ANALYTICAL INDEX

of the

GENERAL AGREEMENT ON TARIFFS AND TRADE

(Revised)

THE CONTRACTING PARTIES

TO THE

GENERAL AGREEMENT ON TARIFFS AND TRADE

GENEVA, APRIL 1959
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INTRODUCTION

The analytical index contains excerpts from reports and discussions during the conferences leading up to the signature of the General Agreement and the Havana Charter and during meetings of the CONTRACTING PARTIES themselves, which are intended to throw light on the drafting of the provisions of the General Agreement and to serve as a guide in their interpretation.

At the ninth session in 1954-55, the CONTRACTING PARTIES reviewed the operation of the Agreement in the six preceding years and, in the light of this, agreed on amendments to various Articles. Most of the amended text came into force in October 1957; only those amendments which require unanimous approval and a few others have not yet become effective. The text as is currently in force is reproduced in Vol. III of the BISD. The present index generally refers to the text in that volume.

Under each Article, reference is made to the corresponding Article in the Havana Charter and in the preceding drafts for the Havana Charter, namely, the Proposals and/or Draft Charter submitted by the United States prior to the London Conference in 1946, the drafts produced by the first session of the Preparatory Committee in London in 1946, by the Drafting Committee in New York in 1947 and by the second session of the Preparatory Committee in Geneva in 1947. Where reference is made in the right-hand column to the London Report, Drafting Committee Report, Geneva Report, Havana Reports and Basic Instruments, these indications pertain respectively to the following:


Basic Instruments and Selected Documents

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Since the document symbol given in the right-hand column shows at which meeting the original document was issued, it has not been felt necessary to indicate in the text when or where the actual statements quoted or summarized were made. A key to the document symbols is given below.

<table>
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<th>Symbol</th>
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<td>First session of Preparatory Committee</td>
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These symbols are followed directly by a number or by PV and a number (verbatim reports), SR and a number (summary records).

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Summary records for the first session were issued under the symbol GATT/1/SR.- and for the second through the sixth session as, e.g., GATT/CP.2/SR.-. For the seventh session and after they have been numbered SR.7/-, etc. Working papers bear the symbol W. followed by a number which indicates the session and a serial number, e.g. W.14/25.
Where interpretative notes contained in Annex P to the Charter do not figure in the General Agreement, the Charter note is quoted in full. In view of their authoritative status extracts from the Reports of the Havana Conference have been used extensively for interpretative material where the text of the General Agreement is substantially the same as that of the Charter provision.

Where the note is prefaced "it was agreed" it reflects an agreed interpretation by the body which drafted or approved the text of the Article. Where the note is prefaced by "it was stated" it indicates that the statement was made by one or more delegates, but that the body which drafted or approved the Article did not pronounce itself on the validity or otherwise of the statement. Quoted decisions of the CONTRACTING PARTIES reproduced in this Index appear as indentations within the text. The Articles of the Havana Charter are given in Arabic numerals whereas the corresponding Articles in the General Agreement are given in Roman numerals. Whenever the quotation refers to the Charter Article, the Article of the General Agreement is given within square brackets.

A list of documents pertaining to each Article of the General Agreement including those referred to in the right-hand column of the Analytical Index has been reproduced in an Appendix.
ARTICLE I - GENERAL MOST-FAVOURED-NATION TREATMENT

(Corresponding article in Havana Charter: Article 16)

US draft
London and New York drafts
Geneva draft

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 since 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 US 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 most-favoured-nation provision, whether goods had in fact originated in a particular country".

EPCT/C.II/FV/11(a), p.9
London Report, p.9
EPCT/C.II/FV/12, pp. 3-4
EPCT/174, p.3

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 sulphate stated that ammonium sulphate and sodium nitrate were not to be considered "like products" indicating that they were usually classified under different tariff items.

EPCT/C.II/FV/12, pp. 5-8
London Report, Section A 1 c, p.9
EPCT/C.II/FV/12, pp. 5-8
E/CONF.2/C.3/SR.5, p.4
GATT/CP.4/39 para.8, p.3

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

The Chairman of the CONTRACTING PARTIES ruled that "consular taxes could be included" in that phrase.

BISD II/12
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. Nota on differences from Havana Charter text:

(a) The word "margins" is used in the Charter (para. 2) instead of "levels".

(b) the preferences between the United States and the Philippines are set out as a sub-paragraph of paragraph 2 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.

12. Consideration of applications for waivers from Part I or other obligations of the Agreement

See "Article XXV, Section 5, 'may waive an obligation', point (c)".
13. **Waivers from Obligations under this Article**

(pursuant to the provisions of Article XXV:5)

(a) **European Coal and Steel Community**

Considering the conclusion of a treaty constituting the European Coal and Steel Community and the undertakings of the Member States in relation to their obligations under the General Agreement, the CONTRACTING PARTIES decided, in accordance with paragraph 5(a) of Article XXV that, notwithstanding the provisions of paragraph 1 of Article I, the governments of the Member States, insofar as coal and steel products are concerned, shall be enabled:

(i) to eliminate by stages the customs duties and charges levied on the internal trade of the listed coal and steel products; and

(ii) to refrain from imposing quantitative restrictions on internal trade of coal and steel products, although maintaining permissible quantitative restrictions upon the trade of such products with third countries.

The CONTRACTING PARTIES decided that the governments of the Member States, acting singly or as a community, in exercising their rights or fulfilling their obligations under Articles VI, XI, XVII, XIX and XX, shall act as if their European territories "constituted the territories of a single contracting party insofar as coal and steel products are concerned".

In conformity with the requirement in paragraph 7 of the Waiver, reports were received annually from the Member States until expiration of the transitional period on 10 February 1958.

(b) **Federation of Rhodesia and Nyasaland**

Pursuant to Article XXV:5(a), the CONTRACTING PARTIES decided that the provisions of Article I of the Agreement shall not prevent the application of the preferences established by the new customs tariff of 1 July 1955 of the Federation of Rhodesia and Nyasaland, inasmuch as:
(1) the new tariff is "... a consolidation of several tariffs with a variety of preferential rates";

(ii) "the effect of the changes ... appeared to be a decrease in preferences"; and

(iii) "there is no provision of the General Agreement that makes adequate allowance for all the special circumstances in which the adjustments have been made."

(c) Peru - Waiver granted in connexion with the introduction of new charges on imports of bound items

See "Article II, Section 8, waivers ..."

For complete list of waivers granted by the CONTRACTING PARTIES see under Article XXV, page 107.
ARTICLE II - SCHEDULES OF CONCESSIONS

(No corresponding article in Havana Charter
Corresponding article in New York draft of the
General Agreement: Article VIII)

1. Maximum rates

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

2. Conversion of specific to ad valorem rates

Report of Working Party on Schedules, ninth session
(approved by the CONTRACTING PARTIES on 20 December 1954),

"It was found that there is no provision in the General Agreement which authorizes a contracting party to alter the structure of bound rates of duty from a specific to an ad valorem basis.

"The obligations of contracting parties are established by the rates of duty appearing in the schedules and any change in the rate such as a change from a specific to an ad valorem duty could in some circumstances adversely affect the value of the concessions to other contracting parties. Consequently, any conversion of specific into ad valorem rates of duty can be made only under some procedure for the modification of concessions."

The same working party, in a report on the Fourth Protocol of Rectifications and Modifications (adopted on 3 March 1955) again adverted to a similar question:

"Among the rectifications requested by the Austrian Government were those relating to Items 140 to 144 of the Austrian Tariff which were being made under the authority of the Note to these items included in the Austrian Schedule XXXII which granted the Austrian Government freedom to change the specific into ad valorem rates. The Austrian Government felt that it would not be impairing the value of the concessions if it retained beside the ad valorem duty the old specific rate as a minimum rate."
"The Working Party took the view that such changes would constitute modifications of Austria's obligations and that it could not recommend their acceptance as rectifications. Such modifications could only be inserted in a protocol of rectifications and modifications after negotiations authorized by the CONTRACTING PARTIES in accordance with the proper procedures."

See also report of Working Party on Schedules, eighth session (approved by the CONTRACTING PARTIES on 23 October 1953).

"The Working Party also concerned itself with the proposal of the Greek Government to introduce a minimum ad valorem rate in certain specific rates and came to the conclusion that such changes could not be considered rectifications to be dealt with by the Working Party. It decided therefore to refer the question to the CONTRACTING PARTIES so that such changes could form the object of consultations and negotiations with the parties having an interest in those items. After the conclusion of the negotiations, the changes agreed upon could be embodied in a protocol of rectifications and modifications."

In approving this report, the CONTRACTING PARTIES authorized the Greek Government to enter into consultations and negotiations with the interested contracting parties.

The CONTRACTING PARTIES have also ruled that the adoption of a revised nomenclature, in this case the Brussels Nomenclature, presents no basic problem so far as schedules to the General Agreement are concerned. In such a case the contracting party wishing to change the nomenclature of its schedule could resort to the normal rectification procedures.

3. Import surcharges as an alternative to import restrictions

At the ninth session the CONTRACTING PARTIES ruled that a contracting party was not entitled to levy import charges in excess of rates bound under the General Agreement "as a temporary and transitional device designed to facilitate the removal of quantitative restrictions on imports". Decision of 17 January 1955, French special temporary compensation tax on imports.
Similarly, at the thirteenth session, the CONTRACTING PARTIES decided that Article XII could not be invoked to justify, as an alternative to the imposition of import restrictions, the imposition of surcharges on products described in the schedules to the General Agreement. Accordingly, the CONTRACTING PARTIES granted a waiver to the Government of Peru covering the levying of such surcharges as an emergency measure designed to overcome a threat to Peru's monetary reserves and to ensure the success of its programme of monetary stabilization. Decision of 21 November 1958, Peruvian Import Charges.

4. Treatment applicable to items

Paragraph 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 imports such as primage duty.

"charges of any kind"

In order to make clear that the expression "all other duties or charges of any kind imposed or in connexion with importation" is all-inclusive, it was agreed at the ninth (review) session to amend the Article by inserting the words "including charges of any kind imposed on the international transfer of payments for imports".

"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”.

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".

5. 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 most-favoured-nation 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".

6. Par value

The words "or provisionally recognized" 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.
At the ninth (review) session it was agreed to amend paragraph 6(a) by using the words "... at the par value accepted or at the rate of exchange recognized by the Fund" on the ground that these words correspond more closely to the Fund's practices under its Articles of Agreement and cover cases not provided for in the previous text. The wording was also changed so as to refer to "the" par value instead of "this" par value, in order to permit an adjustment of duties after a second devaluation of a currency.

7. Application of Article II in specific cases

Benelux: adjustment of specific duties and charges in accordance with paragraph 6(a). (Decision of 15 December 1950.)

Finland: adjustment of specific duties in accordance with paragraph 6(a). (Decision of 15 November 1957.)

France: Special Temporary Compensation Tax on Imports

8. Waivers from obligations under this Article (pursuant to the provisions of Article XXV.5)

Brazil: waiver granted in connexion with the introduction of a new customs tariff: the provisions of Article II are waived to the extent necessary to permit Brazil to put into force its new customs tariff immediately after its enactment. Provision is made in the decision for tariff negotiations by Brazil with a view to establishing a new schedule of concessions.

Finland: adjustment of specific duties in Schedule XXIV

Greece: adjustment of specific duties in Schedule XXV

New Zealand: waiver granted in connexion with the renegotiation of Schedule XIII - New Zealand: the provisions of Article II are waived to the extent necessary to enable New Zealand to apply the revised tariff simultaneously with its submission to the New Zealand Parliament. The Decision lays down conditions for the renegotiation of concessions which shall have been modified.
Peru: waiver granted in connexion with the introduction of new charges on imports of bound items: the provisions of paragraph 2 of Article I and of paragraph 1 of Article II are waived to the extent necessary to allow the Government of Peru to maintain, as an emergency measure, additional surcharges on items bound in Schedule XXXV and to exempt from these surcharges products originating in countries with which Peru is entitled, under Article I:2(d), to maintain preferential arrangements.

Turkey: adjustment of specific duties in Schedule XXXVII
ARTICLE III - NATIONAL TREATMENT ON INTERNAL TAXATION AND REGULATION

(Corresponding article in Havana Charter: Article 18)

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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.

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."

(b) **Transfer charges.** "The Sub-Committee considered that charges imposed in connexion 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 recognized by Article 16" (I).

The foregoing passage was referred to by a panel established to consider a complaint relating to special import taxes instituted by Greece. In this connexion the panel also observed:

"... the principal question arising for determination was whether or not the Greek tax was an internal tax or charge on imported products within the meaning of paragraph 2 of Article III. If the finding on this point were affirmative, the panel considered that it would be subject to the provisions of Article III whatever might have been the underlying intend of the Greek Government in imposing the tax."
The panel also made the following observations:

"On the other hand, if the contention of the Greek Government were accepted that the tax was not in nature of a tax or charge on imported goods, but was a tax on foreign exchange allocated for the payment of imports, the question would arise whether this was a multiple currency practice, and, if so, whether it was in conformity with the Articles of Agreement of the International Monetary Fund. These matters would be for the determination of the International Monetary Fund. If the Fund should find that the tax system was a multiple currency practice and in conformity with the Articles of Agreement of the International Monetary Fund, it would fall outside the scope of Article III."

"Even if it were found that the tax did not fall within the ambit of Article III the further question might arise under Article XV:4 whether the action of the Greek Government constituted frustration by exchange action of the intent of the provisions of Article III of the General Agreement."

(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.

"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 a 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 those 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."

(c) **Special case of charges imposed by Belgium on goods originated in a country whose system of family allowances (allocations familiales) did not meet specific requirements.**

A panel established to consider charges imposed by Belgium on certain imported products found as follows:

"After examining the legal provisions regarding the methods of collection of that charge, the panel came to the conclusion that the 7.5 per cent levy was collected only on products purchased by public bodies for their own use and not on imports as such, and that the levy was charged, not at the time of importation, but when the purchase price was paid by the public body. In those circumstances, it would appear that the levy was to be treated as an "internal charge" within the meaning of paragraph 2 of Article III of the General Agreement, and not as an import charge within the meaning of paragraph 2 of Article II."

The panel further observed that:

"The undertaking to extend an exemption of an internal charge unconditionally is not qualified by any other provision of the Agreement. The panel did not feel that the provisions of paragraph 8(a) of Article III were applicable in this case as the text of the paragraph referred only to laws, regulations and requirements and not to internal taxes or charges. As regards the exception contained in paragraph 2 of Article XVII, it would appear that it referred only to the principle set forth in paragraph 1 of that Article i.e. the obligation to make purchases in accordance with commercial considerations and did not extend to matters dealt with in Article III."
5. "directly or indirectly" (paragraph 2)

The Sub-Committee, in meeting the difficulty of obtaining the exact equivalent in the French text, used this phrase in place of "in connexion with" as had been suggested by the United Kingdom delegate.

6. "Internal taxes and other internal charges" in relation to taxes which are levied at various stages of production (paragraph 2)

The Review Working Party of the ninth session on Schedules and Customs Administration considered the significance of the phrase "internal taxes or other internal charges" in relation to taxes which are levied at various stages of production, and in particular whether the rule of national treatment would allow a government to tax imported products at a rate calculated to be the equivalent of the taxes levied at the various stages of production of the like domestic product or only at the rate of the tax levied at the last stage. In view of differences of opinion, the Working Party did not recommend the insertion of an interpretative note, it being understood that the principle of equality of treatment would be upheld in the event of a tax on imported products being challenged under the consultation or complaint procedure of the Agreement.

7. 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."

8. 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 the present paragraph 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.)

9. **Marking requirements** (paragraph 4)

"... requirements going beyond the obligation to indicate origin would not be consistent with the provisions of Article III, if the same requirements did not apply to domestic producers of like products."


10. **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 [x]."

(iii) Further, a clarification was given in the following statement: "a member could not establish a mixing regulation which protected a domestic product 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 Subcommittee 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 Subcommittee 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."

Permission to alter the details of existing mixing regulations, (paragraph 6)

At the ninth (review) session the delegate for Sweden proposed an interpretative note to paragraph 6, on the lines of the statement adopted at the Havana Conference, as follows:

"The exception permitting the continuance of existing mixing regulations has been drafted so as to bring out more clearly that a contracting party would be free to alter the details of an existing regulation provided that such alterations did not result in changing the overall effect of the regulation to the detriment of imports."

1 Reports of Committees, page 65, paragraph 58.
The Working Party considered that it was not necessary to insert a note in the Agreement as paragraph 6 is to be interpreted in this sense, with the understanding that such changes would be of a minor character and would not apply to a concession provided for in a schedule to the General Agreement.

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

(a) Exception to national treatment rule. The provision in the United States 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 organizations, 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.

13. **Subsidies** (sub-paragraph 8(b))

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/.

14. "**directly competitive or substitutable**" (["Notes and Supplementary Provisions" ad Article III 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)

(In the Revised Agreement, this is no longer a separate article, but is
incorporated as paragraph 10 of Article IV, National Treatment on Internal
Taxation and Regulation.)

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."

Havana Reports, Section 80
p. 68

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 state-
ment at the end of Annex A to the General
Agreement.

EPCT/175, p. 2
ARTICLE V - FREEDOM OF TRANSIT

(Corresponding article in Havana Charter: Article 33

US Proposals Chapter III - 2
US draft Article 10
New York draft Article 16
Geneva draft Article 32)

1. General

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

Drafting Committee Report, p.12
GATT/CP.2/22/Rev.1, p.6

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".

2. Coverage of Article V

"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."

Drafting Committee Report, p.12
EPOT/C.II/54/Rev.1, p.8
EPOT/C.II/54/Rev.1, p.7
E/CONF.2/C.3/C/W.5
EPOT/A/SR.20, p.3
EPOT/109

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.
3. Special provision for 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, 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, but were subject to the provisions of paragraph 2 of Article 18. ..."
6. **Note on differences from 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)

US Proposals
US draft
New York draft
Geneva draft

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".

The Review Working Party on Other Barriers to Trade recorded the following agreements concerning the intention of the text of the Article:

"... it follows from paragraph 1 of Article VI that BISD contracting parties should, within the framework of their legislation, refrain from encouraging dumping, as defined in that paragraph, by private commercial enterprises."

"... in the case where goods are not imported directly from the country of origin but are consigned to the country of importation from an intermediate territory, it would be in accordance with the terms of Article VI to determine the margin of dumping by comparing the price at which the goods are sold from the country of consignment to the country of importation with the comparable price (as defined in para.1 of Article VI) in either the country of consignment or the country of origin of the goods. It is of course understood that where goods are merely transshipped through a third country without entering into the commerce of that country, it would not be permissible to apply anti-dumping duties by reference to prices of like goods in that country."

Protocol Modifying Part II & Article XXVI (September 1948)

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

Ibid
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 insofar 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/OP.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 [XXII] and 93 [XXII]."

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. Requirements of material injury

Report of Panel on Swedish Anti-Dumping Duties, ninth session (approved by the CONTRACTING PARTIES on 26 February 1955):

"... Article VI does not oblige an importing country to levy an anti-dumping duty whenever there is a case of dumping, or to treat in the same manner all suppliers who resort to such practices. The wording of paragraph 6 supports that view. The importing country is only entitled to levy an anti-dumping duty when there is material injury to a domestic industry or at least a threat of such an injury."
8. **Burden of proof of facts justifying imposition of anti-dumping duties**

"... it was clear from the wording of Article VI that no anti-dumping duties should be levied unless certain facts had been established. As this represented an obligation of the contracting party imposing such duties, it would be reasonable to expect that that contracting party should establish the existence of these facts when its action is challenged." - Ibid. para. 15

The question having been raised in this particular case as to whether an anti-dumping levy was being imposed in the absence of dumping practices:

"The Swedish representative stated that it appeared doubtful to his delegation that the CONTRACTING PARTIES could consider that question and that it was the right of the national authorities to decide whether dumping had really taken place. The Panel agreed that no provision of the General Agreement could limit in any way the rights of national authorities in that respect. But for the reasons set forth in paragraph 15 of the Panel's report cited above it would be reasonable to expect from the contracting party which resorts to the provisions of Article VI, if such action is challenged, to show to the satisfaction of the CONTRACTING PARTIES that it had exercised its rights consistently with those provisions." - Ibid. para. 23

The measure complained of in this case consisted in the levying of an anti-dumping duty whenever the invoice price was lower than a minimum price fixed by the Swedish Government. The Panel commented as follows on one of the arguments adduced against this "basic price" formula:

"As regards the second argument relating to the fact that the basic price system is unrelated to the actual prices on the domestic markets of the various exporting countries, the Panel was of the opinion that this feature of the scheme would not necessarily be inconsistent with the provisions of Article VI so long as the basic price is equal to or lower than the actual price on the market of the lowest cost producer. If that condition is fulfilled, no anti-dumping duty will be levied contrary to the provisions of Article VI." - Ibid. para. 10
9. "Comparable price in the ordinary course of trade, etc."

"The Panel was of the opinion that if the Swedish Authorities considered that it was not possible to find 'a comparable price in the ordinary course of trade for the like product when destined for consumption in the exporting country', no provision in the General Agreement would prevent them from using one of the other two criteria laid down in Article VI."

Ibid. para. 28

10. "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

(Corresponding article in Havana Charter: Article 35
US proposals Chapter III - 4
US draft Article 12
New York draft Article 18
Geneva draft Article 34)

1. Notes on differences from Havana Charter text

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.

2. 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 shall not apply:

Havana Reports, Section 30, p.75
Havana Reports, Section 34, p.76
Havana Reports, Section 31, pp.75-76
Idem
Havana Charter Interpretative Note ad Article 35
"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".

This passage was referred to in a "Comparative Study of Methods of Valuation for Customs Purposes" (adopted by the CONTRACTING PARTIES on 2 March 1955):

"This question was also discussed in the Working Party on Valuation at the eighth session of the CONTRACTING PARTIES in October 1953. The discussion in that Working Party showed that the system of fixed values as operated by India and Pakistan was not inconsistent with the principles of paragraph 2(c) of Article VII."

During the ninth (review) session, the idea of inserting an interpretative note similar to that annexed to the Havana Charter (see above) was revived. The suggestion was rejected because of the difficulties of drafting a suitable provision and because contracting parties currently operating fixed values had not suffered any disability from the absence of such an interpretative note. It was added:
"... the systems practised in Chile, India and Pakistan have been closely examined on a number of occasions and ... it is recognized that they are not inconsistent with the General Agreement."

3. "Any internal tax" (paragraph 3)

The Review Working Party on Schedules and Customs Administration agreed that the words "internal tax" read in conjunction with the words "from which the imported product has been exempted or has been or will be relieved by means of refund" mean only (i) internal taxes of the kind which are levied directly on the goods exported (or directly on the materials going into the manufacture of such goods), as distinct from (ii) other taxes (income tax, etc.).

4. Conversion rates of currency (paragraph 4)

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)".

5. Amendments to paragraph 4 (a) and (b)

In the Review Working Party on Schedules and Customs Administration it was agreed that "the amendments to paragraph 4 (a) and (b), to use the words "par value as established" and "rate of exchange recognized" by the Fund, are intended to cover certain exchange situations which are likely to arise in practice and which are not provided for in the present text. For example, in the case of Canada the established par value accepted by the Fund is no longer the effective rate, and the Fund recognized the fluctuating rate for its own accounting purposes. This type of exchange situation will be covered by the amended text.

6. It is not required that internal taxes charged on importation are assessed on the same basis as established for charging customs duties ("Notes and Supplementary Provisions" and Article VII, new note to para.1).

In the Review Working Party on Schedules and Customs Administration it was agreed that the new interpretative note to paragraph 1,
concerning the words "or other charges", is intended to make it clearly understood that the wording does not require internal taxes (or their equivalent) which are charged on imported goods to be assessed on the same basis as that established for the purpose of charging customs duties. While some countries assess internal taxes on imported goods on the customs value or the customs value inclusive of duty, certain countries establish the value on which such internal taxes are charged on a different basis, being the same basis as is adopted for the charge of such internal taxes on domestically produced goods. Moreover, Article VII cannot be held to impose any commitment in relation to internal taxes, over and above those contained in Articles I and III.

7. Government contracts
("Notes and Supplementary Provisions" ad Article VII paragraph 2)

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".

8. Comparative study of methods of valuation for customs purposes
ARTICLE VIII - FEES AND FORMALITIES CONNECTED WITH
IMPORTATION AND EXPORTATION

(Corresponding article in Havana Charter: Article 36)

US Proposals Chapter III-5
US draft Article 13
New York draft Article 19
Geneva draft Article 35)

1. Note on differences from Havana Charter

In the Charter 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 connexion with importation or exportation, other than import and export duties, and other than taxes within the purview of Article 18 [III] of the Geneva draft".

The words "directly affected" were added in Havana in paragraph 2 but 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 was 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".

2. Amendments to paragraphs 1 and 2

The Review Working Party on Schedules and Customs Administration agreed that paragraphs 1 and 2 should be redrafted in order:

Havana Reports, Section 35, p.76
Havana Reports, Sections 43-45, p.78
Havana Reports, Section 41, p.77
BISD 38/214-215, para.20
(i) to separate the provisions relating to fees and charges from those relating to formalities;

(ii) to make it clear that the expression "fees and charges" does not pertain to import and export duties or to taxes which fall within the purview of Article III; and

(iii) to render the provisions of paragraph 1(a) obligatory by changing the words "should" to "shall".

3. 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".

4. Recommendation on Certificates of Origin

BISD 23/57 55/33

5. Recommendation on Documentary Requirements

BISD 18/23, 100 66/27

(This Recommendation no longer refers to Consular Formalities)

6. Recommendation on Abolition of Consular Formalities

BISD 18/25, 101 66/25
ARTICLE IX - MARKS OF ORIGIN

Corresponding article in Havana Charter: Article 37
US Proposals
US draft
New York draft
Geneva draft

1. Note on differences from the Havana Charter text

Paragraphs 1 and 5 of the Charter article and the last sentence of paragraph 7 are not in the text of the GATT.

2. Distinctive names of products (paragraph 6)

"It was agreed that the text of paragraph 7 (6 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."

3. False marking (paragraph 6)

"... 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:1(d)."


Drafting Committee Report, Article 20, paragraph 6(b), p.16
AISD 75/30
ARTICLE X - PUBLICATION AND ADMINISTRATION
OF TRADE REGULATIONS

(Corresponding article in Havana Charter: Article 38
US Proposals Chapter III-8
US draft Article 15
New York draft Article 21
Geneva draft Article 37)

1. Note on differences from Havana Charter text

The provision in paragraph 1 requiring
governments to furnish copies of their laws,
regulations and agreement 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.

2. "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".

Havana Reports, Section 52, pp.79-80
ARTICLE XI - GENERAL ELIMINATION OF
QUANTITATIVE RESTRICTIONS

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

1. Inclusion in the Agreement

The inclusion in the Agreement of
Articles XI-XIV (quantitative restrictions)
was accepted by certain delegations
without the insertion of the Charter Articles 4
and 6 relating to the removal of maladjustments
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 em­
ployment and economic activity should arise,
the provisions on nullification and impairment
could be invoked.

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 pro­
tecting domestic producers against foreign
competition, but simply to permit, in appro­
priate cases, the enforcement of domestic
governmental measures necessitated by the
special problems relating to the production
and marketing of agricultural and fisheries
products."
(b) Non-discriminatory administration of quotas. It was agreed that Members in administering import restrictions should see to it that global quotas not allocated among supplying countries do not 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 period.

(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 [XXIX]."

(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 US proposals the phrase used was "conditions of distress"; the US 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)."

(d) "necessary". The report of the Review Working Party on Quantitative Restrictions (paragraph 67) states that "...the maintenance or the application of a restriction which went beyond what would be 'necessary' to achieve the objects defined in paragraph 2(b) or 2(c) of Article XI would be inconsistent with the
provisions of that Article. This is made clear in the text of these provisions by the use of the word 'necessary'. Restrictions related to the application of standards or regulations for the classification grading or marketing of commodities in international trade which go beyond what is necessary for the application of those standards or regulations and thus have an unduly restrictive effect on trade, would clearly be inconsistent with Article XI. Moreover, if import restrictions of the type referred to in paragraph 2(c) were to be applied after the governmental measures referred to in that paragraph had ceased to be in force, those restrictions would no longer be necessary for the enforcement of those measures and would therefore be inconsistent with the provisions of that paragraph."

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) "necessary". See note (d) on paragraph 2(b) above. The report of the Review Working Party on Quantitative Restrictions (paragraph 68) states that:
"...if restrictions of the type referred to in paragraph 2(c) of Article XI were applied to imports during that part of the year in which domestic supplies of the product were not available, such restrictions would be regarded as consistent with the provisions of the Article only to the extent that they were necessary to enforce or to achieve the objectives of the governmental measures relating to control of the domestic product.

"...it would be an abuse of intent of the provisions under paragraph 2(c)(i) of Article XI if contracting parties were to apply restrictions to processed products exceeding those 'necessary' to secure enforcement of the actual measure restricting production or marketing of the primary product."

(v) 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 corresponding change has been made in the General Agreement.

(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)(i)."

(ii) Animal feeding stuffs. (paragraph 2(c)(ii)) "The Sub-Committee agreed that the provisions of paragraph 2(c)(ii) 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".

Havana Reports,
Section 23,
p.90

E/CONF.2/C.3/66 & SR.41,
p.8

EPCT/A/PV/40(1),
pp.12-15

Havana Reports,
Section 30,
p.92

Havana Reports,
Sections 32-33,
pp.92-93

EPCT/A/PV/41,
p.14

EPCT/C.II/36,
p.8
(ii) "mainly". (paragraph 2(c)(iii). "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).

L. 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."

(iv) "public notice". "The requirement that any contracting party applying restrictions pursuant to paragraph 2(c) should give public notice of the quantities or values to be imported should be construed as requiring that contracting party to send a copy of that notice to the CONTRACTING PARTIES ... which would circulate this information to all contracting parties concerned." (Report of Review Working Party on Quantitative Restrictions, paragraph 70.)

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.

Drafting Committee Report, p.20
EPCT/C.II/QR/PV/5, pp.69-71

9. Note on main differences from Havana Charter text

The last clause of paragraph 2(b) of the Charter on the revision of standards 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 General Agreement. They were inserted at Havana to protect the interests of exporting countries.

The interpretative note to paragraph 2(a) is not in the General Agreement 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 from the General Agreement.

The interpretative note to paragraph 2, last sub-paragraph (Notes and Supplementary Provisions), is differently worded in the Charter from the General Agreement - "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 XIII/".

Havana Reports, Sections 24-28, pp.90-91
Havana Reports, Section 12, p.88
10. **Waivers from obligations under this Article**

Pursuant to the provisions of paragraph 5 of Article XXV, the CONTRACTING PARTIES have in certain cases waived the obligations of particular contracting parties to enable them to maintain import restrictions for special reasons.

(a) The waiver granted in connexion with the European Coal and Steel Community: The decision taken on 10 November 1952 related primarily to the obligations under Article I of the General Agreement. As regards quantitative restrictions, the decision states that the Government of Belgium, notwithstanding the provisions of Article XI, will be free to maintain or institute quantitative restrictions on the import of coal products to the extent necessary to avoid sudden and harmful shifts in production during a defined transitional period; such restrictions should be eliminated within seven years from the date the ECSC came into force.

(b) Waiver granted to the United States in connexion with import restrictions imposed under Section 22 of the United States Agricultural Adjustment Act: The decision taken on 5 March 1955 waived the obligations of the United States under the provisions of Articles II and XI of the General Agreement to the extent necessary to prevent a conflict with these provisions in case of action required to be taken by the United States Government under the agricultural legislation in question.

(c) The "Hard-Core" Waiver for contracting parties faced with problems in eliminating import restrictions maintained during a period of balance-of-payments difficulties: The decision of 5 March 1955 was taken in recognition of the fact that in certain cases restrictions having been maintained during a period of persistent balance-of-payments difficulties might require a period of transition for their elimination so that any industries having received incidental protection might have time to adjust themselves. The decision states that, subject to the concurrence of the contracting parties in each case, the obligations of Article XI shall be temporarily waived to the extent necessary to allow the maintenance of a
restriction applied on certain imports for the purposes indicated above, provided that the application for concurrence in such restrictions shall meet certain requirements and that certain undertakings are given by the applicant contracting party.

The validity of this Decision expired on 31 December 1957, before which any applications for concurrence must be submitted, but has been extended twice. It is at present valid until the end of 1959.

(d) Waiver granted to Belgium in connexion with import restrictions on certain agricultural products: By a Decision of 3 December 1955 the CONTRACTING PARTIES concurred in the maintenance by Belgium of import restrictions on certain agricultural products in accordance with the "hard-core" waiver Decision of 5 March 1955 referred to in (c) above. In addition, the CONTRACTING PARTIES decided that the term of the waiver in this particular case should be extended to 31 December 1962, i.e. two years beyond the maximum period provided for in the "hard-core" waiver.

(e) Waiver granted to Luxemburg in connexion with import restrictions applied on certain agricultural products: By a Decision dated 3 December 1955, the provisions of Article XI were waived to the extent necessary to permit the Government of Luxemburg to maintain the restrictions in force at that time on the importation into Luxemburg of certain specified products. This waiver is subject to review in 1960 in the light of the progress made and the results achieved in the harmonization of its agricultural policy with the policies of its Benelux partners, and certain other factors.

(f) Waiver granted to Cuba in connexion with tariff renegotiations: By a Decision of 30 November 1957 Cuba's obligations under Article XI were suspended pending the conclusion of the renegotiation of certain tariff items to enable it to prevent any abnormal imports of the products in its schedule which were affected by the negotiations.
Reservation in Provisional Accession

Reservation made by Switzerland upon provisional accession to the General Agreement: The Declaration of 22 November 1958, providing for provisional accession of the Swiss Confederation, recognizes a reservation by the Government of Switzerland of its position with regard to the application of the provisions of Article XI; the provisions of this article were waived to the extent necessary to permit it to apply import restrictions pursuant to certain internal legislation.
ARTICLE XII - RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS

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 \[\text{Article 21}\], together with the provision for export controls in certain parts of this Charter, for example, in Article 45 \[\text{Article 45}\], fully meet the position of these economies."

(b) In the course of the discussion at Geneva it was suggested that paragraphs 3(b)(i) and 4(d) \[\text{Article 21}\] in the revised text were contradictory. The following statement was made in reply to that contention: "If they \[\text{restrictions}\] 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."

(c) At the ninth (review) session, amendments were proposed by certain contracting parties which were designed to make provision for joint action in order to restore equilibrium in the system of world trade and payments in the event that system became seriously unbalanced, and to avoid the imposition of unnecessarily severe restrictions on international trade. The
suggested amendments included proposals mainly
designed to meet a situation where some large
and commercially important country might develop
a persistent surplus in its balance of payments
with the rest of the world, thus placing a
strain on the international reserves of other
countries and bringing about a general scarcity
of the currency of the particular country
concerned.

The Review Working Party on Quantitative
Restrictions commented on these proposals as
follows:

"It was noted that provisions are already con­
tained in the General Agreement and also in the
Articles of Agreement of the International
Monetary Fund to enable consultation to take
place on the measures that might appropriately
be adopted to meet such situations." The
Working Party included in its report an
enumeration and analysis of the provisions in
question (report, paragraphs 17/23)

A broadly similar proposal was also put
forward in the review session in the form of a
suggestion for the inclusion in the General
Agreement of an article on full employment.
The Review Working Party on Organizational and
Functional Questions considered such an insertion
unnecessary since the objectives sought through the
proposed amendment were already covered in
existing or proposed new Articles of the Agreement.

(See report of Working Party on Organizational
and Functional Questions, paragraphs 27/32.)

(d) At the ninth (review) session, a separate
set of rules governing the use of import restr­
lictions for balance-of-payments reasons by
"under-developed" countries was inserted in
Article XVIII, as Section B.

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 pro­
vision "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 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 Cub-Committee that the present text of Article 21/II 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 was 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)(i) 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 recognized that the phrase was open to a wide interpretation, it was stressed as being a matter of common sense on which Members in good faith ought not to disagree very seriously.

It was agreed at Genova 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. The Review Working Party on Quantitative Restrictions commented on the amendments to paragraphs 1-3 as follows:

"... the new text of the first three paragraphs of Article XII does not involve any change of substance. Their provisions have been re-arranged in order to improve the language and to set them out in a better logical sequence";

and later:

"The Working Party considered a proposal to the effect that a provision be included in paragraph 3(c) requiring contracting parties applying restrictions under Article XII to minimize the incidental protective effects of
the restrictions. The Working Party, while in general agreement with the intent of the proposal, considered such a provision unnecessary; it was of the view that this had been adequately covered by other provisions in the proposed Article, including sub-paragraph 3(a) which required contracting parties to pay due regard to the desirability of avoiding any uneconomic employment of protective resources, and paragraph 3(c)(i), under which contracting parties undertake to avoid unnecessary damage to the commercial and economic interests of any other contracting party. As regards the re-draft of paragraph 3(d), the Working Party wishes to place on record that the provisions of that sub-paragraph should be interpreted, inter alia, in the light of the undertaking set forth in sub-paragraph 3(a).

7. 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 connexion that the provision should be retained not merely on the grounds of secrecy, but also to suggest that a Member country consulting under paragraph 4(a) should not be required to have completed its plans and to have chosen exactly what it was going to do. In fact, it was hoped that in most cases the country concerned would not have decided and that it should not be required to indicate particular measures which it may ultimately determine to adopt.

8. 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.

9. The Review Working Party on Quantitative Restrictions commented as follows on the amendments to paragraph 4:

"Paragraph 4(a) ... has been re-drafted for the sake of brevity, but the intent remains unchanged. The reference to 'new restrictions' covers the case
described in paragraph 4(a) of the present Article, that of a contracting party which was not applying restrictions under the Article but finds it necessary to introduce restrictions on imports. On the other hand, the phrase: 'raising the general level of its existing restrictions by a substantial intensification of the measures applied under this Article shall ...' corresponds to the second part of the first sentence of paragraph 4(b) of the present Article. The language adopted, and in particular the use of the word 'measures' is meant to convey the idea that the intensification referred to in this paragraph may be achieved either by increasing the restrictive effect of the restrictions applied to products the import of which is already limited, or by the substitution of new restrictions on products the import of which was not yet subject to limitations.'

"Sub-paragraph (c)(i) is meant to apply to inconsistencies of a minor or technical nature. It is expected that if, during the course of consultations, the CONTRACTING PARTIES should find that such inconsistencies exist in the restrictions maintained by a particular contracting party, they would draw the attention of the contracting party to them, and, in their discretion, advise how they might be suitably modified; no other action is envisaged."

"Although the changes in paragraph 4(d) are more of emphasis than of substance, the new text brings out clearly that the action of the contracting parties adversely affected by an application of restrictions which would not conform to the provisions of the Article, takes the form of a request for consultation rather than of a challenge."

"It was agreed that the scope of consultations under Articles XII and XIV should include external as well as internal causes of balance-of-payments difficulties, with a view to finding ways and means of eliminating them." This point is the subject of an interpretative note to paragraph 4(e).

A Resolution of 17 November 1956 relating to particular difficulties connected with trade in primary products provides inter alia:

"they [the CONTRACTING PARTIES] shall, in the course of consultations undertaken under Article XII and ... under Article XVIII B, take account of problems relating to
international commodity trade among other difficulties which may be contributing to the desequilibrium of the balance of payments and compelling certain contracting parties to maintain import restrictions."

It would be appropriate for the CONTRACTING PARTIES to receive a complaint of the part of a contracting party under the provisions of paragraph 4(d) of Article XII if another contracting party which was otherwise entitled to resort to the provisions of Article XII imposed restrictions on the export of the complaining contracting party which were of such a character as to cause damage to the commercial and economic interests of the complainant, and in considering such a complaint to pay special attention to the question whether these particular restrictions were necessary. The Working Party in this connexion had particularly in mind the provisions of paragraph 3(c)(iii) of Article XII.


11. Supplementary dispositions and recommendations

(a) Standard Practices for Import and Export Restrictions and Exchange Controls: In 1950 the CONTRACTING PARTIES adopted a Code of Standard Practices in these fields, aimed at reducing to a minimum uncertainties and hardships that might be caused to traders by unnecessary procedures and requirements in the administration of restrictions.

(b) Protective effects of balance-of-payments restrictions: In 1950 the CONTRACTING PARTIES examined this question and drew up a report entitled Use of Quantitative Restrictions for Protective and Other Commercial Purposes, which, inter alia, recommended certain methods designed to minimize the protective effects of restrictions applied by contracting parties for balance-of-payments reasons.
ARTICLE XIII - NON-DISCRIMINATORY ADMINISTRATION OF QUANTITATIVE RESTRICTIONS

(Corresponding article in Havana Charter: Article 22
US Proposals Chapter III-C-3
US draft Article 21
London and New York drafts Article 26
Geneva draft 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.
See also paragraph 2(b) on Article XI above.

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

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

3. "previous representative period" (paragraph 2(d))

Report of Review Working Party on Quantitative Restrictions: "...The Working Party agreed to recognize that the general rule contained in the introduction to paragraph 2 governed the various sub-paragraphs of that paragraph including those of sub-paragraph (d) to which the note was intended to refer."

4. 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.

5. "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:

"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]."

6. Note on differences from Havana Charter text

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-payments 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

US Proposals Chapter III C-4
US draft Article 22
London and New York Article 28
drafts Article 23
Geneva draft

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.

The Article was further revised as a result of the "review" of the Agreement in 1954-55. The revised text of the Agreement, however, has not come into force. (See sections J and QQ and paragraph 8 of the Protocol Amending the Preamble and Parts II and III of the Agreement.)

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."

At the review session, paragraph 1 was amended so as to include a reference to Article VIII of the Articles of Agreement of the International Monetary Fund. "This addition is intended to cover cases when contracting parties are authorized by a decision taken by the International Monetary Fund, in accordance with Article VIII of its Articles of Agreement, to deviate from the rule of non-discrimination."

(Report of Review Working Party on Quantitative Restrictions paragraph 26)

3. "Equivalent effect"

Review Working Party on Quantitative Restrictions, paragraph 28: "For practical reasons the Working Party has not tried to define the phrase 'equivalent effect' in paragraphs 1 and 5 of Article XIV. It agreed, however, to record their view that a contracting party which is deviating from Article XIII will not be considered to be in breach of its obligations under this paragraph if the International Monetary Fund has stated that corresponding restrictions on payments and transfers would have been authorized under the Articles of Agreement of the Fund or approved by the Fund if the contracting party in question had chosen to proceed by way of exchange restrictions rather than trade restrictions."

4. 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

Havana Reports, Section 21, p.99
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."

5. Quote 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 arrangements 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."

6. 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
connexion 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 1(g) 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 24 XV/"

7. Application of Article XIV in specific cases

(a) Annex J applies to: Ceylon, the Federation of Rhodesia and Nyasaland, the United Kingdom, Malaya and Ghana. Canada and the Union of South Africa once made use of its provisions but have ceased to do so.

(b) Annual reports and consultations under paragraph 1(g) of Article XIV:

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1 Also Lebanon and Syria, which are no longer contracting parties to GATT.
Since 1950 the CONTRACTING PARTIES have drawn up each year a report on the continued retention of discrimination under Article XIV. The first three annual reports were published in separate volumes. The fourth and subsequent reports have been reproduced in the successive annual supplements to BISD.

Since 1952, annual consultations have been held with certain contracting parties acting under Article XIV. The reports of these consultations are generally restricted documents, and are as a rule referred to in the report of the working party of each session (see the successive supplements to BISD).
ARTICLE XV - EXCHANGE ARRANGEMENTS

(Corresponding article in Havana Charter: Article 24)

| US proposals | Chapter III F-5 |
| US draft | Articles 23-24 |
| London and New York drafts | Article 29 |
| Geneva draft | Article 24 |

1. General

Paragraph 9 was amended in 1948 by the deletion of the cross-reference to paragraph 4 to conform to the Charter Article. Protocol modifying Part II and Article XXVI

GATT/CP.2/22/Rev.1

Section 28

BISD II/44

This deletion was considered at Havana to be consequential on the rewording of Article 23 (XIV). Havana Reports, Section 19, p.98

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... strictly to the powers of 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 (XV) 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 United Nations concerning the collection and appreciation of statistical data on balances of payment and for other purposes."

(c) "financial aspects of other matters ... ". A representative 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 paragraph 4 and 5. 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).

In the course of the Review of the General Agreement at the ninth session, a special sub-group was appointed by the Working Party on Quantitative Restrictions to examine the provisions of the General Agreement regarding relations between the GATT at the International Monetary Fund. Commenting on Article XV:9(a), "They (the Working Group) ... agreed that paragraph 9(a) was not to be interpreted so as to preclude the CONTRACTING PARTIES from discussing with a contracting party the effects on the trade of contracting parties of exchange controls or restrictions imposed or maintained by that contracting party, or from reporting on these matters to the IMF (as indeed was specifically envisaged by paragraph 5 of the Article)."

6. Note on main differences from Havana Charter text

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 recognize 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 6 of the GATT).

7. Implementation of Article XV and application in specific cases

Text of model special exchange agreement approved by CONTRACTING PARTIES.

Application of paragraph 6 of the Article to contracting parties using solely the currency of another contracting party.

8. Waivers from obligations under this article (pursuant to the provisions of Article XXV:5)

Czechoslovakia - waiver granted of the provisions of Article XV:6.

By Decisions dated 5 March 1955 and 30 November 1957 the Government of Czechoslovakia was exempted from the
obligations under Article XV:6 to become a member of the International Monetary Fund or to accept a special exchange agreement, subject to certain conditions.

New Zealand - waiver granted of the provisions of Article XV:6

By Decisions dated 20 January 1955 and 30 November 1957 the Government of New Zealand was exempted from the obligations under Article XV:6 to become a member of the International Monetary Fund or to accept a special exchange agreement, subject to certain conditions.

9. Reservation in "Provisional Accession"

Switzerland - Declaration recognizing Switzerland's reservation relating to Article XV:6 upon provisional accession to GATT.

The Declaration of 22 November 1958 providing for provisional accession of Switzerland recognizes a reservation made by Switzerland regarding the obligations under Article XV:6 to become a member of the International Monetary Fund or to enter into a special exchange agreement.
ARTICLE XVI - SUBSIDIES

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### 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."

As regards domestic subsidies, the Review Working Party on Other Barriers to Trade agreed "that a contracting party which has negotiated a concession under Article II may be assumed, for the purpose of Article XXIII, to have a reasonable expectation, failing evidence to the contrary, that the value of the concession will not be nullified or impaired by the contracting party which granted the concession by the subsequent introduction or increase of a domestic subsidy on the product concerned."

The Working Party further agreed that "there was nothing to prevent contracting parties, when they negotiate for the binding or reduction of tariffs, from negotiating on matters, such as subsidies, which might affect the practical effects of tariff concessions..."

(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".

Drafting Committee Report, p.26

Havana Reports, Sections 11-12, p.107

EPT/127, p.1
EPT/B/3R.22, pp.5-6

GATT/CP.2/22/Rev.1 Section 29, pp.6-7
BISD II/24

Drafting Committee Report, p.26
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. "equitable share" (Section B, para.3)

"... in determining what are 'equitable shares' of world trade the CONTRACTING PARTIES should not lose sight of:

(a) the desirability of facilitating the satisfaction of world requirements of the commodity concerned in the most effective and economic manner, and

(b) the fact that export subsidies in existence during the selected representative period may have influenced the share of the trade obtained by the various exporting countries."


"... at both Havana and the review session when the provisions of paragraph 3 of Article XVI were discussed it was implicitly agreed that the concept of 'equitable' share was meant to refer to share in 'world' export trade of a particular product and not to trade in that product in individual markets."


9. Note on main differences from Havana Charter text

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".

10. **Implementation of Article XVI**

Arrangements for reporting existing subsidies by 1 August 1950 and for notification of new measures of subsidization or modifications. (Decision of 2 March 1950)

Extension of Standstill Provisions of Article XVI:4 - Declaration.

Extension of Standstill Provisions of Article XVI:4 - Procès-Verbal.
ARTICLE XVII - STATE-TRADING ENTERPRISES

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. Note on main differences from the Havana Charter text

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.

3. 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) Supplying of information. The London draft contained a provision regarding the supplying of information in connexion with the consultation procedure provided in Article 41 (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 not 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.

4. 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."
5. 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 US draft relating to governmental contracts.

(b) "goods". The US draft referred 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.

(c) The report of the Panel on Belgian Family Allowances (adopted by the CONTRACTING PARTIES on 7 November 1952) contains the following observation:

"As regards the exception contained in paragraph 2 of Article XVII, it would appear that it referred only to the principle set forth in paragraph 1 of that Article, i.e. the obligation to make purchases in accordance with commercial considerations and did not extend to matters dealt with in Article III."

6. Collection of information concerning State monopolies (paragraph 4)

In recommending the addition of paragraph 4 requiring contracting parties to provide the CONTRACTING PARTIES with information concerning State monopolies, the Review Working Party on Other Barriers to Trade agreed that "a contracting party would not be expected to supply information which it is unable to obtain without amending its legislation existing at the time of the adoption of this amendment."

7. Notifications

The CONTRACTING PARTIES agreed ... that the first notifications required under paragraph 4(a) of Article XVII will be submitted to the CONTRACTING PARTIES not later than 1 February 1958 and any new notifications required, or information to bring prior notifications up to date, will be submitted annually thereafter.
ARTICLE XVIII - GOVERNMENTAL ASSISTANCE TO ECONOMIC DEVELOPMENT

(Corresponding article in Havana Charter Articles 13 and 14
London and New York drafts Article 13
Geneva draft Articles 13 and 14)

An entirely new text of Article XVIII was drafted at the ninth (review) session of the CONTRACTING PARTIES. The Review Working Party on Quantitative Restrictions commented on that Article as follows:

"The general concept of the new Article is that economic development is consistent with the objectives of the General Agreement and that the raising of the general standard of living of the under-developed countries which should be the result of economic development will facilitate the attainment of the objectives of the Agreement. In that sense, the new text represents a new and more positive approach to the problem of economic development and to the ways and means of reconciling the requirements of economic development with the obligations undertaken under the General Agreement regarding the conduct of commercial policy."

For an analysis of the method of application of this concept in the new Article, see paragraphs 36/39 of the same report.

1. The Preamble

"Annual Review"

Paragraph 6 of the Preamble provides for an annual review of the deviations from the provisions of the Agreement which are authorized under Sections C and D of the Article.

"This Review is intended to provide an opportunity for discussing the effects of the measures applied under Sections C and D, the progress made by the industries in question and the general operation of these Sections. It is agreed that the CONTRACTING PARTIES shall not withdraw their concurrence or modify the terms of a concurrence during the period
of validity for which it has been given, or request
the withdrawal or modification of a measure applied
in full accordance with the terms of that concurrence."

(Report of Review Working Party on Quantitative
Restrictions, paragraph 41.)

"with a view to raising the general standard of
living" (paragraph 3 of Preamble, and paragraphs 7
and 13 of the text).

This phrase "has been used instead of the words
'in order to raise the general standard of living'
which was contained in earlier drafts. The working
Party felt that this more flexible form of words
would cover cases where the direct contribution
which the establishment of a new industry was
expected to make to the general standard of living
of the country was not appreciable."

(Report of Review Working Party on Quantitative
Restrictions, paragraph 42)

2. Scope of consultations under paragraph 12

"The Working Party agreed that ... the scope
of consultations under paragraph 12 of
Article XVIII was the same as that of consul-
tations under Article XII and that the classifi-
cation contained in paragraph 4(e) of Article XII
and in the related interpretative note would
apply equally to consultations undertaken under
Section B of Article XVIII.

(Report of Review Working Party on Quantitative
Restrictions, paragraph 49.)

3. "whose economy is in the process of development"

"The clause in sub-paragraph 4(b) reading 'whose
economy is in the process of development' should
not be construed as a legal limitation on the
eligibility of countries to submit applications
under Section D, but as a general indication of
the type of economy whose need that Section is
intended to meet."

(Review Working Party on Quantitative Restrictions,
paragraph 54.)
4. **Affect of concurrence by CONTRACTING PARTIES under Article XVIII on right of recourse to Article XXIII**

"... the question was raised whether and to what extent the concurrence by the CONTRACTING PARTIES in a measure proposed under Article XVIII would affect the right of a contracting party to resort to Article XXIII. The Working Party agreed on the following interpretation which would apply to paragraph 21 of Article XVIII, but would not in any way prejudice the interpretation of Article XXIII in other cases; although it is understood that the concurrence of the CONTRACTING PARTIES in a measure under paragraphs 16, 19 or 22, or the fact that the CONTRACTING PARTIES, as envisaged in paragraph 15 did not request a contracting party to consult, would not deprive a contracting party affected by the measure in question of its right to lodge a complaint under Article XXIII, the CONTRACTING PARTIES, in assessing the extent of the impairment of benefit, would have to take into consideration all the facts of the case and, in particular, the terms under which the benefit was obtained, including the provisions embodied in Article XVIII. It is therefore recognized that the CONTRACTING PARTIES would not be in a position to allow a contracting party to resort to the withdrawal of concessions or suspension of obligations under paragraph 2 of Article XXIII, unless the effects of the measure concurred in proved to be substantially different from what could reasonably have been foreseen at the time the measure was considered by the CONTRACTING PARTIES."

(Report of Review Working Party on Quantitative Restrictions, BISD paragraph 63.)

5. "**reasonable period of time**" (interpretative note to paragraphs 13 and 14).

"... with respect to the interpretative note to paragraphs 13 and 14 referring to 'a reasonable period of time' ... it is recognized that this period should normally not exceed two years."

(Report of Review Working Party on Quantitative Restrictions, paragraph 65.)
6. Application of the provisions of Article XVIII:C

Since the revised provisions of this Article came into force in October 1957, the CONTRACTING PARTIES have considered notifications under these provisions made by the Government of Ceylon. The decisions taken and the related considerations are noted in reports adopted on 28 November 1957 and 22 November 1958.

The first annual review under paragraph 6 of the Article, of measures applied under the provisions of Sections C and D, was made in 1958 and the report on this review was adopted on 22 November 1958.
ARTICLE XIX - EMERGENCY ACTION ON IMPORTS OF PARTICULAR PRODUCTS

(Corresponding article in Havana Charter: Article 40

Us draft Article 29
London and New York drafts Article 34
Geneva draft Article 40)

1. General

The reference to preferences (sub-paragraph 1(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 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 was 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 from Havana Charter text

(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.

5. Application of Article XIX in specific cases

Greece:
- Apples
- Electric refrigerators

Canada:
- Strawberries

Havana Charter
Interpretative note

Report on the withdrawal by the United States of a tariff concession under Article XIX...
(Sale No. GATT/1951-3, Geneva: November, 1951)

Havana Reports, Section 11, p. 83

GATT/CP.2/22/Rev.1, Section 30, p.7

BISD II/34

Havana Reports, Section 13, p. 83

L/346

L/541

L/642
Germany:
Hard coal and hard-coal products

Austria:
Porcelain

Australia:
Printed cotton textiles
(Measure abolished L/797/Add.2)
Casual footwear

United States:
Women's fur felt hats and hat bodies

Hatters' fur
Concession restored
Dried figs
Alsike clover seed
Bicycles
Towelling, of flax, hemp or ramie
Spring clothespins
Safety pins
Clinical thermometers

Lead and zinc

Compensatory action under paragraph 3(a):

Belgium (mastics) in connexion with
United States' withdrawal of concession on
Hatters' fur
Concession restored

Turkey (various articles) in connexion with
the United States' withdrawal of concession
on dried figs

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\(^1\) Since withdrawn from Schedule XX following negotiations under Article XXVIII:4.

Sixth Protocol of Rectifications and Modifications, 11 April 1957.
ARTICLE XX - GENERAL EXCEPTIONS

Corresponding article in Havana Charter: US Proposals US draft London and New York drafts 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 /XI/ and for long-term purposes by Article (7) /of the Charter/ in combination with Articles (93, 94 /XIII/ and 95 /of the Charter/)."

(c) Marketing of agricultural commodities. It was understood that "governmental measures relating to the orderly marketing of agricultural commodities for which storage facilities in both the countries of origin and destination were insufficient, were covered in paragraph 2(b) of Article 20 /[XI/]."

2. "necessary to protect human, animal or plant life or health" (paragraph (b) previously X(b)).

"The Committee agreed that quarantine and other sanitary regulations as well as other types of regulations must be published under Article 37 /[X/ and that the provisions for consultation in Article 41 /[XXIII/ required Members to supply full information as to the reasons for and operation of such regulations.

Havana Reports, Section 19, p.84
E/CONF.2/C.3/SR.35, pp.6-7
"The Committee agreed that quarantine and other sanitary regulations are a subject to which the Organization should give careful attention with a view to preventing measures 'necessary to protect human, animal or plant life or health' 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 subparagraph 1(a)(iii) or Article 357(b) of XX 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. Revision of paragraph (h) (previously paragraph 1(h))

The text of this paragraph was revised at the ninth (review) session principally in view of the steps being taken to develop new principles relating to the conclusion of commodity agreements. In order that the exception provided for in the old text might continue to operate, an interpretative note was added.

4. "Local short supply" (paragraph (j), previously paragraph II(a))

It was stated during the course of the discussion at Geneva that this phrase was "understood to 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. Note on previous Part II

A 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 of uneconomic industries carried over from the war period."

A waiver was granted until 1 January 1954 to contracting parties who were obligated to discontinue or to seek the approval for the continuation of measures under Part II of Article XX. A similar waiver extended the time limit to 1 July 1955.

At the ninth (review) session the CONTRACTING PARTIES agreed to delete Part II of the Article with the exception of II(a) which henceforth became paragraph (j), to remain in force subject to review not later than 30 June 1960.

6. Note on main differences from Havana Charter text

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 (j) (previously 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 "1 January 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".

At the ninth (review) session this provision was altered to read: "The CONTRACTING PARTIES shall review the need for this sub-paragraph (j) not later that 30 June 1960."
ARTICLE XXI - SECURITY EXCEPTIONS

(Corresponding article in Havana Charter: Article 99 (partially)
Geneva draft Article 94
earlier drafts including among
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 from Havana Charter text

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
US draft Article 30
London and New York drafts Article 35
Geneva draft Article 41)

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. Procedures on questions affecting the interests of a number of contracting parties

On 10 November 1958, the CONTRACTING PARTIES adopted Procedures under Article XXII on questions affecting the interests of a number of contracting parties.
ARTICLE XXIII - NULLIFICATION OR IMPAIRMENT

(Corresponding article in Havana Charter: Articles 93, 94 & 95)

1. Applicability of Article XXIII where waivers have been granted pursuant to Article XXV

The report of the Working Party established to consider a waiver requested in respect of the European Coal and Steel Community (approved on 10 November 1952) contains the following statement:

"... the Working Party agreed that the adoption of the Decision would not debar any individual contracting party from having recourse to the provisions of Article XXIII if it considered that any benefit accruing to it under the Agreement was being nullified or impaired."

Similarly, in a waiver granted to the United States relating to restrictions imposed under paragraph 22 of the Agricultural Adjustment Act (Decision of 5 March 1955), it is provided that "this Decision shall not preclude the right of affected contracting parties to have recourse to the appropriate provision of Article XXIII".

See also the so-called "Hard-Core Waiver" of 5 March 1955:

"any concurrence given in accordance with this Decision does not preclude the right of contracting parties affected to have recourse to Article XXIII."

A similar provision was included in a waiver relating to special problems of dependent overseas territories of the United Kingdom. (Decision of 5 March 1955.)

2. Applicability of Article XXIII in connexion 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 II of the Charter which were not dealt with under the exceptions already provided for in Articles XI through XV 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."

3. "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 ...".

4. "Matter"

A Havana Committee "agreed that the word 'matter' as used in Article 93 XXIII refers to nullification or impairment of a benefit and not to the action, failure, measure or situation referred to in subparagraphs 1(a), (b) or (c) ..."
At the seventh session, the CONTRACTING PARTIES were asked by the Netherlands Government to suspend its obligations towards the United States to the extent necessary to enable the Netherlands to take a certain measure affecting its trade with the United States.

The CONTRACTING PARTIES instructed a working party "to investigate the appropriateness of the measure which the Netherlands Government proposed to take, having regard to its equivalence to the impairment suffered by the Netherlands as a result of the United States restrictions."

In this connexion, the Working Party reported as follows:

"The Working Party felt that the appropriateness of the measure envisaged by the Netherlands Government should be considered from two point of view; in the first place whether, in the circumstances, the measure proposed was appropriate in character, and secondly, whether the extent of the quantitative restriction proposed by the Netherlands Government was reasonable, having regard to the impairment suffered.

"Although the working Party recognized that it was appropriate to consider calculations of the trade affected by the measures and countermeasures in question, it was aware that a purely statistical test would not, by itself, be sufficient and that it would also be necessary to consider the broader economic elements entering into the assessment of the impairment suffered. It was agreed therefore that it would be proper to take into account the contention of the Netherlands Government that the restrictions imposed by the United States had had serious effects on the efforts which were being made by the Netherlands to stimulate its exports to the United States not only of the products subject to the restrictions but of other products as well, and the further contention of the Netherlands Government that the restrictions had affected its efforts to overcome balance-of-payments difficulties with which the country was confronted."
6. **Application of paragraph 2**

(Report of Review Working Party on Organizational and Functional Questions, paragraph 63)

"... the requirement in paragraph 2 of the Article that the circumstances must be 'serious enough' limits the possibility of authorizing a contracting party or parties to take appropriate retaliatory action to cases when endeavours to solve the problem through the withdrawal of the measures causing the damage, the substitution of other concessions or some other appropriate action have not proved to be possible, and where there is considered to be a substantial justification for retaliatory action, as in cases when such authorization appears to be the only means either of preventing serious economic consequences to the country for which a benefit has been nullified or impaired, or the only means of restoring the original situation."

(Idem , paragraph 64)

"... any implication ... that the provision of appropriate compensation, on the one hand, and the removal of a measure inconsistent with the Agreement, on the other hand, are fully equivalent and satisfactory alternatives would not accord with the intent and spirit of the Article. ... the first objective, if the CONTRACTING PARTIES decided, in the event of a complaint under Article XXIII, that certain measures were inconsistent with the provisions of the Agreement, should be to secure the withdrawal of the measures. In such a case, the alternative of providing compensation for damage suffered should be resorted to only if the immediate withdrawal of the measures was impracticable and only as a temporary measure pending the withdrawal of the measures which were inconsistent with the Agreement."

7. **Note on main differences from Havana Charter text**

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.

8. Application of Article XXIII in specific cases

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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) and Annex M
104:3

(Corresponding article in US Proposals:

US draft
London and New York drafts
Geneva draft

Chapter IV-4

Article 33
Article 38
Article 42)

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 Customs 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. "Frontier traffic" (paragraph 3(a))

The Review Working Party on Schedules and Customs Administration agreed that

"... traffic in zones designated in treaties between adjacent countries, designed solely to facilitate clearance at the frontier, would normally be covered by the phrase 'frontier traffic'".

5. 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."

6. "Notes and Supplementary Provisions" ad Article XXIV paragraph 9

The note was rectified 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".

7. Application of Article XXIV in specific cases

European Atomic Energy Community (Report adopted by the CONTRACTING PARTIES on 29 November 1957)

European Economic Community:

Reports of Sub-Groups

Report of Interseessional Committee to Thirteenth Session

Action at the thirteenth session
Participation of Nicaragua in Central American Free Trade Area

Free-trade area between Nicaragua and El Salvador

Customs union between the Union of South Africa and Southern Rhodesia
ARTICLE XXV - JOINT ACTION BY THE CONTRACTING PARTIES

1. 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.

2. 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."

3. Competence of CONTRACTING PARTIES in relation to commodity problems

At the tenth session of the CONTRACTING PARTIES, the Chairman ruled that the CONTRACTING PARTIES were acting properly within the provisions of paragraph 1 in adopting recommendations relating to the study of commodity problems. This ruling was upheld by a formal vote of the CONTRACTING PARTIES.

This ruling was reaffirmed in a Resolution of 17 November 1956, particular difficulties connected with trade in primary commodities:

"... the CONTRACTING PARTIES, in conformity with the functions conferred upon them under paragraph 1 of Article XXV and as recognized in the ruling of the tenth session, are competent to deal, upon the request of one or more contracting parties, with special difficulties arising in connexion with international trade in primary commodities ..."
4. "majority of the votes cast" (paragraphs 4 and 5)

This phrase was used in order to permit postal voting.

5. "may waive an obligation" (paragraph 5)

(a) In discussing the powers to suspend obligations undertaken by members "it was finally agreed that all the obligations undertaken by members, pursuant to the Charter, should come within the purview of this general provision."

(b) At the seventh session, the CONTRACTING PARTIES approved (10 November 1952) the report of a working party on the European Coal and Steel Community which affirmed that the foregoing passage, relating to an analogous provision, in the Havana Charter, was applicable to Article XXV(5)(a).

"The Working Party is of the view that the text of paragraph 5(a) of Article XXV is general in character; it allows the CONTRACTING PARTIES to waive any obligations imposed upon the contracting parties by the Agreement in exceptional circumstances not provided for in the Agreement, and places no limitations on the exercise of that right."

The Working Party, however, considered it appropriate to consider whether the object sought through the waiver (in this case the establishment of the ESC) was consistent with the objectives of the General Agreement.

(c) At the eleventh session, the CONTRACTING PARTIES adopted guiding principles to be followed in considering applications for waivers from Part I or other important obligations of the Agreement.
6. **Application of Article XXV in specific cases**

Waivers of obligations granted in accordance with the terms of paragraph 5(a):

**Extension of time-limit in Part II of Article XX**
(see also "Article XX, Section 5, Part II")

**Problems raised for contracting parties in**
eliminating import restrictions maintained during a period of balance-of-payments difficulties
(see also "Article XI, Section 10(c), Waivers from obligations ...")

**Australian treatment of products of Papua and New Guinea**

**Belgium - in connexion with import restrictions on certain agricultural products**
(see also "Article XI, Section 10(d), Waivers from obligations ...")

**Brazil - in connexion with renegotiation of certain concessions**

**Brazil - in connexion with the introduction of new customs tariff**
(see also "Article II, Section 8, Waivers ...")

**Cuba - in connexion with the renegotiation of Schedule IX**
(see also "Article XI, Section 10(g), Waivers from obligations ...")

**Czechoslovakia - in connexion with the provisions of Article XV:6**
(see also "Article XI, Section 8, Waivers from obligations ...")

**European Coal and Steel Community**
(see also "Article I, Section 13(a), Application of ..." and "Article XI, Section 10(a), Waivers from obligations ...")
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United Kingdom - in connexion with items traditionally admitted free of duty from countries of the Commonwealth

United Kingdom - special problems of dependent overseas territories

United States - in connexion with an item in Schedule XX (potatoes)

United States - in respect of the Trust territory of the Pacific Islands

United States - in connexion with import restrictions imposed under Section 22 of the United States Agricultural Adjustment Act (of 1933), as amended (see also "Article XI, Section 10(b), Waivers from obligations ...")
ARTICLE XXVI - ACCEPTANCE, ENTRY INTO FORCE
AND REGISTRATION

1. General

(a) 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 next text is modelled on Article 104 of the Havana Charter.

(b) By a resolution of 7 March 1955, the CONTRACTING PARTIES unanimously agreed that "an acceptance pursuant to Article XXVI shall be valid even if accompanied by a reservation to the effect that Part II of the General Agreement will be applied to the fullest extent not inconsistent with legislation which existed on 30 October 1947 or, in the case of a contracting party which since 30 June 1949 has acceded to the Agreement, the date of the Protocol providing for such accession".

The following notes refer to the interpretation of the reservation:

(a) the annual review

"... the annual review provided for in paragraph 3 of the agreement or declaration relating to the Reservation would afford an opportunity for consultations regarding any special difficulties of any contracting party arising out of the operation of the legislation of another contracting party covered by the Reservation."

(b) "appropriate recommendations" (paragraph 4)

"The words 'appropriate recommendations' in para-

graph 4 were intended to mean that the CONTRACTING
PARTIES could make whatever recommendations were
indicated in the circumstances existing at the time,
taking into account any inequities which would re-
sult from the maintenance of the situation. It was
also clear that the Reservation would not deprive any
contracting party of resort to Article XXIII in
accordance with paragraph 1(b) or (c) thereof.

Ibid.

(c) Duration of the Reservation

"The formula suggested ... does not set any fixed
time-limit for the duration of the Reservation,
but the general intent of the declaration and the
detailed procedures proposed are directed towards
securing as early as possible complete conformity
between the legislation of contracting parties
and their obligations under the General Agreement ..."

Idem para. 56

(d) Scope of Reservation

(i) "... the Reservation would provide to a
contracting party a defence against the
charge that it was acting inconsistently with
the General Agreement only to the extent to
which the legislation in question was in
fact covered by the terms of the Reservation.
It was open to any contracting party to
submit this matter to the judgment of the
CONTRACTING PARTIES under the appropriate
procedures of the Agreement or in the
course of the review provided for in the
declaration ... relating to the
Reservation."

Idem para. 57

(ii) The phraseology used in the Reservation
is the same as that employed in the
Protocol of Provisional Application
and is subject to the same interpretation
regarding the mandatory character of the
legislation (see notes on Protocol of
Provisional Application).

Idem para. 58
Further interpretation by CONTRACTING PARTIES in adopting the text of the Reservation

The CONTRACTING PARTIES agreed that the following interpretation proposed by the delegate for New Zealand was correct:

"(i) that the purpose of the Reservation procedure was to give contracting parties with legislation inconsistent with the Agreement a breathing space within which to bring that legislation into conformity with the Agreement without the need for recourse to transitional period procedures;

"(ii) that the provision in paragraph 3 of the draft decision would permit the CONTRACTING PARTIES annually to review the progress made in bringing such legislation into conformity with the Agreement, with a view to assessing the progress achieved towards the full application of the Agreement by all contracting parties, and to making appropriate recommendations;

"(iii) that, in the review mentioned in paragraph 4 of the situation prevailing at the end of three years with respect to the Reservation, the CONTRACTING PARTIES would then decide what further recommendations - over and above those which might have been made following annual reviews - would be appropriate to ensure the equal acceptance by all contracting parties of the obligations of the General Agreement."

2. Interpretation of paragraph 5(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."

"(i) that the purpose of the Reservation procedure was to give contracting parties with legislation inconsistent with the Agreement a breathing space within which to bring that legislation into conformity with the Agreement without the need for recourse to transitional period procedures;

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"(iii) that, in the review mentioned in paragraph 4 of the situation prevailing at the end of three years with respect to the Reservation, the CONTRACTING PARTIES would then decide what further recommendations - over and above those which might have been made following annual reviews - would be appropriate to ensure the equal acceptance by all contracting parties of the obligations of the General Agreement."

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(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.

At the twelfth session, the CONTRACTING PARTIES adopted Procedures for sponsorship under paragraph 5(c) /formerly 4(c)/ (Recommendation of 1 November 1957).

(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.

3. Application of Article XXVI:5 in specific cases

When the General Agreement was drafted, Burma, Ceylon and Southern Rhodesia were considered as contracting parties in their own right.

Indonesia became a contracting party in 1950 in accordance with the provisions of this paragraph; and Ghana and Malaya in 1957.
ARTICLE XXVII - WITHHOLDING OR WITHDRAWAL OF CONCESSIONS

(no equivalent Charter Article)

1. "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."

2. Application of Article XXVII in specific cases

Benelux

Section A - Metropolitan Territories: withdrawal of concessions negotiated with China, Syro-Lebanese Customs Union, Liberia and Philippines. L/674

Section C - Netherlands New Guinea: withdrawal of concessions negotiated with China. L/658, L/658/Add.1

Canada - withdrawal of concessions negotiated with China, Liberia, Philippines and Korea. L/553

Czechoslovakia - withdrawal of a concession negotiated with Palestine. GATT/CP/23 and /32, p.25

Finland - withdrawal of concessions negotiated with China. L/659

France - withdrawal of concessions negotiated with China. L/460

India - withdrawal of concessions negotiated with China and Colombia. G/77

Sweden - withdrawal of concessions negotiated with Colombia, Philippines and China. L/950

United Kingdom - withdrawal of concessions negotiated with China. L/786

United States - withdrawal of concessions negotiated with China. GATT/CP/115 and /Add.3
ARTICLE XXVIII - MODIFICATION OF SCHEDULES
(no equivalent Charter Article)

1. General
   
The firm validity of schedules which originally ended on 1 January 1951 (amended to 1 January 1954 by the Torquay Protocol paragraph 6 (a)) has been extended at the ninth (review) session by three-year periods.

2. "The withdrawal of concessions shall be preceded by consultations" (paragraph 1)
   
   This article differs 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."

4. Reservation to modify the appropriate schedule (paragraph 5)
   
   "Concerning paragraph 5, the Review Working Party on Schedules and Customs Administration wishes to place on record, in order to eliminate any possibility of misunderstanding, that, without prejudice to the provisions of Regulation 5, a reservation of the right under that paragraph to modify a schedule applies to the whole schedule and cannot apply to selected items only".

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1 The allusion is to "regulations" annexed to the Report of the Working Party (L/329) and later incorporated in the Interpretative Notes to the Article. Regulation 5 is now Note 3 to paragraph 1 of Article XXVIII.
ARTICLE XXVIII (bis) - TARIFF NEGOTIATIONS

(New Article drafted at the ninth (review) session)

1. Measurement of value of concessions

"The Review Working Party considered that governments participating in negotiations should retain complete freedom to adopt any method they might feel most appropriate for estimating the value of duty reductions and bindings."

2. Tariff negotiations procedures

Procedures adopted for the Torquay Tariff Conference

Procedures for negotiations between two or more contracting parties

Procedures governing negotiations for Accession

Procedures for the 1956 Tariff Conference
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 VII were omitted because they deal with procedural matters.

It was stated in this connexion 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."

4. Application of Article XXIX in specific cases

The CONTRACTING PARTIES decided to postpone the meeting called for in paragraph 3 of the Article.
ARTICLE XXX - AMENDMENTS

(Corresponding Article in Havana Charter: Article 100)

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 base of the provisions about the most-favoured-nation treatment and so on which will be embodied in Part I".

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 XXXIII" 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.
ARTICLE XXXIII - ACCESSION

(Corresponding Article in Havana Charter: Article 71 partially)

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.

Havana Reports, paragraph 7(a), p.162

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."

GATT/CP.3/37, Section 8
BISD II/149

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."

EPCT/TAC/FV/22, pp.20-21

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".

GATT/CP.3/37, Section 11
Idem Section 13 p.4
BISD II/150
5. **Application of Article XXXIII in specific cases**

   Accession of **Denmark**, **Dominican Republic**, **Finland**, **Greece**, **Haiti**, **Italy**, **Liberia**, **Nicaragua**, **Sweden**, and **Uruguay** (Decision of 30 November 1949).

   Accession of **Austria**, **Germany**, **Korea**, **Peru**, **Philippines** and **Turkey** (Decisions of 21 June 1951).

   Accession of **Japan** (Decision of 11 August 1955).

6. **Procedures**

   Procedures governing accession.

   - **Annecy Protocol of Terms of Accession**
     BISD
     II/33

   - **Torquay Protocol of Terms of Accession**
     BISD
     II/33-35

   - **BISD 4S/33**

   - **BISD I/110**
ARTICLE XXXIV - ANNEXES

(Corresponding Article in Havana Charter: Article 105)

This article was inserted at Geneva to give to the interpretative notes [now: "Notes and Supplementary Provisions" - Annex I] the same legal value as to the provisions of the Agreement.

EPCT/TAC/PV/18, pp.19-25
ARTICLE XXXV - NON-APPLICATION OF THE AGREEMENT BETWEEN
PARTICULAR CONTRACTING PARTIES

(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.

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**

Invocation of this Article in respect of:

- **Union of South Africa by India**
  - GATT/CP.2/4

- **Union of South Africa by Pakistan**
  - (the invocation of the Article has been withdrawn)
  - L/610

- **Colombia**
- **Dominican Republic**
- **Greece**
- **Italy**
- **Liberia**
- **Nicaragua**
- **Sweden**
- **Uruguay**
- **Austria**
- **Germany**
- **Korea**
- **Peru**
- **Philippines**
- **Turkey**
- **Philippines by Cuba**
  - GATT/CP/111

- **Philippines by United States**
  - GATT/CP/109
(Australia
(Austria
(Belgium
(Brazil (withdrawn L/670)
(Cuba
(France
(Haiti
(India (withdrawn L/952)
(Luxemburg
(Netherlands
(New Zealand
(Federation of Rhodesia
and Nyasaland
(Union of South Africa
(United Kingdom

Japan by Ghana  BISD 6S/9
Japan by Federation of Malaya  BISD 6S/9
INSTRUMENTS OF PROVISIONAL APPLICATION AND ACCESSION

(A) Protocol of Provisional Application

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 Article XXVI, paragraph 5(a).

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

(a) It was ruled that this referred to legislation existing on 30 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".

This ruling was expressly reaffirmed at the ninth (review) session of the CONTRACTING PARTIES, subject to reservation by CUBA and CHILE.

It was referred to and applied in a case submitted to the CONTRACTING PARTIES under Article XXIII (Belgian Family Allowances).
(c) **Limitation of operation of Article III under the Protocol.**  

(See note 2, Article III above).  

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".  

(See note 2, Article III above).  

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.  

(B) **Torquay Protocol**  

"not inconsistent with legislation existing on the date of this Protocol"  
(paragraph 1(a) (ii))  

See 2 in Section (A) above.  

Discussion of the meaning of this provision in connexion with German import restrictions applied under the Marketing Laws  

BISD 6S/60-61  
7S/104-106, 107  

(C) **Provisional "Accession"**  

(a) **Japan**  

Participation of Japan in the sessions of the CONTRACTING PARTIES. Decision.  

BISD 2S/30  

Commercial relations between certain contracting parties to the General Agreement and Japan. Declaration.  

BISD 2S/31  

(Japan has since acceded under Article LXXIII. See this Article).
(b) Switzerland

Participation of Switzerland in the work of the CONTRACTING PARTIES. Resolution.  

Provisional Accession of the Swiss Confederation. Declaration.  

BISD 73/18  

BISD 73/19
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