A draft protocol of organizational provisions is circulated herewith including the articles on which there seems substantial agreement. Differences in wording and substance have been indicated. The Sub-Group might address itself to reconciling these differences and establishing a text for the Working Party.

Part I - General

Article 1 - Establishment

Pursuant to Article XXV of the General Agreement on Tariffs and Trade (hereinafter referred to as the Agreement) the contracting parties to the Agreement hereby establish the International Trade Organization (hereinafter referred to as the Organization) to achieve the purposes and objectives set forth in this Protocol.

Article 2 - Membership

The members of the Organization shall consist of the contracting parties to the General Agreement which accept this Agreement pursuant to Article 1. Other countries may be admitted to the Organization upon approval of two-thirds of the Members of the Organization.

Notes:

1. The United States proposes an article which simply states: "There is hereby established the Organization for Trade Co-operation."

2. France

3. United States

4. Neither the secretariat nor the French draft provides explicitly for membership by other than contracting parties. The secretariat draft had intended that non-members could be invited to participate in any machinery that might be established under other agreements sponsored by the Organization. The Norwegian draft provides for countries acceding to the General Agreement to become members of the Organization.
Article 3 - Functions

The functions of the Organization are:

a) to give effect to those provisions of the Agreement which require joint action by the contracting parties;

b) to encourage and facilitate consultation among members on all questions relating to the provisions of the Agreement;

c) to study questions of international trade and commercial policy and to make recommendations thereon to the contracting parties;

d) to prepare or sponsor agreements between governments with respect to any matter within the scope of the Agreement and to recommend such agreements for acceptance;

e) generally to facilitate the operation of the Agreement and to discharge such other functions as the members may from time to time agree to assign to it;

f) to collect, analyze and publish information relating to international trade, commercial policy, basic commodity problems and general development of an economic, industrial and agricultural character.

Notes:

1. All four drafts provide for the functions laid down in a), b), c), d), and e) with differences in wording and presentation in the United States draft.

2. The United States proposes "Administer the provisions of the General Agreement".

3. The French proposal also states in this paragraph "to enter into consultation with the contracting parties", and "to advise and assist them in all matters connected with the implementation of the Agreement."

4. The United States version is significantly differently worded, viz. "to sponsor multilateral trade negotiations".

5. France. See also the proposed Article 13 of the United States proposal as follows:

"In addition to such specific functions as are provided for in this Part, the Organization shall be the body to receive reports, conduct studies, circulate proposals, sponsor consultations and negotiations, and make decisions in any case in which such functions are required or appropriate to carry out the purposes of the General Agreement."
to undertake studies on primary commodities in collaboration with the Economic and Social Council of the United Nations and with the competent intergovernmental organizations.

The Organization shall have no authority to alter the provisions of the General Agreement, or to impose any new obligation on a member government.

Part II - Structure of the Organization

Article 4

The Organization shall consist of an Assembly, a Council and such other subsidiary organs as the Assembly may decide to establish. There shall also be an Executive Secretary and a Staff.

Notes:

1. France.

Sub-item (e) was intended, in the Secretariat draft to cover such matters as commodity policy and restrictive business practices, should the Organization decide to take up such questions with a view to sponsoring supplementary agreements.

2. United States

General note concerning "Functions":

These questions impinge upon the scope of the Agreement which is currently under discussion in the Working Party and consideration of them might accordingly be deferred by the Sub-Group.

3. The working group might first devote itself to the question of titles. At its last meeting the working group indicated a preference for the title "Assembly" for the plenary body, but subsequently the United States distributed a draft referring to "the Council". The name of the principal subsidiary body was left somewhat open, although the working group appeared to have a preference for "the Council" rather than "an Executive Committee". In that case it would be appropriate to retain the expression "Executive Secretary".

4. The Norwegian proposal uses the word "auxiliary".
The Assembly

Article 5

The Assembly shall consist of all the members of the Organization.

Article 6

It shall be the responsibility of the Assembly to carry out the functions of the Organization as defined in Article 3.

Article 7

The Assembly shall meet in regular annual session and in such special sessions as may be convened in accordance with the rules of procedure.

Article 8

The Assembly shall establish its own rules of procedure, which shall include rules for the discharge of its functions during intervals between sessions, and also the rules of procedure of the Council and of subsidiary bodies established by it.

Notes:

1. Norway. In addition the Norwegian draft specifically provides that each member shall have one representative. This provision might perhaps be included in the rules of procedure.

2. The United States proposal specifies that the Assembly "shall be the principal organ of the Organization." It also specifies that the Assembly shall carry out the functions of the Organization except as otherwise provided in this Agreement. The Norwegian proposal for this article is as follows:

   "The powers and duties attributed to the Organization by the Agreement and the final authority to determine the policies of the Organization shall be vested in the Assembly."

3. The Norwegian proposal provides for session "from time to time as required, and specifically "at the seat of the Organization". The Norwegian draft incorporates the rules for the convening of special sessions in the statutes; it might be desirable to leave these for inclusion in the rules of procedure. All the drafts, except the United States draft provide for the election of a chairman. It would seem desirable that provision should be made for this also in the rules of procedure rather than in the statutes.

4. The Norwegian and French proposals do not mention rules for subsidiary organs. The United States proposals refer to rules and regulations for the secretariat as well as for subsidiary bodies.
The United States and secretariat drafts contain an enabling clause which empowers the organization to establish a permanent subsidiary body. The United States draft provides that such a body shall be established by a two-thirds vote, and contains criteria for its composition. The French and Norwegian proposals contain more elaborate provisions for the executive body. The French draft specifies the number of members and establishes criteria (without stating that this body shall include members of chief economic importance). The Norwegian draft leaves the determination of the size and composition of the executive body to the Assembly and suggests no criteria. The Norwegian and French drafts provide for the executive body to adopt its own rules of procedure subject to confirmation by the Assembly.

The working group should decide which type of provisions it wishes to suggest for inclusion in the Protocol.

The Executive Secretary and the Secretariat

Article (9)

The Assembly shall appoint an Executive Secretary, as chief administrative officer of the Organization. The powers, duties, conditions of service and terms of office of the Executive Secretary shall conform to regulations approved by the Conference.

Article (10)

The Executive Secretary shall appoint such members of the staff as may be required and shall fix their duties and conditions of service in accordance with regulations approved by the Conference.

Article (11)

The Executive Secretary or his representative shall be entitled to participate, without the right to vote, in all meetings of any organ of the Organization.

Article (12)

The Executive Secretary shall present to the Assembly an annual report on the work of the Organization, and the annual budget estimates and financial statements of the Organization.

Note:

1. The Norwegian proposal provides that the appointment shall be made on the recommendation of the Council, and that he shall be subject to the general supervision of the Council.
Article (13)

The Executive Secretary and the members of the secretariat shall have the status of international officials. In carrying out their duties they shall neither solicit nor accept instructions from any government or any authority outside the Organization. They shall refrain from any act incompatible with their position as international officials. Member states shall respect the international status of these officials and shall not seek to influence them in the carrying out of their duties.

Article (14)

The selection of the members of the staff shall as far as possible be made on a wide geographical basis and with due regard to the various types of economy represented by Member countries. The paramount consideration in the selection of candidates and in determining the conditions of service of the staff shall be the necessity of securing the highest standards of efficiency, competence, impartiality and integrity.

Voting

At meetings of the Assembly each member of the Organization shall be entitled to have one vote and, except as otherwise provided for in the Agreement, decisions of the Conference shall be taken by a majority of the votes cast.

Members of the Council and other subsidiary bodies shall have one vote therein.

In the exercise by the Organization of any function under the General Agreement, unless such agreement provides otherwise, only Members which are also parties to such agreement shall be counted thereunder in determining the fulfilment of the respective voting requirements.

Notes:

1. In the discussion in the working party it was suggested that criteria should be included for the selection of staff such as those contained in the Havana Charter, Article 83.

2. Since voting requirements should apply both to the Assembly and the permanent subsidiary body, there appears advantage in including this article separately under "Structure" in general, rather than under the "Assembly".

3. United States
PART III - BUDGET AND ADMINISTRATIVE PROVISIONS

BUDGET

Article (12)\(^1\)

The Assembly shall approve the accounts and the budget of the Organization. It shall apportion the expenditures of the Organization among the members in accordance with a scale of contributions to be fixed by the Assembly, and shall take necessary measures to ensure that the contributions are paid promptly by all members.

RELATIONS WITH OTHER ORGANIZATIONS

Article (13)

The Organization may\(^2\) be brought into relationship with the United Nations, as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations. This relationship shall be effected by agreement approved by the Assembly.

Article (14)

The Organization may\(^2\) make arrangements with other intergovernmental organizations which have related responsibilities to provide for effective co-operation and the avoidance of unnecessary duplication of activities.

Article (15)\(^3\)

The Organization may make suitable arrangements for consultation and co-operation with non-governmental organizations concerned with matters within the scope of the Agreement.

Notes:

1. The Norwegian proposal contains an article relating to sanctions to be applied when a member is in arrears in the payment of its contribution, as follows:

"Each Member shall contribute promptly to the Organization its share of the expenditure of the Organization as apportioned by the Assembly. A Member which is in arrears in the payment of its contribution shall have no vote in the organs of the Organization, if the amount of its arrears equals or exceeds the amount of the contributions due from it in respect of the preceding two complete years. The Assembly may, nevertheless, permit such a Member to vote, if it is satisfied that the failure to pay is due to circumstances beyond the control of the Member."

2. The opinion of the Working Group seemed to be in favour of a permissive rather than mandatory clause.

3. The United States draft makes no provision for this.
The Organization shall have legal personality and shall enjoy such legal capacity as may be necessary for the exercise of its functions.

The Organization shall enjoy in the territory of each of the members such legal capacity, privileges and immunities as may be necessary for the exercise of its functions.

The representatives of the members and the officials of the Organization shall similarly enjoy such privileges and immunities as may be necessary for the independent exercise of their functions in connection with the Organization.

In exceptional circumstances, not elsewhere provided for in the Agreement, the Assembly may waive an obligation imposed upon a contracting party by the Agreement; provided that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the members.

The Organization may also by such a vote (i) define certain categories or exceptional circumstances to which other voting requirements shall apply for the waiver of obligations imposed by the General Agreement, and (ii) prescribe such criteria as may be necessary for the application of this Article.

Notes:

1. Three of the drafts provide the standard clauses regarding privileges and immunities for the organization's delegates and staff. The United States draft differs in two respects. The privileges and immunities are limited to the income assets and property of the organization and nothing is provided for the delegates or staff. Moreover these privileges, as well as the establishment of legal status of the organization, is limited in the United States draft by "to the extent consistent with" the law of each member country. Unless there are strong reasons to the contrary, it would seem desirable to follow the practice which is followed by all other international organizations.

2. Norway
Note on Additional provisions

In addition to the standard organizational provisions, the following proposals have been made:

(1) The inclusion of preamble of the Agreement containing the purposes and objectives, as a first article - Norway.

(2) The inclusion of an article relating to general obligations - Norway.

(3) Nullification and impairment. The inclusion of an article based on Article XXIII - United States. A somewhat more general article for the settlement of differences has been proposed by France. Proposals were made during the Plenary Session for the inclusion of some provision for arbitration by the organization.

(4) Articles providing for accession, amendments and withdrawal - United States. Norway also indicated support for such articles.

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Note:

1. The question of entering into force is being treated separately by the Rapporteurs.