ANALYTICAL INDEX TO THE GENERAL AGREEMENT

Note by the Executive Secretary

In accordance with the instruction of the Contracting Parties on 29 October 1951 (GATT/CP.6/SR.25, Section 3, and Add.1), the secretariat has prepared an analytical index of the General Agreement. This index is intended to throw light on the drafting of the provisions of the Agreement and to serve as a guide in their interpretation.

The contracting parties are invited to submit their comments and suggestions to the secretariat before 15 September 1952.
ARTICLE I - GENERAL MOST-FAVOURED-NATION TREATMENT

(Corresponding article in Havana Charter: Article 16
U.S. draft Article 8
London & New York drafts Article 14
Geneva draft Article 16)

1. Most-Favoured-Nation Clause

Paragraph 1 is modelled on the standard League of Nations most-favoured-nation clause. The references to "international transfer of payments" and "internal taxes" were introduced into the standard clause by the United States in their original draft.

2. Margins of Preference

It was agreed that paragraph 2 refers only to preferences in the form of tariff margins and has "nothing to do with quotas or quantitative restrictions".

Paragraph 4 is more definite than the corresponding Havana Charter paragraph as it had to cover all the cases resulting from the tariff negotiations.

The definition contained in the interpretative note that the margin of preference is the actual rather than the percentage difference between the two rates was decided on largely owing to the difficulty of calculating the percentage difference.

"A margin of preference, on an item included in either or both parts of a Schedule, is not bound against decrease by the provisions of the General Agreement." (Decision of 9 August 1949).
The wording "existing on 10 April 1947" in paragraph 4 was adopted in order to "include rates or margins which had legal existence on the base date but were not actually applied". It was also understood that the "general provisions relating to the binding of margins would not override specific undertakings in the tariff schedules to maintain particular products under a particular tariff classification". The interpretative note lists certain types of customs action which would be permissible under paragraph 4 as indicated above.

3. **Preferences for economic development**

Paragraph 3 was inserted in 1948 to conform to the Charter text.

The wording is that of Article 17 of the Charter but the proviso is different as Article 15 of the Charter has no counterpart in the Agreement.

The words "in the light of paragraph 1 of Article XXIX" were inserted to provide for the special position of certain countries of the Near East. The Working Party stated in its report that "the Contracting Parties in taking action pursuant to Article XXV with respect to preferences among countries formerly a part of the Ottoman Empire, would be required to make a decision in accordance with the principles and requirements of Article 15 of the Havana Charter".

4. **Preferential internal taxes**

The interpretative note to paragraph 1 is based on a proposal by the U.S. delegation.

The object is to reserve the legislation regarding preferential internal taxes until definitive acceptance of the Agreement.
5. "originating in" and country of origin (paragraph 1)

The wording "originating in" was deliberately chosen to exclude the concept of "provenance". As stated in the course of the discussion, "what you need ... to obtain the benefit of the minimum rates is to prove the origin and those rates would apply even if /the products/ entered the importing country by way of a third country".

The Preparatory Committee did not think it necessary to define these phrases and suggested that such a definition should be studied by the ITO.

A sub-committee of the Preparatory Committee considered it "to be clear that it is within the province of each importing member country to determine in accordance with the provisions of its law for the purpose of applying the m-f-n provision, whether goods had in fact originated in a particular country".

6. "like product" (paragraph 1)

The Preparatory Committee did not think it necessary to define this phrase and recommended that such definition be studied by the ITO.

It was suggested that the method of tariff classification could be used for determining whether products were "like products" or not.

The Report of the Working Party on the Australian subsidy on ammonium sulfate stated that ammonium sulfate and sodium nitrate were not to be considered "like products" indicating that they were usually classified under different tariff items.

7. "charges of any kind" (paragraph 1)

The Contracting Parties ruled that "consular taxes would be included" in that phrase.
8. "any advantage, favour, privilege or immunity granted by any contracting party ..."

The Chairman of the Contracting Parties ruled that "any advantage ... granted with respect to internal taxes by any contracting party to any product destined for any other country shall be accorded immediately and unconditionally to the like product destined for the territories of all other contracting parties".

9. "in respect of duties and charges" (paragraph 4)

These words were inserted to make it clear that the obligation applied not only to ordinary customs duties but also to other charges such as primage, surtax, etc.

10. San Marino and Vatican City

"The Sub-Committee was of the opinion that the special arrangements existing between Italy and these two territories were not contrary to the Charter."

11. Note on differences to Havana Charter Text:

a) The word "margins" is used in the Charter (para.1) instead of "levels".

b) the preferences between the United States and the Philippines are set out as a sub-paragraph of paragraph 1 in the Charter; in the Agreement they are listed in Annex D.

c) the final paragraphs of Annexes A and D concerning preferential internal taxes are included in the Charter as paragraph 5.
ARTICLE II - SCHEDULES OF CONCESSIONS

(No corresponding article in Havana Charter
Corresponding article in New York draft: Article 6)

1. Maximum rates

"The wording of Article II made it clear beyond doubt that the rates of duty contained in the schedules were only maximum, and not also minimum, rates of duty."

2. Treatment applicable to items

Paragraphs 1(b) and (c) were included in the body of the article in order to obviate the need for an individual note to each schedule, which was the method suggested in the New York draft.

"The inclusion of these provisions in Article II would not affect the right of any delegation to require any other delegation with which it had entered into negotiations to provide lists or details of legislation referred to in the last sentence" of paragraphs 1 and 2.

"ordinary" customs duties (paragraphs 1(b) and (c)).

The word "ordinary" was used to distinguish between the rates on regular tariffs shown in the columns of the schedules (in French "droits de douane proprement dit") and the various supplementary duties and charges imposed on importations (such as primage duty).

"directly or mandatorily" required to be imposed (paragraph 1(b)).

These words "directly or mandatorily" were inserted "to eliminate the cases where the rate may be varied by some kind of administrative order under a law in force and to make it necessary that it shall be a direct requirement of the law that that charge shall be made".

GATT/CP.3/37, p.7
EPCT/201
EPCT/201, p.2
EPCT/TAC/PV/23, pp. 24-25
EPCT/TAC/PV/23, p.28
The addition of the words "at specified fixed rates" after "imposed thereafter" was not accepted. The main argument against this addition was that the provision "was designed to deal with measures such as anti-dumping duties and countervailing duties and, for example, marketing duties or penalty duties with the effect that it would simply require the administration to impose a penalty which may vary ... if certain violations take place".

"equivalent" (paragraph 2(a)). The Legal Drafting Committee agreed that the word here means that "for example, if a /charge/ is imposed on perfume because it contains alcohol, the /charge/ to be imposed must take into consideration the value of the alcohol and not the value of the perfume, that is to say the value of the content and not the value of the whole".

3. Country of origin and direct consignment requirements

It was decided that it was unnecessary to add the words "originating in" to the phrase "products of territories of other contracting parties" (1(b) and (c)), as this was the normal description used in trade treaties.

Paragraph 1(b) does not contain a provision similar to the last sentence of paragraph 1(c) regarding direct shipping requirements. It was agreed that "direct shipping requirements would not be permitted" as regards the granting of the m.f.n. rate of duty. On the other hand, it was clear that "it is within the province of each importing member country to determine, in accordance with the provisions of its law, for the purpose of applying the Most-Favoured-Nation provisions whether goods do, in fact, originate in a particular country".

4. Par value

The words "or provisionally recognised" were inserted in paragraph 6 (a) to meet the case of Brazil, which had not established a par value at the time when the paragraph was drafted.
ARTICLE III - NATIONAL TREATMENT OF INTERNAL TAXATION AND REGULATION

(Corresponding article in Havana Charter: Article 18
U.S. draft Article 9
New York draft Article 15
Geneva draft Article 18)

1. General

The original article was amended in 1948 to conform to Article 18 of the Havana Charter.

The main change from the Geneva article was to provide for the outright elimination of taxes protecting directly competitive or substitutable products in cases in which there was no substantial domestic production of a like product. "The new form of the article makes clearer than did the Geneva text the intention that internal taxes on goods should not be used as a means of protection."

"Internal taxes on imported products could be increased if the tax on the domestic products was also increased; the requirement was that the tax should be the same on both imported and domestic products."

"The Sub-Committee was of the opinion that ... the article as drafted would permit the use of internal regulations required to enforce standards."

2. Limitation of operation of Article III under Protocol of Provisional Application

"The Protocol of Provisional Application limited the operation of Article III only in the sense that it permitted the retention of an absolute difference in the level of taxes applied to domestic and imported products, required by existing legislation, and that no subsequent change in legislation should have the effect of increasing the absolute margin of difference."
3. Applicability of Article III to imported goods

"The Working Party agreed that a contracting party was bound by the provisions of Article III whether or not the contracting party in question had undertaken tariff commitments in respect of the goods concerned."

The question was raised whether the provisions of the first sentence of paragraph 2 of Article III (national treatment) were equally applicable whether imports from other contracting parties were substantial, small or non-existent. The majority of the Working Party replied in the affirmative.

GATT/CP.3/42, pp. 1-2

4. Applicability of Article III to certain types of taxes

a) Income tax. "Neither income taxes nor import duties fall within the scope of Article 18 which is concerned solely with internal taxes on goods."

Havana Reports, Section 44, p. 63

b) Transfer charges. "The Sub-Committee considered that charges imposed in connection with the international transfer of payments for imports or exports, particularly the charges imposed by countries employing multiple currency practices, where such charges are imposed not inconsistently with the Articles of Agreement of the International Monetary Fund, would not be covered by Article 18 (III). On the other hand, in the unlikely case of a multiple currency practice which takes the form of an internal tax or charge, such as an excise tax on an imported product not applied on the like domestic product, that practice would be precluded by Article 18 (III). It may be pointed out that the possible existence of charges on the transfer of payments insofar as these are permitted by the International Monetary Fund is clearly recognised by Article 16."

Havana Reports, Section 39, p. 62

c) Special case of a general tax for revenue purposes.

"The Sub-Committee agreed that a general tax, imposed for revenue purposes, uniformly applicable to a considerable number of products, which conformed to the requirements of the first sentence of paragraph 2 would not be considered to be inconsistent with the second sentence."

Havana Reports, Sections 40 & 41, p. 62
"It was agreed further that a tax applying at a uniform rate to a considerable number of products was to be regarded as a tax of the kind referred to in the preceding paragraph ... notwithstanding the fact that the legislation under which the tax was imposed also provided for other rates of tax applying to other products."

d) Special case of charges imposed by Chile, Lebanon and Syria. The Sub-Committee considered that certain charges imposed by Chile, Lebanon and Syria were "import duties and not internal taxes because according to the information supplied by the countries concerned (a) they are collected at the time of, and as a condition to, the entry of the goods into the importing country, and (b) they apply exclusively to imported products without being related in any way to similar charges collected internally on like domestic products. The fact that these charges are described as internal taxes in the laws of the importing country would not in itself have the effect of giving them the status of internal taxes under the Charter."

5. Application of paragraph 3

"If the import duty on the product in question was not bound, the margin of protection afforded by internal taxation could be transferred to the customs duty; even if it were bound, under paragraph 3 of Article 18 (III) it was possible to postpone the transfer until such time as it was possible for the Member to obtain a release from its trade agreement obligation."

6. Mixing regulations (paragraph 5)

a) Special cases. "The Sub-Committee was in agreement that under the provisions of Article 18 (III) regulations and taxes would be permitted which, while perhaps having the effect of assisting the production of a particular domestic product (say, butter) are directed as much against the domestic production of another product (say, domestic oleomargarine) of which there was a substantial domestic production as they are against imports (say, imported oleomargarine)."
The question of the application of mixing regulations in time of shortages was fully discussed at Havana.

The main points made in the course of the discussion were the following:

(i) "Provided the regulation did not require that the product to be mixed had to be of domestic origin, or provided that the regulation was not imposed for protective purposes, then such a regulation would not contravene the Article."

(ii) In the event that regulations imposed in respect of shortages of raw materials had protective effects, "they would be covered by Article 43 (XX)."

(iii) Further, a clarification was given in the following statement: "A Member could not establish a mixing regulation which protected a domestic product as against an imported product during the periods when there was no shortage, in order that the industry in question would be in existence in the event of a future shortage."

"A regulation requiring a product to be composed of two or more materials in a specific proportion, where all the materials in question are produced domestically in substantial quantities and where there is no requirement that any specific quantity of any of the materials be of domestic origin" would not come under Article III.

b) Grant of special customs treatment. "The Sub-Committee is of the opinion that paragraph 5 ... would not prohibit the continuance of a tariff system which permits the entry of the product at a rate of duty lower than the normal tariff rate, provided the product is mixed or used with a certain proportion of a similar product of national origin. The Sub-Committee considered that such a provision would not be regarded as an internal quantitative regulation in terms of this paragraph for the reason that the use of a percentage of the local product is not made compulsory, nor is the product in any way restricted."
7. Transportation charges (paragraph 4)

"The Sub-Committee inserted the word 'internal' to make it clear that the phrase 'differential transportation charges' does not refer to international shipping.

"Since paragraph 4 relates solely to the question of differential treatment between imported and domestic goods, the inclusion of the last sentence in that paragraph should not be understood to give sanction to the use of artificial measures in the form of differential transport charges designed to divert traffic from one port to another."

(For discriminatory internal transportation charges having the effect of a subsidy, see section on Article XVI.)

8. Governmental purchases of supplies for governmental use (paragraph 8(a))

a) Exception to national treatment rule. The provision in the U.S. draft for national as distinct from most-favoured-nation treatment in respect of governmental purchases of supplies for governmental use was omitted in London "as it appears to the Preparatory Committee that an attempt to reach agreement on such a commitment would lead to exceptions almost as broad as the commitment itself".

b) "governmental". "the word was intended to include all governmental bodies, including local authorities".

c) Resale of products purchased by a government. It was stated that paragraph 8 "had been redrafted by the Sub-Committee specifically to cover purchases made originally for governmental purposes and not with a view to commercial resale, which might nevertheless later be sold; nor ... could Article 18 (III) be construed as applying to contracts for purchases in foreign countries, since paragraph 8 refers only to laws, regulations or requirements relating to mixture, processing or use which might grant protection or give more favourable treatment to domestic as opposed to foreign products".
d) *Special case of a monopoly margin.* In order to make it clear that an *internal tax* levied by a state monopoly, if treated as a negotiable monopoly margin, would not fall within the scope of Article 18 (III), the following interpretative note was added to Article 31 of the Charter:

"The maximum import duty referred to in paragraphs 2 and 4 of Article 31 would cover the margin which has been negotiated or which has been published or notified to the Organization, whether or not collected, wholly or in part, at the custom house as an ordinary customs duty."

No corresponding interpretative note is contained in the General Agreement.

9. **Subsidies**

Sub-paragraph 8(b) "was redrafted in order to make it clear that nothing in Article 18 (III) could be construed to sanction the exemption of domestic products from internal taxes imposed on like imported products or the remission of such taxes. At the same time the Sub-Committee recorded its view that nothing in this sub-paragraph or elsewhere in Article 18 (III) would override the provisions of Article XVI."

10. "*Directly competitive or substitutable*" (interpretative note to paragraph 2)

A decision would have to be made on each case as it arose and in relation to the factual situation.
ARTICLE IV - SPECIAL PROVISIONS RELATING TO
CINEMATOGRAPH FILMS

(Corresponding article in Havana Charter: Article 19
New York draft Article 15(4)
Geneva draft Article 19)

1. Discrimination between films

"The date fixed in sub-paragraph (c) clearly relates only to discriminatory measures as between foreign films, not as between domestic and foreign films."

2. New Zealand renters' quota

"The Sub-Committee agreed that the New Zealand renters' quota is in purpose and effect the equivalent of a screen quota," hence the note at the end of Annex A.
ARTICLE V - FREEDOM OF TRANSIT

(Corresponding article in Havana Charter: Article 33

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1. General

Paragraph 1 and the last sentence of paragraph 2 were based on the text of the Barcelona Convention of 20 April 1921.

No change was made to this Article by the Contracting Parties to incorporate the changes made at Havana and the new interpretative notes because "the contracting parties who all signed the Final Act of the Conference of Havana could not interpret these provisions in any other way than that laid down in the ... Charter".

Drafting Committee Report, p. 12

GATT/CP.2/22/Rev.1, p. 6

2. Coverage of Article

"The original text referred in general to persons, goods and means of transport. The text recommended by the Drafting Committee refers to goods and means of transport only, since the transit of persons was considered not to be within the scope of the Charter, and since traffic of persons is subject to immigration laws and may properly be the concern of an international agency other than the Organization."

The operation of aircraft in transit was exempted as a subject that would be dealt with by ICAO, but air transit of goods, including baggage, is covered by paragraph 7.

"In the opinion of the Sub-Committee the case of grazing livestock ... was not considered as coming within the ambit of this Article."

There was no agreement as to whether the principle of freedom of transit applied to goods consigned to a country in bond without a final destination.

Drafting Committee Report, p. 12

EPCT/C.II/54/Rev.1, p. 8

EPCT/C.II/54/Rev.1, p. 7

E/CONF.2/C.3/C/W.5

EPCT/A/SR.20, p. 3

EPCT/109
3. **Special case of goods assembled, disassembled or reassembled**

"The assembly of vehicles and mobile machinery arriving in a knocked-down condition or the disassembly (or disassembly and subsequent reassembly) of bulky articles shall not be held to render the passage of such goods outside the scope of 'traffic in transit', provided that any such operation is undertaken solely for convenience of transport."

4. **Neighbouring countries**

"... a movement between two points in the same country passing through another country was clearly 'in transit' through the other country within the meaning of paragraph 1."

"If, as a result of negotiations in accordance with paragraph 6 (not included in the GATT), a Member grants to a country which has no direct access to the sea more ample facilities than those already provided for in other paragraphs of Article 33 (V), such special facilities may be limited to the landlocked country concerned unless the Organization finds, on the complaint of any other Member, that the withholding of the special facilities from the complaining Member contravenes the most-favoured-nation provisions of this Charter."

"... agreements between neighbouring countries for the regulation of transit in respect of their own trade ... are clearly permissible under the terms of the Article if they do not prejudice the interests of other Members in violation of the most-favoured-nation provisions of the Charter, and if they do not limit freedom of transit for other Members."

5. **Transportation charges**

It was agreed "that transportation charges on traffic in transit did not come within the purview of Article 32 (V), but were subject to the provisions of paragraph 2 of Article 18 (III)".
6. **Note on differences to Havana Charter text**

Paragraph 6 of Article 33 of the Charter is not in the GATT; it was inserted at Havana "in view of the great importance of this matter to many countries, particularly to those countries which have no access to the sea".

The interpretative note in the GATT does not appear in the Havana Charter; on the other hand, three interpretative notes have been annexed to the Havana Charter and are not reproduced in the GATT (see, however, Section 1 General above).
ARTICLE VI - ANTI-DUMPING AND COUNTERVAILING DUTIES

(Corresponding article in Havana Charter: Article 34)

U.S. Proposals Chapter III - 3
U.S. draft Article 11
New York draft Article 17
Geneva draft Article 33)

1. General

The original Article was amended in 1948 to conform to Article 34 of the Havana Charter.

It was agreed that although there was no substantive difference between the two texts "the text adopted at Havana contains a useful indication of the principle governing the operation of that Article and constitutes a clearer formulation of the rules laid down in that Article".

Protocol modifying Part II & Article XXVI (Sept.1948)
GATT/CP.2/22/Rev.1 p.2

2. Types of dumping

"The Article .. condemns injurious 'price dumping' as defined therein and does not relate to other types of dumping."

Havana Reports, Section 23, p. 74

3. Retaliatory action

It was agreed "that measures other than compensatory anti-dumping or countervailing duties may not be applied to counteract dumping or subsidization except in so far as such other measures are permitted under other provisions of the Charter".

This agreement was confirmed in the report of the Working Party on Modifications of the GATT.

Havana Reports, Section 25, p. 74
E/CONF.2/C.3/SR.30, p.6
GATT/CP.2/22/Rev.1, p.2

4. Abuses

"It was .. the general view of the Sub-Committee that adequate means for dealing with abuses by a Member unnecessarily levying anti-dumping or countervailing duties/ was adequately covered by the general provisions of the Charter, particularly by Articles 41 (XXI) and 93 (XXIII)."

Havana Reports, Section 22, p. 74
5. "like product"

It was stated that the words "like product" meant in this instance the same product.


6. "industry"

"Where the word 'industry' is used ... it includes such activities as agriculture, forestry, mining, etc., as well as manufacturing."

Havana Reports, Section 24, p. 74

7. "retard materially" (paragraph 6)

It was stated that if an industry became economically unprofitable because of dumping, this would be covered by the phrase quoted above.

ARTICLE VII - VALUATION FOR CUSTOMS PURPOSES

1. Ad valorem duties levied on the basis of fixed values

This question was fully discussed at Havana. It was agreed that "it would not, and should not, be compatible with the letter or spirit of the Article to accept the principle of variable schedules of 'fixed values' for products subject to ad valorem rates of duty".

On the other hand, it was agreed that ad valorem rates applied to established values of goods are, in practical result, the equivalent of specific duties so long as the established values of goods are not changed.

Accordingly, the following interpretative note was annexed to the Charter:

"If on the date of this Charter a Member has in force a system under which ad valorem duties are levied on the basis of fixed values, the provisions of paragraph 3 of Article 35 (VII) shall not apply:

"1. in the case of values not subject to periodical revision in regard to a particular product, as long as the value established for that product remains unchanged;

"2. in the case of values subject to periodical revision, on condition that the revision is based on the average 'actual value' established by reference to an immediately preceding period of not more than twelve months and that such revision is made at any time at the request of the parties concerned or of Members. The revision shall apply to the importation or importations in respect of which the specific request for revision was made, and the revised value so established shall remain in force pending further revision."
It was noted in the Summary Record that the system of tariff valuation in force in India "for non-ordinary products was in order insofar as the actual value could not be readily ascertained under paragraph 3(b) (GATT 2(b)), and that paragraph 3(c) (GATT 2(c)) met the problem of India in respect of those particular products for which they found it necessary periodically to fix a value".

2. **Conversion rates of currency**

"If compliance with the provisions of paragraph 5 (GATT 4) would result in decreases in amounts of duty payable on products with respect to which the rates of duty have been bound by an international agreement, the term 'at the earliest practicable date' in paragraph 2 allows the Member concerned a reasonable time to obtain adjustment of the agreement."

It was agreed that "cases in which an alteration in the rate of exchange, with or without par value, is introduced are adequately covered by paragraphs 4(a) and (b)".

3. **Government contracts**

The first paragraph of the note to paragraph 2 of the GATT Article was amended in the Charter "so as to provide expressly for the presumption that contract prices may represent the basis for establishing 'actual values' in the case of government contracts in respect of primary products".

4. **Note on differences to Havana Charter**

Paragraph 1 of the Charter article is omitted in the Agreement.

In paragraph 2 of the Charter article the words "directly affected" are inserted after "upon a request by another Member".

Sub-paragraph (d) of paragraph 4 became in the Havana Charter a separate paragraph (6) in order to obviate any misunderstanding of the concept of paragraph 4. Accordingly, the word "paragraph" was replaced by the word "article" in the Havana text.
The first interpretative note to the Agreement is omitted in the Charter, and there are two interpretative notes in the Charter which are not in the GATT.
ARTICLE VIII - FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

1. Fees and charges relating to exchange control

It was agreed that "sub-paragraph (d) is without prejudice to the provisions of the Charter relating to safeguarding balance-of-payments and exchange control".

2. Note on differences to Havana Charter

In the Charter Article the wording of paragraph 1 was revised to show that "this Article relates to all payments of any character required by a Member on or in connection with importation or exportation, other than import and export duties, and other than taxes within the purview of Article 13 of the Geneva draft (III)".

The words "directly affected" were added in Havana in paragraph 2 and are not in the GATT.

The last sentence of paragraph 2 and paragraph 4 of the Charter article are not included in the GATT, as they related to functions of the Organization.

Paragraph 6 of the Charter article relating to tariff discrimination based on the use of regional or geographical names in tariff descriptions is not included in the GATT as it did not appear in the Geneva draft. The order of the paragraphs has been changed at Havana.

The interpretative note in the Charter reads "not inconsistent with the Articles of Agreement of the International Monetary Fund" instead of "with the approval of the International Monetary Fund"; the change was made because "the express approval of the Fund was not required in all cases covered by the note".

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ARTICLE IX - MARKS OF ORIGIN

1. Distinctive names of products (paragraph 5)

"It was agreed that the text of paragraph 7 (5 in GATT) should not have the effect of prejudicing the present situation as regards certain distinctive names of products, provided always that the names affixed to the products cannot misrepresent their true origin. This is particularly the case when the name of the producing country is clearly indicated. It will rest with the governments concerned to proceed to a joint examination of particular cases which might arise if disputes occur as a result of the use of distinctive names of products which may have lost their original significance through constant use permitted by law in the country where they are used."

2. False marking

"... the right of each country to prohibit the import, export and transit of foreign goods falsely marked as being produced in the country in question was considered to be covered primarily by the words 'deceptive practices' [in Article XX:I(d)]."

3. Note on differences to the Havana Charter

Paragraphs 1 and 5 of the Charter article and the last sentence of paragraph 7 are not in the text of the GATT.
ARTICLE X - PUBLICATION AND ADMINISTRATION
OF TRADE REGULATIONS

(Corresponding article in Havana Charter: Article 38)

U.S. Proposals Chapter III-8
U.S. draft Article 15
New York draft Article 21
Geneva draft Article 37

1. "published" (paragraph 2)

The word "published" at the end of paragraph 2 of the GATT article was changed to "made public" in the Charter article. It was agreed that the text "did not require the prior public issue of an official document, but that the effect could also be accomplished by an official announcement made in the legislature of the country concerned".

2. Note on differences to Havana Charter

The provision in paragraph 1 requiring governments to furnish copies of their laws, regulations and agreements to the Organization is omitted in the GATT.

The last sentence of paragraph 3(a) in the Charter article regarding facilities afforded to traders is omitted in the GATT.
ARTICLE XI - GENERAL ELIMINATION OF QUANTITATIVE RESTRICTIONS

(Corresponding article in Havana Charter: Article 20
U.S. Proposals Chapter III C-1
U.S. draft Article 19
London & New York drafts Article 25
Geneva draft Article 20)

1. Inclusion in the Agreement

The inclusion in the Agreement of Articles X-XIV (quantitative restrictions) was accepted by certain delegations without the insertion of the Charter Articles IV and VI relating to the removal of mal-adjustments within the balance-of-payments and safeguards for members subject to external pressure, on the understanding that if a situation of the sort envisaged in the chapter relating to employment and economic activity should arise, the Parties could invoke the Protocol of Provisional Application, particularly in view of the specific reference to the provisions on nullification and impairment.

2. Scope of quantitative restrictions permitted

a) Non-protective object of restrictions permitted. It was stressed at Geneva that the quantitative restrictions permitted under this Article should not be used "as means of protection, but as a means of making water-tight, and making possible the working of necessary forms of internal control".

"The Sub-Committee agreed that paragraph 2(c) was not intended to provide a means of protecting domestic producers against foreign competition, but simply to permit, in appropriate cases, the enforcement of domestic governmental measures necessitated by the special problems relating to the production and marketing of agricultural and fisheries products."

EPCT/TAC/SR.13, pp. 4-5
EPCT/A/PV/19, p. 44
Havana Reports, Section 16, p. 89
b) **Non-discriminatory administration of quotas.** It was agreed that Members in administering import restrictions should pay due regard to the need for avoiding that global quotas not allocated among supplying countries operate in a manner unduly favourable to those countries best able for any reason to take prompt advantage of the global quotas at the opening of the quotas.

c) **Use of quantitative restrictions as an anti-dumping measure.** "The suggestion was also made that it should be permissible to use import restrictions, under proper safeguards, as an anti-dumping measure in those cases of intermittent dumping in which import duties did not provide a suitable instrument of control. After consideration it was generally agreed that as far as the establishment of new industries is concerned, the position should be sufficiently covered by the provisions of Chapter IV (Article XVIII). In respect of the threat of intermittent dumping to established industries, there was wide agreement with the view that the position was probably already adequately covered under Article 34" (Article XIX).

d) **Seasonal restrictions.** It was suggested in London that restrictions imposed under the exception contained in paragraph 2(c) "should not be imposed on seasonal commodities at a time when similar domestic products were not available".

e) **Temporary export restrictions to meet rising prices.** "The Sub-Committee was satisfied that the terms of paragraph 2(a) ... are adequate to allow a country to impose temporary export restrictions to meet a considerable rise in domestic prices of foodstuffs due to a rise in prices in other countries."

Other special cases.
3. Interpretation of paragraph 2(a)

a) The words "prevent or" were added in Geneva "to enable a member to take remedial action before a critical shortage has actually arisen".

b) "It was the view of the Sub-Committee that for the purposes of this provision, the importance of any product should be judged in relation to the particular country concerned."

c) It was agreed that the Australian export prohibitions on merino sheep were covered by paragraph 2(a).

d) In the U.S. proposals the phrase used was "conditions of distress"; the U.S. representative gave the following interpretation: the phrase did not mean "economic distress but referred to shortages of crops, etc., in cases such as famine".

4. Interpretation of paragraph 2(b)

a) "Marketing". The reference to marketing regulations was added in Geneva.

b) It was agreed in Geneva that the Australian butter marketing scheme, as well as other similar schemes which required export licences, were covered by the exception.

c) "The Sub-Committee expressed the view that governmental measures relating to the orderly marketing of agricultural commodities for which storage facilities in both the country of origin and destination were insufficient were covered in paragraph 2(b)."

5. Interpretation of paragraph 2(c)

a) Scope and intent of the provision.

i) It was pointed out in reply to objections that industrial products should also be included in this exception that agriculture and fisheries presented particular difficulties, since there were a multitude of small and unorganized producers who were often faced very suddenly with very large crops or catches, and the government
accordingly had to step in and organize them. Industrial producers did not suffer from the same disadvantage and were usually sufficiently well organized.

ii) Reference to fisheries products was added in London.

iii) "restrict". "The Sub-Committee agreed that in interpreting the term "restrict" for the purposes of paragraph 2(c), the essential point was that the measures of domestic restriction must effectively keep domestic output below the level which it would have attained in the absence of restrictions."

iv) Domestic subsidies on agricultural or fisheries production. "The Sub-Committee agreed that it was not the case that subsidies were necessarily inconsistent with restrictions of production and that in some cases they might be necessary features of a governmental programme for restricting production. It was recognized, on the other hand, that there might be cases in which restrictions on domestic production were not effectively enforced and that this, particularly in conjunction with the application of subsidies, might lead to misuse of the provisions of paragraph 2(c). The Sub-Committee agreed that Members whose interests were seriously prejudiced by the operation of a domestic subsidy should normally have recourse to the procedure of Article 25 (XVI) and that this procedure would be open to any Member which considered that restrictions on domestic agricultural production applied for the purposes of paragraph 2(c) were being rendered ineffective by the operation of a domestic subsidy. The essential point was that the restrictions on domestic production should be effectively enforced and the Sub-Committee recognized that unless this condition were fulfilled, restrictions on imports would not be warranted."

To meet this point and also to ensure that paragraph 2(c) should apply only when there was a surplus of production, the word "effectively" was inserted after "operate" at Havana in the Charter. No change was made at Havana to the GATT.
b) **Definition of agricultural and fisheries products**

i) "The term 'agricultural product' in sub-paragraph 2(c) ... may include inter alia sericultural products and certain plant products (a) which are derived from the plant in the natural process of growth, such as gums, resins and syrups, and (b) a major part of the total output of which is produced by small producers."

ii) **Whales.** It was agreed that a decision as to whether whales were covered by fisheries products should be made by the ITO when established.

c) **Special cases**

i) **Swedish policy on livestock production.** "... The Sub-Committee agreed that a number of the measures that [the Swedish delegate] ... had described were certainly capable of being used for restricting domestic production, and to the extent that they were so used, would be covered by the provisions of paragraph 2(c)(1)."

ii) **Animal feeding stuffs.** (paragraph 2 (c)(ii)) "The Sub-Committee agreed that the provisions of paragraph 2 (c):i) would cover arrangements under which the government concerned made temporary surpluses of grain available as animal feeding stuffs to small holders and similar categories with a low standard of living, free of charge or at prices below the current market level."

d) **Other points of interpretation**

i) **like product.** It was agreed that the definition of this phrase should be left to the ITO. It was stated, however, that in this Article the term did not mean a competing product. Reference was made to the following definition of the League of Nations: "practically identical with another product".
ii) "mainly" (paragraph 2(c))

It was agreed that under the existing text, in a case for example in which a Member wished to restrict the quantities permitted to be produced of any animal product the production of which was dependent wholly or mainly on two or more imported kinds of feeding stuffs, considered together but not necessarily on either kind considered separately, it would be open to that Member to restrict the production of animal products, provided that domestic production of imported kinds of feeding stuffs were relatively negligible by treating the imported kinds of feeding stuffs as a single commodity and applying import restrictions thereto.

"It was further agreed that if the various imported feeding stuffs were in fact treated as a single commodity, import restrictions thereon should be applied globally on the total combined imports without allocating shares to the individual feeding stuffs. It was felt that, in cases where this procedure would not be practicable the import restrictions should take the form of an equal proportionate reduction in the amount permitted to be imported of each of the several feeding stuffs."

iii) "in any form" (paragraph 2(c))

This was meant to cover only "those earlier stages of processing which result in a perishable product" (e.g., kippers).

In the interpretative note to the GATT the word "perishable" is used. This wording was changed at Havana because "... the term 'perishable' which is inapplicable to many types of agricultural products had unduly narrowed the scope of paragraph 2(c)". "The Sub-Committee, however, wishes to make clear that the omission of the phrase 'when in an early stage of processing and still perishable' is dictated solely by the need to permit greater flexibility in taking into account the differing circumstances that may relate to the trade in different types of agricultural products, having in view only the necessity of not making ineffective the restriction on the importation of the product in its original form and is in no way intended to widen the field within which quantitative restrictions under paragraph 2(c) may be applied."
In particular, it should not be construed as permitting the use of quantitative restrictions as a method of protecting the industrial processing of agricultural or fisheries products.

6. Interpretation of the last sub-paragraph of paragraph 2.

a) Perishable commodities. "It was ... agreed that in the case of perishable commodities, due regard should be had for the special problems affecting the trade in these commodities."

b) "special factors". It was stated that "special factors" meant real changes in the competitive situation and not changes artificially introduced or encouraged by government action of a kind which other sections of the Charter would not allow.

"... the Sub-Committee agreed that it was desirable to make it clear that changes in relative productive efficiency between the home producers and foreign producers should be taken into consideration in determining the size of import quotas under paragraph 2(c)(i)."

7. Interpretation of paragraph 3

a) State trading operations. Paragraph 3 of the Article relating to state trading operations was transferred to this article in Geneva from its original place in Article 26 (XII), as it was considered applicable to the entire section on quantitative restrictions and reworded so as to cover export restrictions as well as import restrictions.

8. Other points

a) Goods en route. The reference to "goods en route", which was included in the London draft of the Article, was deleted by the Drafting Committee as it was considered sufficiently covered by the provisions concerning public notice and goods en route (Article XIII:3(c)).

It was generally agreed in London that if goods were en route, they must be admitted, but may be counted against a quota.
9. **Note on main differences to Havana Charter**

The last clause of paragraph 2(b) of the Charter was omitted from the Agreement. It was stated that it would be "unwise to envisage the Contracting Parties as being in a position to examine marketing standards and agree on regulations", and that this would be appropriate for the ITO, which would have a staff of experts.

Paragraphs 3(a) and (b) of the Charter article are not included in the GATT. They were inserted at Havana to protect the interests of exporting countries.

The interpretative note to paragraph 2(a) is not in the GATT text. It was inserted at Havana to meet the Greek problem of olive oil production. The interpretative note to paragraph 2(c) is differently worded in the Charter to the GATT.

The interpretative note to paragraph 2, last sub-paragraph, is differently worded in the Charter to the GATT - "the words 'or as between different foreign producers' had been deleted from this footnote (in the Charter) because they were pertinent only to the footnote on 'special factors' in Article 22 /XII/".

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**References**

- EPCT/TAC/PV/27, p. 18
- Havana Reports, Sections 24-28, pp. 90-91
- Havana Reports, Section 12, p. 88
ARTICLE XII - RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS

(Corresponding article in Havana Charter: Article 21
U.S. Proposals Chapter III C-2
U.S. draft Article 20
London and New York London draft Article 26
drafts Geneva draft Article 22)

1. General

a) "With regard to the special problems that might be created for Members which, as a result of their programmes of full employment, maintenance of high and rising levels of demand and economic development, find themselves faced with a high level of demand for imports, and in consequence maintain quantitative regulation of their foreign trade, it was considered that the text of Article 21 (XII), together with the provision for export controls in certain parts of this Charter, for example, in Article 45 (XX), fully meet the position of these economies."

b) In the course of the discussion it was suggested at Geneva that paragraphs 3(b)(i) and 4(d) were contradictory. The following statement was made in reply to that contention: "If the restrictions are necessary in the sense of meeting the criteria in paragraph 2, if they are administered in a way which is in accord with the undertakings in paragraph 3(c), then you cannot be required to withdraw them on the grounds that if you adopted a policy of deflation or ceased reconstruction, you would no longer be in difficulties, but if you undertake restrictions which do not meet the criteria of paragraph 2, or if you break the undertakings given in paragraph 3 (c), then you may be required to withdraw the restrictions."

2. Interpretation of paragraph 1

a) "in order to safeguard its external financial position and balance of payments". When this wording was proposed, it was indicated that it would eliminate the risk that the provision "could be interpreted to mean that import restrictions were not 'necessary' (and therefore were not permitted) until every other possible corrective measure (such as exchange controls, exchange depreciation, etc.) had been tried and found inadequate". It was also stated that

Havana Charter Interpretative Note ad Article 21
EPCT/A/PV/41, p. 20
EPCT/W/223, pp. 13, 15
it remained clear, of course, that the Organization had the right during the course of consultation with the Members fully to discuss and recommend alternative action which a Member might take to meet its difficulties.

3. **Interpretation of paragraph 2(a)**

a) "serious decline". "The seriousness of a decline in reserves depended on a number of factors such as the size of a country, its need for reserves, the variability of its trade and the size of the reserves. Neither the absolute amount of the decline nor the proportionate amount would be valid in all cases as the criterion of the seriousness of the decline."

b) Special factors (last sentence of 2(a)). "There are, however, many factors to which due regard must be paid .... There may be special non-recurrent movements of funds affecting a country's reserves, a country may have special credits outside its monetary reserves which it might be expected to use to a proper extent and at a proper rate to meet a strain on its external position, a country which has high reserves may, nevertheless, have high future commitments or probable drains upon its resources to meet in the near future. All such factors will have to be taken into account in interpreting movements in a country's reserves."

"It was the view of the Sub-Committee that the present text of Article 21 (XII) made adequate provision for many of the considerations put forward by the delegates of Venezuela and Uruguay ... It was pointed out that a country exporting principally a small number of products would, in like conditions, probably be considered to have need for greater reserves than a country exporting a large variety of products, particularly if the exports were exhaustible or subject to considerable fluctuations of supply or price. A country actively embarked on a programme of economic development which is raising levels of production and foreign trade would probably then be considered to have need for greater reserves than when its economic activity was at a lower level."
4. Interpretation of paragraph 3(b)

a) "such a contracting party may experience a high level of demand for imports". The meaning of this provision has been fully discussed at Havana. As a result the provision was spelled out in the Havana text as follows (paragraph 4(b)): "Such a Member may find that demands for foreign exchange on account of imports and other current payments are absorbing the foreign exchange resources currently available to it in such a manner as to exercise pressure on its monetary reserves which would justify the institution or maintenance of restrictions under paragraph 3 in this Article".

When the text was approved, the United Kingdom representative made a statement annexed to the Summary Record.

b) The cross-reference contained in 3(b)(1) of the GATT to the provisions of paragraph 2 (and the interpretative note) were inserted in Geneva because the principle established in 3(b)(i) was intended to apply to paragraph 2(a) and the question of necessity. (This cross-reference and the interpretative note were removed from the Charter at Havana).

c) Paragraph 3(b)(ii): Permission to give priority for the importation of certain products more essential in the light of domestic policies was expressly laid down "so that a Member can, if necessary, restrict the importation of consumer goods without restricting the importation of capital goods".

5. Interpretation of paragraph 3(c)

a) "minimum commercial quantities". It was stated that "the object ... is to keep open the channels of trade, to make it just worthwhile for the exporter to keep his sales organization together in the overseas market". Although it was recognized that the phrase was open to a wide interpretation, it was stressed that it was a matter of common sense on which Members in good faith ought not to disagree very seriously.
It was agreed at Geneva to record the statement that "there should be an understood priority for the importation of spare parts, because in prohibiting the importation of spare parts into a country, you are making it impossible for other countries to export machinery".

b) Description of goods (sub-title). It was stated that "whether you mean fountain pens as a class or each brand of fountain pen, ... you certainly do not mean the importation of one particular kind".

c) Paragraphs 3(c)(ii) and (iii) of the GATT were transferred in the Charter to the paragraph beginning "No Member shall institute ... " (paragraph 2 of the GATT) "on the ground that they constitute limitations on any kind of quantitative restrictions, irrespective of whether the restriction is a consequence of the domestic policies referred to in paragraph 3(c) ... or of other causes".

6. Interpretation of paragraph 4(a)

A proposal to eliminate the last sentence of paragraph 4(a) "no contracting party shall be required ... etc." on the ground that it had the same object as the secrecy clause in paragraph 4(e) was defeated. It was stated in this connection that the provision should be retained not merely on the grounds of secrecy, but also to suggest that when a Member consulted under paragraph 4(a) he should not be required to have completed his plans and to have chosen exactly what he was going to do. In fact, it was hoped that in most cases he would not have made up his mind and that he should not be required to indicate particular measures which he may ultimately determine to adopt.

7. Interpretation of paragraph 4(d)

"prima facie case". These words were inserted to exclude frivolous complaints and to oblige countries to document to some extent any case presented.
8. **Note on differences to Havana Charter**

Paragraph 1 of the Charter, recognizing the responsibilities of Members for their external financial position, was inserted at Havana and is not included in the GATT.

Paragraphs 2(b), 3(b) and 3(c)(ii) are differently worded in the Charter.

Paragraph 3(b)(i): the cross reference contained in the GATT does not appear in the Charter.

Paragraph 4(b): the GATT uses the word "discussions" in the second sentence where the Charter used the word "consultations". A specific date (January 1, 1951) is used in the GATT.

Paragraph 4(d): "prima facie case" in the GATT is not in the Charter.

Paragraph 4(e): the first sentence of the equivalent Charter paragraph (5(e)) is not in the GATT.

The GATT interpretative note was omitted from the Charter in Havana, and the interpretative note to the Charter Article is not in the GATT.
ARTICLE XIII - NON-DISCRIMINATORY ADMINISTRATION OF QUANTITATIVE RESTRICTIONS

(Corresponding article in Havana Charter: Article 22
U.S. Proposals Chapter III-C-3
U.S. draft Article 21
London & New York Article 26
drafts Article 22)

1. General

The text of paragraph 5 was amended in 1948; the reference to internal quantitative restrictions and licensing regulations was deleted. This change was consequential on the change of Article III, paragraph 7.

2. Import licences - discrimination in issue for balance-of-payment reasons (paragraph 2(c))

The question was raised at Geneva "whether a Member was permitted to require an import licence or permit to be utilised for the importation of a product from a particular country or source for balance-of-payment reasons", and a Geneva Sub-Committee felt that the text of Article XV:9(b) took due account of this problem.

3. Products en route (paragraph 3(b))

The second Proviso in paragraph 3(b) was inserted by the Drafting Committee "to bring this sub-paragraph into harmony with the provision concerning publication of certain administrative rulings contained in paragraph 3 of" the article concerning publication and administration of trade regulations (Article X). This provision, however, was not retained in the texts of the GATT or of the Havana Charter.

4. "special factors" (paragraphs 2(d) and 4)

At Havana it was agreed that the text should be made more explicit by the specific mention of certain additional factors which should be taken into account in the allocation of quotas. The following interpretative note was accordingly added to the Charter text:

Protocol modifying Part II & Article XXVI
GATT/CP.2/22/Rev.1, Section 32, p.7
EPCT/163 p. 23
Drafting Committee Report, p. 23
Havana Reports, Section 52, p. 95
"The term 'special factors' as used in Article 22 (XIII) includes among other factors the following changes, as between the various foreign producers, which may have occurred since the representative period:

1. changes in relative productive efficiency;
2. the existence of new or additional ability to export; and
3. reduced ability to export."

It was also agreed that "changes artificially brought about since the representative period (assuming that period to have preceded the coming into force of the Charter) by means not permissible under the provisions of the Charter were not to be regarded as 'special factors' for the purposes of paragraph 2(c) and Article 22 (XIII)."

5. Note on differences to Havana Charter

Paragraph 3(d) of the Charter article is not in the GATT text; it was inserted at Havana in order to enable a Member, trading with a non-Member or non-Members, to be released from its obligations to give public notice under paragraphs 3(b) and 3(c).

The interpretative note to paragraph 2(d) in the GATT was deleted in Havana and is not included in the Charter.

The interpretative note to paragraph 4 in the GATT is worded more explicitly in the Charter.

The following interpretative note to paragraph 3, which is not in the GATT text, was added at Havana to meet the special case of India:

"The first sentence of paragraph 3(b) is to be understood as requiring the Member in all cases to give, not later than the beginning of the relevant period, public notice of any quota fixed for a specified future period, but as permitting a Member, which for urgent balance-of-payment reasons is under the necessity of changing the quota within the course of a specified period, to select the time of its giving public notice of the change. This in no way affects the obligation of a Member under the provisions of paragraph 3(a), where applicable."

In the first sentence of paragraph 2(d) there is a drafting difference between the Charter and the GATT. 
ARTICLE XIV - EXCEPTIONS TO THE RULE OF NON-DISCRIMINATION

(Corresponding article in Havana Charter: Article 23
U.S. Proposals Chapter III C-4
U.S. draft Article 22
London & New York Article 28
drafts Geneva draft Article 23)

1. General

This Article was completely re-written in Havana. "Since, however, certain Members would have already accepted the principles of Article 23 of the Geneva text (original Article XIV of the GATT) ... the Sub-Committee considered that such Members should be allowed, if they so desire, to continue to apply these principles during the transitional period." This option is embodied in an Annex (J).

The original Article XIV was replaced in 1948 by the text of the Charter Article.

Havana Reports, Sections 16, 21-26, pp. 98-100
Special Protocol relating to Art. XIV (March 1948)

2. Intent of paragraph 1

"The discriminatory measures, including adaptations thereof, permitted under paragraph 1, may be applied by a Member during the transitional period without the prior approval of the Organization."

It was also stated at Geneva that "under the Articles of Agreement of the International Monetary Fund, countries which claim the benefit of Article XIV (of the Articles of Agreement) - that is, the transitional period - or those that obtain the permission of the International Monetary Fund under Article VIII of those Articles are permitted to discriminate in exchange controls. Since they can discriminate in exchange controls, freedom to discriminate in import controls is simply freedom to use one mechanism as against another mechanism. Those countries already have the permission, under the Bretton Woods Agreement, to have discriminatory exchange controls applying to imports. However, countries which no longer operate under Article XIV of the Articles
of the Monetary Fund and which have not received permission from the Monetary Fund to have exchange controls on current transactions are not permitted to discriminate in exchange operations, since they cannot have exchange restrictions at all."

3. **Equal treatment for Members operating under the Article and under Annex J**

The attention of the Sub-Committee was particularly directed to ensuring that Members operating under sub-paragraphs (b) and (c) and Members operating under the Annex enjoyed equality of treatment "in the administrative control to be exercised by the Organization over measures taken under the Article". "As a consequence the Sub-Committee in drafting these sub-paragraphs (g) and (h) took account of the procedures laid down in Article XIV of the Articles of Agreement of the International Monetary Fund."

4. **Quota preferences (sub-paragraph 5(b))**

"The Preparatory Committee considered the question of the treatment of certain existing preferential arrangements which were established under international agreements but not affected by the normal method of a difference in rates of duty." Both in London and Geneva it was recommended that such arrangements remaining after the conclusion of the Geneva negotiations should be dealt with by a provision in the GATT, "to the effect that the member applying these arrangements shall be entitled to continue them or equivalent measures, pending either: (i) an arrangement under Chapter V (VI of the Havana Charter) if the members concerned desire that the product should be made the subject of such arrangement, or (ii) some other arrangement regarding the matter between the members concerned."

"It was agreed that only a very limited number of commodities fell under this heading and that the countries concerned should establish the facts about them so that the above recommendation could be taken into account in the forthcoming negotiations. It was further recognized that the concessions or lack of concessions in respect of the items concerned would, for purposes of assessing the results of the negotiations, stand on the same footing as concessions or lack of concessions in respect of particular tariff or preference items."
"The United Kingdom Delegation understands that the commodities in question for the purpose of this paragraph are beef, mutton, lamb, bacon and processed milk imported into the United Kingdom from Commonwealth and other sources." See Annex A to GATT.

5. Annex J

a) Paragraph 1(a): The original Geneva draft contained the following wording "... to the extent necessary to obtain from countries limiting imports because of balance-of-payments difficulties additional imports ..." The underlined words have been deleted before the text was finally approved at Geneva. It was stated in this connection that "those words would be unduly limiting in that they would prevent the obtaining of additional imports from a country which was not limiting imports itself, but which, nevertheless, had a currency which was inconvertible. It might also prevent the obtaining of additional imports from countries which were prepared to facilitate it by withholding the currency of the buying country, and in any case, we suspect that there might be some incentive to certain countries to endeavour to continue to limit their imports because they wish to be discriminated in favour of."

b) "part of any arrangement". It was stated that "the intention of this paragraph, ... is that countries should not be parties to any arrangement which diverts their exports away from markets where they can normally earn hard currency which, of course, is available for expenditure in any /country/, and thus removes to that extent the need for operating under this Article."

c) Consultation with the International Monetary Fund. At Geneva the Preparatory Committee decided that it was not necessary to make express reference in the provisions now included in paragraph 3 of Annex J and in paragraphs (c) and (h) and paragraph 2 (of the Article) to the need of the Organization to consult with the International Monetary Fund "since such consultation in all appropriate cases was already required by virtue of the provisions of paragraph 2 of /Article XV/".
ARTICLE XV - EXCHANGE ARRANGEMENTS

(Corresponding article in Havana Charter: Article 24

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1. General

Paragraph 9 was amended in 1948 by the deletion of the cross-reference to paragraph 4 to conform to the Charter Article.

This deletion was considered at Havana to be consequential on the rewording of Article 23 (XIV).

2. Interpretation of paragraph 1

"jurisdiction." In the original draft the word used was "competence", but was changed to "jurisdiction" at Geneva. The precise difference between the two words was not clearly defined. In the course of the discussion, it was stated that "it seems ... that there is a real difference here between saving matters within the jurisdiction of the Fund, which relates, as I understand it, strictly to the powers the Fund has, whereas matters within the competence of the Fund are matters on which the Fund, by reason of the subject matter which it deals with, is competent to provide the facts or to express an opinion. As one might say in a government department at home which has certain legal powers in relation to a part of its field and no powers in another, certain things are within the jurisdiction of that government department, but a great many more are within its competence."

Paragraphs 2 and 3 were added to the Article in order to clarify precisely what the respective responsibilities of the IMF and the ITO should be and to give some indication of how the consultations with the IMF should be carried out.
3. Interpretation of paragraph 2

a) "final decision". It was stated that "if the provisions of Article 24 [XIV] were considered with Article 21 [XII], there was no basis for the fears that the ITO would be subservient to the Fund. The provisions of paragraphs 2(a)(ii) and 3(a) of Article 21 [XII] made it clear that the final decision as to whether restrictions would be instituted or maintained rested with the ITO, notwithstanding determinations made by the IMF."

b) "findings of statistical ... facts". "The provision in paragraph 2 ... concerning the responsibility of the Fund in respect of statistical data relating to balances of payment or monetary reserves for the purpose of that Article is independent of any arrangement to be made between the Fund and the U.N. concerning the collection and appreciation of statistical data on balances of payment and for other purposes."

c) "financial aspects of other matters ...". It was stated that, for instance, in the case of imminent threat to the balance of payments of a country "matters to be taken into consideration may be almost entirely trade questions, such as, for instance, the imminent threat to Australia's balance of payments through the failure of her wheat crop. I say nothing about what would happen if all the sheep died. Equally there might be, in the case of another country, some financial aspect of the imminent threat on which I should have thought the assistance of the International Monetary Fund would be extremely useful to the ITO."

4. Note on paragraph 6

"within a time to be determined". The time has been determined by the Contracting Parties in their resolution of 20 June 1949.

5. Note on paragraph 9

When the Preparatory Committee examined the new article drafted at Geneva, it was proposed to transfer paragraph 1(c) of Article 28 [XIV] to Article 29 [XV], and the wording suggested was the following:
"Nothing in this Section is intended to preclude a Member from requiring that its exporters accept only its own currency or the currencies of any one or more members of the International Monetary Fund, as it may specify in payment for exports."

The Sub-Committee produced a new text which was approved without any changes and inserted in the GATT. It was, however, considered essential to include "as an official explanation of the text" the note to paragraphs 4 and 9. The second sentence of the note covers the case mentioned in the original draft quoted above. The last sentence was inserted to meet a request of the Czechoslovak delegation.

In the final Geneva draft, and also in the GATT text, the interpretative note refers only to paragraph 4. At Havana the note was attached to the last paragraph (9 in the GATT).

6. Note on main differences to Havana Charter

The title of the Charter article is "Relationship with the International Monetary Fund and Exchange Arrangements".

The third sentence of paragraph 2 was amended at Havana "in the light of the amendments proposed by Australia and New Zealand". The Charter text reads as follows: "When the Organization is examining a situation in the light of relevant considerations under all pertinent provisions of Article 21 XII for the purpose of reaching its final decision in cases ... ".

In support of this change - it was stated that "it was administratively unsound to separate responsibility for a decision from the responsibility for action arising from it. Good working relations between the IMF and the ITO would be impaired if the ITO had to adopt a decision against its judgment.

"The proper procedure was for any decision to be preceded by close personal consultation between the officers of the two Organizations, a consultation which would recognise the special fields of competence of each. Moreover, the respect by Members for the provisions of the Charter would be weakened if the ITO were to impose on Members a determination of the IMF with which it disagreed."
Paragraph 6(d) of the Charter article was included at Havana to meet "the case of a country which does not use its own currency". This provision does not appear in the GATT, but the case is provided for by a resolution of the Contracting Parties [20 June 1949].

The words "whether or not it has entered into a special exchange agreement" were inserted at Havana in the paragraph relating to the provision of information (paragraph 8 of the GATT).
ARTICLE XVI - SUBSIDIES

(Corresponding article in Havana Charter: Article 25)

U.S. Proposals Chapter III D-1
U.S. draft Article 25
London & New York Article 30
drafts Article 25
Geneva draft

1. General

a) "The inclusion of Article XVI was approved and it was considered unnecessary to add additional provisions since Article XVI itself covered both export and domestic subsidies adequately for the purpose of the General Agreement."

b) It was stated by the United States representative at the Drafting Committee in New York that "the executive authority of his Government did not permit an undertaking with regard to export subsidies".

c) It was proposed in 1948 to insert the additional Charter articles on subsidies (26, 27 and 28) in the GATT. The report of the Working Party reads as follows: "While agreeing in principle that the insertion of Articles 26, 27 and 28 of the Charter would be desirable, the majority of the working party felt that, in view of practical difficulties, they could not usefully recommend such inclusion at the present stage. It was, of course, understood that, in the light of Article XXIX, paragraph 1, the Contracting Parties undertake to apply the principles of the Havana Charter relating to export subsidies to the full extent of their executive authority."

2. "directly or indirectly"

These words were inserted by the Drafting Committee in New York to make it clear that the provision "can thus not be interpreted as being confined to subsidies operating directly to affect trade in the product under consideration."
3. **Instances of indirect subsidization**

a) **Tax exemption.** It was agreed at Havana that the terms of Article 25 (XVI) were sufficiently wide to cover a system where methods of direct subsidization to domestic industries were not used but whereby "certain domestic industries were exempted from internal taxes payable on imported goods".

b) **Internal transport charges.** It was agreed at Geneva that the granting of reduced charges on goods for export "would be subject to the provisions of Article (XVI) if it operates directly or indirectly to increase the exports of any product".

4. **"to increase exports"**

It was agreed that this phrase was "intended to include the concept of maintaining exports at a level higher than would otherwise exist in the absence of the subsidy, as made clear in line 3 of Article 25 of the Havana Charter".

5. **"estimated effect"**

The Drafting Committee changed the words "anticipated effect" to "estimated effect" "in order to remove the possible impression that the effect of a subsidy on trade could be accurately predicted".

6. **Intent of the last sentence**

It was agreed that the intent of that sentence "is that consultation shall proceed upon the request of a contracting party when it considers that prejudice is caused or threatened and would not require a prior international determination".

7. **"limiting the subsidization"**

"The word 'limiting'... is used in a broad sense to indicate maintaining the subsidization at as low a level as possible, and the gradual reduction in subsidization over a period of time where this is appropriate."
8. Note on main differences to Havana Charter

The Charter text reads "... which operates directly or indirectly to maintain or increase exports of any product from or to reduce or prevent an increase in imports ...", the underlined words having been added at Havana because "it was felt that the Geneva text of the article failed to cover subsidies which, whilst not increasing a Member's exports nor reducing its imports, might nevertheless affect a Member's share of total trade".

At the end of the Article the words "it is determined that serious prejudice" were changed in the Charter text to "a Member considers that serious prejudice" because "it was thought that this change was consistent with similar changes in Chapter VI of the Charter and would expedite procedure".

The Charter contains three additional articles on subsidies (26, 27 and 28) which are not included in the GATT.
ARTICLE XVII - NON-DISCRIMINATORY TREATMENT ON THE
PART OF STATE-TRADING ENTERPRISES

(Corresponding article in Havana Charter: Article 29)

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1. General

The definition of state-trading enterprises included in paragraph 3 of the London and New York drafts (two alternatives) was deleted at Geneva in view of the fact that the enterprises are defined as precisely as practicable in sub-paragraph 1(a).

"In the opinion of the Sub-Committee (Havana) the term 'State enterprises' in the text did not require any special definition; it was generally understood that the term includes, *inter alia*, any agency of government that engages in purchasing or selling."

2. Interpretation of paragraph 1(a)

a) "exclusive or special privileges".

   i) See interpretative note ad paragraph 1(a).

   ii) "It was the understanding of the Sub-Committee that if a Member Government exempted an enterprise from certain taxes, as compensation for its participation in the profits of this enterprise, this procedure should not be considered as 'granting exclusive privileges'."

b) "involving either imports or exports". "It was the understanding of the Sub-Committee that the intent of the words 'involving either imports or exports' is to cover within the terms of this Article any transactions by a state enterprise through which such enterprise could intentionally influence the direction of total import or export trade in the commodity in a manner inconsistent with the other provisions of the Charter."
c) "general principles of non-discriminatory treatment". These words were inserted at Geneva "in order to allay the doubt that 'commercial principles' meant that exactly the same price would have to exist in different markets".

This point is covered in the third paragraph of the first interpretative note to the Article.

d) Suppling of information. The London draft contained a provision regarding the supplying of information in connection with the consultation procedure provided in Article XXII. This reference was deleted by the Drafting Committee as a result of the insertion of a similar provision in the article on Consultation.

That provision, however, was deleted at Geneva and does not therefore appear in Article XXII of the GATT; it was re-introduced in the Charter as an interpretative note ad Article 41.

It was agreed in London that "the disclosure of information, which would hamper the commercial operations of such a state-trading organization, would not be required".

e) Marketing boards. "It was agreed that when marketing boards buy or sell they would come under the provisions relating to state-trading; where they lay down regulations governing private trade their activities would be covered by the relevant articles of the Charter. It was understood that the term 'marketing boards' is confined to boards established by express governmental action."

The application of the Article to marketing boards is defined in the first two paragraphs of the first interpretative note to the Article.

3. Interpretation of paragraph 1 (b)

a) "having due regard to the other provisions of this Agreement". It was agreed that this phrase "covers also differential customs treatment maintained consistently with the other provisions of the Charter".
b) Commercial considerations (special case of a "tied loan"). "The view was generally held that a country receiving a loan would be free to take this loan into account as a "commercial consideration" when purchasing its requirements abroad."

"The position of countries making such 'tied loans' was another question."

c) "customary business practice". "It was the understanding of the Sub-Committee that the expression 'customary business practice' was intended to cover business practices customary in the respective line of trade."

4. Interpretation of paragraph 2

a) Governmental contracts. Paragraph 2 was inserted at London because of the deletion from the most-favoured-nation clause of the provision in the U.S. draft relating to governmental contracts.

b) "goods". The U.S. draft referred also to "services". It was considered in London that the article in conformity with certain others in the Charter should refer to "goods" only. This point is made clear in the interpretative note ad paragraph 2.

5. Note on main differences to the Havana Charter

In the last sentence of the second paragraph of the Charter article a reference was inserted to the laws, regulations and requirements of Article 18 (III).

The first two paragraphs of the interpretative note ad paragraph 1 were transferred to the body of the Charter and became Article 30.

The third paragraph of that note was amended at Havana so as to include "purchases as well as sales and to take account also of relevant factors other than supply and demand".

The interpretative note of paragraph 1(a) is slightly differently worded in the Charter.
The interpretative notes to paragraphs 1 (b) and 2 do not appear in the Havana Charter.

The Charter contains three additional articles (30, 31 and 32) which do not appear in the General Agreement.
ARTICLE XVIII - GOVERNMENTAL ASSISTANCE TO ECONOMIC DEVELOPMENT AND RECONSTRUCTION

(Corresponding article in Havana Charter: Articles 13 & 14

London & New York drafts
Geneva draft

1. General

The original Geneva article was entirely replaced in 1948 by the articles as drafted at Havana. The reasons for this amendment are set forth in paragraph 14 of the report to the Second Session of the Contracting Parties.

Paragraph 1 is largely similar to the original London paragraph. The preamble to paragraph 3, paragraph 3(b), paragraph 5, paragraph 6, paragraph 7 (a)(iv), paragraph 9 and paragraph 10 correspond to the Geneva paragraphs. The remainder of the article was entirely redrafted at Havana.

2. Obligation to notify (paragraphs 6 to 11)

It was agreed that, during the period of provisional application:

(i) "A contracting party need not notify a measure which is already exempted by virtue of sub-paragraph 1 (b) of the Protocol of Provisional Application or sub-paragraph 1 (a) (ii) of the Annecy Protocol;

(ii) "in case it chooses to notify the measure for the purpose of obtaining a release under paragraph 7, 8 or 12, as the case may be, the full procedures and the criteria of the relevant parts of Article XVIII would apply as if the Agreement were definitively in force. However, if as a result of examination the Contracting Parties decide that the measure should be withdrawn or modified, the contracting party concerned would nevertheless be free to maintain the measure during the period of provisional application only; and..."
(iii) "it would be open to the contracting party to inform the Contracting Parties of any measure for which it was not seeking a release under paragraph 7, 8 or 12 but which it was imposing or retaining in accordance with sub-paragraph 1(b) of the Protocol of Provisional Application or sub-paragraph 1(a)(ii) of the Annecy Protocol."

Notes: a) The corresponding provision of the Torquay Protocol is contained in paragraph 1 (a) (ii); b) as regards the interpretation of "existing legislation" and of a measure "exempted by virtue of sub-paragraph 1(b) of the Protocol of Provisional Application", see notes on the Protocol of Provisional Application below.

3. Withdrawal of provisional action

No specific provision was included to the effect that provisional action taken under Article XVIII "(a) would be taken in such a form that it could be readily withdrawn or modified, and (b) would be withdrawn or modified either when it was no longer required or in accordance with a decision of the Organization, ... because this was believed to be implicit in the relevant provisions of the Article ..."

4. "development" (paragraph 1)

It was agreed not to insert the words "maintenance" or "maintain" in this paragraph, as the amendments were already covered in the text.

"It was agreed that the word 'development' ... might cover the cases in which the branch of industry or agriculture to be developed had been established before the date of the Member's application to the Organization."

5. "materially affected" (paragraphs 3, 5 and 8)

"... it was agreed that this term was not restricted to those countries which in the past were principal suppliers. With regard to the use of these words in sub-paragraph 3 (b) it was assumed that the Organization would have
due regard to the contractual rights of Members. In interpreting these words in paragraphs 5 and 8, it would be proper for the Organization to have regard, for instance, to the interests of Members which supplied a large proportion of the imports of the applicant Member in the product concerned, those Members which were substantially interested in exporting the product to world markets, and those Members whose economies were materially dependent on exports of the product."

6. **International trade** (paragraphs 7 (a)(iii) and 8 (b)(ii))

"With regard to the references to international trade ... it was agreed that these were references to international trade in general and not to trade in the specific product to which the measure in question related."

7. **"pending a decision of the Contracting Parties"** (paragraph 9)

"The Sub-Committee ... agreed that the phrase 'pending a decision by the Organization' should refer to the final decision ..."

8. **"reduce imports"** (paragraph 9)

"It was agreed that the proviso at the end of paragraph 9 ... would permit a Member to prohibit entirely or reduce the imports of a product to the extent needed to ensure that, over the whole period following the increase in imports referred to in that paragraph, that product was not imported at a rate greater than in the most recent representative period preceding the date of notification."
ARTICLE XIX - EMERGENCY ACTION ON IMPORTS
OF PARTICULAR PRODUCTS

(Corresponding article in Havana Charter: Article 40
U.S. draft Article 29
London & New York Article 34
drafts Article 40
Geneva draft)

1. General

The reference to preferences (sub-paragraph (b)) was inserted in London.

2. Interpretation of paragraph 1

a) "unforeseen developments". It was agreed that "situations deriving from the fulfilment by a Member of its obligations under Articles 3 or 9 of the Charter" might constitute an "unforeseen development" for the purpose of the corresponding paragraph of the Charter Article.

A Contracting Parties working party concluded that the phrase would cover "developments occurring after the negotiation of the relevant tariff concession which it would not be reasonable to expect that the negotiators of the country making the concession could and should have foreseen at the time when the concession was negotiated".

b) "for such time as may be necessary". In London it was stated during the course of the discussion that "the Article provided only for a temporary relaxation of commitments, not for a permanent revision".

It was also stated that "the general purpose of Article 29 (XIX) is to deal with an emergency situation. In general you would expect that it would be short-term, but it does not necessarily have to be under the terms of the Article".
Subsequently a Contracting Parties working party concluded that "Action under Article XIX is essentially of an emergency character and should be of limited duration. A government taking action under that Article should keep the position under review and be prepared to reconsider the matter as soon as this action is no longer necessary to prevent or remedy a serious injury."

It also stated that Article XIX required that the original tariff concessions should be wholly or partially restored if and as soon as the domestic industry affected "is in a position to compete with imported supplies without the support of the higher rates of import duties".

c) "obligations". It was agreed that "Members invoking the Article may withdraw or modify ... obligations regarding quantitative restrictions, etc.".

"It was agreed that the text as drafted does not limit the measures which Members might take." (That is, that action taken did not have to be limited to the reimposition of measures that were in force prior to the Havana Charter.)

3. Other points

a) Limited scope of the Article. 
"... any proposal to withdraw a tariff concession in order to promote the establishment or development of domestic production of a new or novel type of product in which overseas suppliers have opened up a new market is not permissible under Article XIX... . On the other hand it may be permissible to have recourse to Article XIX if a new or novel type of imported product is replacing the customary domestic product to a degree which causes or threatens serious injury to domestic producers."
b) **Non-discriminatory nature of emergency action.**

"It is understood that any suspension, withdrawal or modification under paragraphs 1(a), 1(b) and 3(b) must not discriminate against imports from any Member country, and that such action should avoid, to the fullest extent possible, injury to other supplying Member countries."

c) **Public announcement.** It is desirable to delay, as far as practicable, the release of any public announcement on any proposed action under Article XIX, as premature disclosure to the public would make it difficult for the government proposing to take action to take fully into consideration the representations made by other contracting parties in the course of consultations.

4. **Note on main differences to Havana Charter**

a) "**relatively**". (paragraph 1). This word was inserted between "such" and "increased" at Havana "so as to make it clear that Article 40 could apply in cases where imports had increased relatively to domestic production, even though there might not have been an absolute increase in imports as compared with a previous base period".

The GATT Article was not amended to conform to the Charter Article; it was understood, however, "that the phrase 'being imported ... in such increased quantities in paragraph 1(a) of Article XIX was intended to cover cases where imports may have increased relatively, as made clear in paragraph 1(a) of Article 40 of the Havana Charter".

b) "**critical**" (paragraph 2). In the Havana Charter the words "special urgency" are used instead of the word "critical" as being clearer.
ARTICLE XX -- GENERAL EXCEPTIONS

(Corresponding article in Havana Charter: Article 45)
U.S. Proposals Chapter III-G
U.S. draft Article 32
London & New York Article 37
drafts Article 43
Geneva draft

1. General

a) Effect on bilateral agreements. It was agreed to record the view that the Article does not "relate in any way to previous obligations incurred by Members in any bilateral agreements which they might have concluded".

b) Social dumping. A Havana sub-committee decided that it was not necessary to amend the article so as to "exempt measures against so-called 'social dumping" since "this objective was covered for short-term purposes by paragraph 1 of Article 40 (XIX) and for long-term purposes by Article (7) (of the Charter) in combination with Articles (93, 94 (XXIII) and 95 (of the Charter)."

Havana Reports,
Section 19,
p. 84

E/CONF.2/C.3/SR.32,
pp. 4-5

Havana Reports,
Section 24,
p. 85

Havana Reports,
Section 19,
p. 84

E/CONF.2/C.3/SR.35,
pp. 6-7

E/C0NF.2/C.3/SR.32,
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E/C0NF.2/C.3/SR.35,
from being applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade and to advising Members how they can maintain such measures without causing such prejudice.

"In view of this, the Committee assumes that the Organization will establish a regular procedure with a view to investigating (in consultation when it considers this advisable, with other intergovernmental specialized agencies of recognized scientific and technical competence, such as the FAO) any complaints that might be brought by a Member as to the use of the exception in sub-paragraph 1 (a)(iii) of Article \[\text{45/(X)}\] in a manner inconsistent with the provisions of the preamble to that paragraph."

The original draft of paragraph 1 (b) said "if corresponding domestic safeguards under similar conditions exist in the importing country". This phrase was removed in Geneva as unclear, the meaning being already covered in the headnote to the Article. Also, it is clear from the discussion that "this Commission is against any possibility of this provision being used as a measure of protection in disguise".

3. Part II

Part II was added at Geneva "to replace and broaden the scope of paragraph 2 (a) of Article 25" (of the New York draft excepting such measures from the provisions on elimination of quantitative restrictions).

"The effect of this would be to permit during the transitional period the use of differential internal taxes and internal mixing regulations as well as quantitative restrictions in order to distribute goods in short supply, to give effect to price controls based on shortages and to liquidate surplus stocks or uneconomic industries carried over from the war period."

4. "local_short_supply" (paragraph II (a))

It was stated during the course of the discussion at Geneva that this phrase was "understood to

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EPCT/A/FV/30, pp. 11, 13
EPCT/A/SR.32, p. 3
EPCT/A/FV/30, p. 22
EPCT/A/SR.40(2), p. 15
include cases where a product, although in international short supply, was not necessarily in short supply in all markets throughout the world. It was not used in the sense that every country importing a commodity was in short supply, otherwise it would not be importing it."

5. "the war" (paragraphs II (b) and (c))

It was agreed that these words "were intended solely to refer to World War II", and the text of the Charter was amended accordingly.

6. Note on main differences to Havana Charter

Sub-paragraphs (ii) and (x) relating to laws for the public safety (including the concept of public order) and the conservation of fisheries resources, migratory birds and wild animals were inserted in paragraph 1(a) of the Charter at Havana and are not in the GATT.

In Part II (a), the word "multilateral" in the GATT is replaced in the Havana Charter by the words "general inter-governmental", as the provision was "intended to require Members to take guidance not from any multilateral agreement as such, but from agreements of a wide and general character ..."

The date specified in the GATT "January 1, 1951" was changed in the Charter to "date to be specified by the Organization" as "it was felt that the conditions due to the war had not improved at the rate and to the extent expected when the Charter was first drafted and that even now it was not possible to foresee with any accuracy when these conditions would be likely to cease to exist".

The Contracting Parties twice postponed the date by Decisions.
ARTICLE XXI - SECURITY EXCEPTIONS

(Corresponding article in Havana Charter: Article 99 (partially)
Geneva draft included among earlier drafts General Exceptions)

1. General

It was stated during the discussion at Geneva that it was clear that the terms of this article were subject to the provisions of paragraph 1 of Article XXIII.

2. "essential security interests"

It was stated that "some latitude must be granted for security as opposed to commercial purposes", and that "the spirit in which Members of the Organization would interpret these provisions was the only guarantee against abuse".

3. Note on main differences to Havana Charter

In paragraph (b), the words in the GATT "taking any action" read in the Charter "taking, either singly or with other States, any action".

In paragraph (b) (ii), the Charter contains at the end the words "of the Member or of any other country".

Paragraph (c) of the GATT Article has been transferred to Article 86, paragraph 4, of the Charter.

Paragraph (c) of the Charter Article was inserted to meet the case of certain inter-governmental commodity agreements.

Paragraph (d) of the Charter Article and Annex M refer to trade relations between India and Pakistan which are covered in the GATT by the provisions of Article XXIV, paragraph 11.

Paragraph 2 of the Charter Article refers to peace treaties and trust agreements. No corresponding provision is included in the GATT.
ARTICLE XXII - CONSULTATION

(Corresponding article in Havana Charter: Article 41)

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1. Supplying of information

The following note based on the New York draft (Article 35, paragraph 1) was added to the Havana Charter:

"The provisions for consultation require Members, subject to the exceptions specifically set forth in this Charter, to supply to other Members, upon request, such information as will enable a full and fair appraisal of the matters which are the subject of such consultation, including the operation of sanitary laws and regulations for the protection of human, animal or plant life or health, and other matters affecting the application of Chapter IV."

Havana Charter, Interpretative Note ad Article 41 See also note 2(d) on Article XVII

2. Note on main differences to Havana Charter

"Internal price regulations" and "transit regulations and practices" are included in the Charter and not in the GATT.
ARTICLE XXIII - NULLIFICATION AND IMPAIRMENT

(Corresponding article in Havana Charter: Articles 93, 94 & 95
London & New York drafts Article 35:2
Geneva draft Article 89)

1. Applicability of Article XXIII in connection with employment and development problems

During the discussion in Geneva on the question of whether or not to include the employment chapter of the Charter, it was stated that "if a situation should arise in which considerations came up under Chapter III of the Charter which were not dealt with under the exceptions already provided for in Articles XI through XVI, a party could invoke" the Agreement "specifically under Article XXIII". Reference was also made to the development chapter in the course of the discussion.

Referring to the equivalent Charter article, a Havana sub-committee stated: "The Committee was of the opinion that, in case of widespread unemployment or a serious decline in demand in the territory of another Member, a Member might properly have recourse to Article 93 XXIII, if the measures adopted by the other Member under the provisions of Article 3 of the Charter had not produced the effects which they were designed to achieve and thus did not result in such benefits as might reasonably be anticipated."

2. "Impairment"

In the case of the Australian subsidy on ammonium sulphate, it was agreed "that ... impairment would exist if the action of the Australian Government which resulted in upsetting the competitive relationship ... could not reasonably have been anticipated by the Chilean government, taking into consideration all pertinent circumstances and the provisions of the General Agreement, at the time it negotiated ... ".

EPCT/TAC/PV/13, p. 41
Havana Reports, p. 155
GATT/CP.4/39, Section 12
Basic Instruments, v. II, p. 93
3. "matter"

A Havana Committee "agreed that the word 'matter' as used in Article ... [XXIII]/... refers to nullification or impairment of a benefit and not to the action, failure, measure or situation referred to in sub-paragraphs 1(a), (b) or (c)...", Havana Reports, p. 155

4. Note on main differences to Havana Charter

Article XXIII was replaced at Havana by Chapter VIII Settlement of Differences. The main changes in the provisions corresponding to Article XXIII are the following:

a) The wording of paragraphs 1(a) and 1(b) has been substantially changed in the Charter.

b) Two new paragraphs relating to arbitration were inserted at Havana in Article 93.

c) The second sentence of paragraph 2 regarding the action which may be taken has become paragraph 2 of Article 94, which is more detailed in the Charter than in the GATT.

d) The Charter articles contain procedural provisions which do not appear in the GATT.

e) The Charter also provides for a reference to the International Court of Justice.
ARTICLE XXIV - TERRITORIAL APPLICATION - FRONTIER TRAFFIC -
CUSTOMS UNIONS AND FREE TRADE AREAS

(Havana Charter article 42 corresponding to GATT paragraphs 1 & 2
43
44
99:1(d) & Annex M
104:3

(Corresponding article in U.S. Proposals:
U.S. draft
London & New York
drafts
Geneva draft

1. The first four paragraphs of the original Geneva article were replaced in 1948 by the corresponding provisions of the Havana Charter.

2. General

The new text applies not only to customs unions, but also to free trade areas.

It was stated during the course of the discussion in Geneva that there was "no question of the Contracting Parties/... having any power to approve or disapprove a Customs Union... if the Contracting Parties/ find that the proposals made by the country... will in fact lead towards a Custom Union in some reasonable period of time... they must approve it. They have no power to object."

It was considered that the article (including paragraph 10) "would not prevent the formation of customs unions and free trade areas of which one or more parties were non-Members, but would give the Organization an essential degree of control".

3. Customs unions - procedures and precedents

"Consideration by the Contracting Parties of proposals for customs unions would have to be based on the circumstances and conditions of each proposal and, therefore, ... no general procedures can be established beyond those provided in the Article itself."
During the discussion of the South African-Southern Rhodesian customs union proposal it was stated that "to establish precedents was clearly against the spirit of Article XXIV".

4. Customs unions - "general incidence of duties" (paragraph 5(a))

"It was the intention of the Sub-Committee that this phrase should not require a mathematical average of customs duties but should permit greater flexibility so that the volume of trade may be taken into account."

5. Interpretative note ad paragraph 9

The note was amended by the Third Protocol of Rectifications to meet a difficulty of Southern Rhodesia. At Havana "it had not been envisaged that the importing country might be one which granted the same preferential rate to the country of origin of the product as the re-exporting country and in that case the difference payable should be that between the duty already paid and the preferential rate".
1. **General**

Paragraphs 5(b) - (d) were added in 1948 at the suggestion of the Havana Conference.

2. **Contracting Parties** (paragraph 1)

It was decided in Geneva to omit any references to a "committee" and use only the term "Contracting Parties" in order to remove any connotation of formal organization.

3. **Interpretation of the Agreement** (paragraph 1)

The Chairman of the Contracting Parties interpreted the phrase "with a view to facilitating the operation and furthering the objectives of this Agreement" as "enabling the Contracting Parties acting jointly to interpret the Agreement whenever they saw fit. It was open for any government disagreeing with an interpretation to take the dispute which had given rise to such an interpretation to the International Court, although neither a government nor the Contracting Parties acting jointly could take a ruling of the Contracting Parties to the Court."

4. **"majority of the votes cast"** (paragraphs 4 & 5)

This phrase was used in order to permit postal voting.
ARTICLE XXVI - ACCEPTANCE, ENTRY INTO FORCE
AND REGISTRATION

1. General

a) Paragraph 5(b) of the original article was deleted in 1948.

b) Paragraph 4 of the article was amended in 1949 because "the present form of Article XXVI might frustrate the entry into force of the Agreement" by enabling a territory which was a separate customs territory and did not possess full autonomy to delay the acceptance of the country which was internationally responsible for it. The new text is modelled on Article 104 of the Havana Charter.

2. Interpretation of paragraph 4(c)

a) The GATT text differs from the Charter Article (104) in that under the Charter a Member may accept it on behalf of any separate customs territory without any decision being taken by the Organization. In the GATT a distinction is made between those customs territories on behalf of which the contracting party has negotiated tariff concessions (i.e., "in respect of which it has accepted the Agreement") and those separate customs territories which have not taken part in the negotiations. The latter territories will have to accede to the Agreement under Article XXXIII.

b) "upon sponsorship through a declaration by the responsible contracting party". This clause was inserted in order to certify that the customs territory "had the right de jure and/or de facto to act on its own behalf and to fulfil" its obligations.
c) "deemed to be a contracting party". In the original draft (EPCT/135) the separate customs territory was "entitled to appoint a representative" to the Contracting Parties. The final text gives it the full status of a contracting party. The use of the word "deemed" was intentional to enable the territory to be represented either by a separate delegate or by the delegate of the contracting party which is internationally responsible for that territory.

d) Application of these provisions to individual cases:

Burma, Ceylon, Southern Rhodesia

Indonesia
ARTICLE XXVII - WITHHOLDING OR WITHDRAWAL OF CONCESSIONS

(no equivalent Charter article)

1. "consult with the contracting parties which have a substantial ..."

The original text providing "with the contracting parties which the Committee determines to have a ..." was changed when all references to a central committee were deleted.

2. "or has ceased to be a contracting party"

The Contracting Parties decided that this phrase covered the case of Palestine - "the mandatory government having ceased to exist, the United Kingdom had ceased to be a contracting party in respect of Palestine."

EPCT/TAC/FW/14, p.2
Declaration of 9 May 1949
GATT/CP.3/SR.11, p. 3
Basic Instruments, v. II, p. 14
ARTICLE XXVIII - MODIFICATION OF SCHEDULES

(no equivalent Charter article)

1. **General**

"January 1, 1951" was amended to read "January 1, 1954".

2. "as the Contracting Parties determine to have a substantial interest"

The phrase was retained in this article and differs thereby from Article XXVII which "permits a country to take action first; in other words, to determine that a particular concession it negotiated with a country which does not become a contracting party will be withheld" whereas in Article XXVIII "the intention is ... that consultation shall precede the withdrawal of the concession" and to "limit the right of other countries to hold up or delay or prevent the withdrawal ... ".

3. **Non-discrimination in application**

"It was agreed that there was no intention to interfere in any way with the operation of the most-favoured-nation clause."

Torquay Protocol, paragraph 6(a)

EPCT/TAC/PV/14, pp. 13-19

EPCT/TAC/PV/18, p. 46
ARTICLE XXIX - THE RELATION OF THIS AGREEMENT TO THE HAVANA CHARTER

(no equivalent Charter article)

1. The article was reworded in 1948 by the Contracting Parties "in order to eliminate certain purely temporary provisions and to clarify certain points the interpretation of which may give rise to difficulties".

2. "general principles of Chapters I - VI inclusive and of chapter IX of the Havana Charter"

Chapters VII and VIII were omitted because they dealt with procedural matters.

It was stated in that connection that "by virtue of the Final Act signed at Havana, the contracting parties must regard themselves morally bound not to go back on the principles evolved at Havana. The principle of giving due regard to the economic circumstances mentioned in paragraph 2 of Article 72, as well as those in other articles of the Havana Charter, could not be disregarded even though they were not explicitly included in paragraph 1 of Article XXIX."

3. Relation of paragraph 1 to the interpretation of the Agreement

"If difficulties in application were to arise before the entry into force of the Charter, the Contracting Parties would still have the possibility under the terms of Article XXV to settle such cases in the light of the provisions of Article XXIX, paragraph 1."
ARTICLE XXX - AMENDMENTS

(no equivalent Charter article)

1. "except where provision for modification is made elsewhere in this Agreement" (paragraph 1)

This phrase was introduced to cover the changes in the schedules which may be made in accordance with other provisions. Specific reference was made in the original draft to Article II:5 and Articles XXVII and XXVIII. In the course of the discussion Articles XVIII, XIX, and XXIII were also mentioned.

2. Unanimity requirement for amendments to Part I

It was argued at Geneva that a two-thirds majority would be sufficient for amendments to Part I since the corresponding articles in the Charter could be amended with such a majority. It was agreed, however, that the unanimity requirement was essential for the following reasons:

a) The General Agreement is a trade agreement, and the rule in ordinary trade agreements is that they "can only be modified with the unanimous consent of the parties taking part in them". The two-thirds majority rule was exceptional and applied in the case of Part II "because there are exceptional circumstances which may justify the supersession of these provisions by the provisions of the Charter".

b) "Part I... is meant to be a provision to which are attached the Schedules embodying results of the tariff negotiations which "have taken place specifically on the basis of the provisions about the Most-Favoured-Nation treatment and so on which will be embodied in Part II".

3. Rectifications to schedules

Noting that several protocols of rectifications had not come into force owing to the impossibility of obtaining the signature of all the contracting parties, a working party stated: "Clearly it was never the intention of Article XXX to place difficulties in the
way of making rectifications of an entirely non-substantive character, nor to prevent agreed modifications of the concessions contained in the schedules to the General Agreement."

4. Non-acceptance of amendments

It was stated that the second sentence of paragraph 2 meant that a contracting party would have the choice either to withdraw from the Agreement or, if the Contracting Parties consent, to remain party to it without applying the provisions contained in an amendment which it does not accept.
ARTICLE XXXI - WITHDRAWAL

ARTICLE XXXII - CONTRACTING PARTIES

(no equivalent Charter article)

1. General

The words "or XXXII." were added in 1948.

2. The substance of the second paragraph has been embodied in paragraph 8(b) of the Annecy Protocol and in paragraph 9(b) of the Torquay Protocol.

Protocol modifying certain provisions of the General Agreement.
ARTICLE XXXIII - ACCESSION

1. General

The unanimity requirement of the original text was changed to a two-thirds majority in 1948 at the request of the Havana Conference.

2. Two-thirds majority

"It was agreed that the two-thirds majority required by Article XXXIII referred to such a majority of the number of contracting parties at the time at which the Decision was taken and not of the number of contracting parties at any later time at which an acceding government accedes in consequence of the Decision."

3. "government acting on behalf of a separate customs territory..."

These words were added to indicate that the separate customs territories which have not negotiated at Geneva could not become members of the club automatically. "They will have to adhere to the club of the General Agreement on the same conditions as ... any government which has not taken part in the negotiations at Geneva."

4. Extension of concessions to acceding governments

When an acceding government becomes a contracting party (pursuant to a decision taken under this article), "it enjoys all benefits of the General Agreement".

If a contracting party is unwilling to grant the benefits of the Geneva concessions to an acceding government "such cases should be governed by the provisions of Article XXXV and paragraph 5 (b) of Article XXV".
This article was inserted at Geneva to give to the interpretative notes the same legal value as to the provisions of the Agreement.

EPCT/TAG/PV/18,
pp. 19-25
ARTICLE XXXV

(no equivalent Charter article)

1. General

Article XXXV was added in 1948 at the time when the unanimity rule was changed to two-thirds in Article XXXIII.

The substance of paragraph 1 appeared first as a proviso in the new draft for Article XXXIII. It was stated that the amendment of Article XXXIII from unanimity to two-thirds "gives rise to certain problems of relations between the new contracting party and those old contracting parties with which no negotiations have taken place, and to meet these difficulties alternative provisos have been inserted". It was also pointed out that such a safeguard was necessary, otherwise "two-thirds of the contracting parties would oblige a contracting party to enter a trade agreement with another country without its consent".

A new draft was suggested to become a new Article XXXV (see discussion of this draft in GATT/1/SR.7, pp. 4-7).

The second paragraph of Article XXXV was proposed by the United Kingdom representative. It was stated in the course of the discussion that "the draft was designed to provide for those cases where a party felt it had received inequitable treatment at the hands of another". It was also stated that this paragraph was intended to meet the case of Southern Rhodesia.

"Article XXXV could not be invoked by one signatory of the Final Act of Genoa against another such signatory once the two parties had agreed that there was no basis for negotiation, after they had been willing to negotiate." (See also, text of a draft resolution on p. 5 of GATT/1/SR.10)
2. "entered into negotiations"

The Chairman ruled on 31 May 1949 "that delegations should be deemed to have entered into negotiations when they had held a first meeting scheduled by the Tariff Negotiations Working Party at which they had exchanged lists of offers".

3. Interdependence of paragraphs 1(a) and (b)

To a question whether the two conditions in (a) and (b), paragraph 1 of Article XXXV, were meant to be mutually exclusive or interdependent, the reply was that "according to the paragraph, if two countries, one of which was a contracting party and the other of which was acceding to the General Agreement, had not entered into negotiations, either of them, the contracting party or the acceding party, could decide that the Agreement or Article II should not apply between them when the second party became a contracting party".

4. Application of Article XXXV in specific cases
FINAL NOTE CONCERNING OCCUPIED AREAS

The note was inserted in order to neutralize these areas completely – they would be considered neither as members nor non-members, to avoid any possible misinterpretation of Article XXVI and because the commercial activities engaged in by the occupying powers which were "discriminatory in favour of these areas would be ruled out by the Charter even if those areas were considered as non-members".

The last sentence concerning the applicability of Articles XXII and XXIII was inserted to make it clear that complaints could be brought.

EPCT/TAC/PV/22, pp. 56 & 59

EPCT/TAC/PV/24, p. 25
1. **Application to overseas territories** (paragraph 1)

Although the wording of paragraph 1 would imply that, when no special mention is made of the metropolitan territory, the signature of the Protocol is on behalf of all territories of the contracting party, the provisional application of the Agreement does not extend to certain territories such as New Guinea and Papua. The Annecy Protocol (paragraph 9) enables any acceding government to except certain territories from the provisional application of the Agreement. The same provision appears in the new version of Article XXVI.

2. "**not inconsistent with existing legislation**" (paragraph 1(b))

   a) It was ruled that this referred to legislation existing on 3 October 1947. It was stated, however, that "particular attention should be given to the special and exceptional circumstances of Pakistan, i.e. those attendant upon the coming into existence of the new state".

   b) It was agreed that a measure could be permitted during the period of provisional application "provided that the legislation on which it is based is by its terms or expressed intent of a mandatory character - that is, it imposes on the executive authority requirements which cannot be modified by executive action".

   c) Limitation of operation of Article III under the Protocol.

3. **Application of the Agreement to Jamaica** (paragraph 3)

It was agreed that "there would be no obstacle to the provisional application of the Agreement in respect of Jamaica should the government of the United Kingdom decide at any time to make it applicable".
4. "free to withdraw such application" (paragraph 5)

It was stated in Geneva that this meant "freedom to withdraw the whole arrangement and not part of it" so that countries could not withdraw portions of their schedules.