AN OUTLINE OF THE PROVISIONS OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The General Agreement is divided into three parts. Part I, comprising the first two articles, is the principal, operative section. It gives life to the tariff concessions which governments have negotiated one with another, and guarantees that the rates thus agreed upon are observed as maxima and are applied on a non-discriminatory basis among the adhering governments. In respect of this part of the Agreement the contracting parties have accepted an absolute commitment, i.e. their legislatures are bound by its terms, and, furthermore, no change can be made in its articles except by unanimous agreement with the contracting parties.

Part II of the Agreement contains twenty-one articles - Articles III to XXIII - and is intended principally to ensure that the value of the tariff reductions is not prejudiced by the introduction, or changes in administration, of other controls on trade, particularly quantitative import restrictions, or by internal taxes, new methods of valuation, customs formalities, etc. Under the Protocol of Provisional Application and the protocols by which governments have acceded to the Agreement, the contracting parties are bound to apply the provisions of these articles "to the fullest extent not inconsistent with existing legislation." Not until they apply the Agreement definitively will they be required to submit legislation to their parliaments to modify statutes which are not fully in conformity with these provisions. This section of the Agreement may be amended by two-thirds of the contracting parties, but the amendments are binding only upon those which accept them.

Part III - containing the last twelve articles - deals with questions of accession and enforcement, joint action by the contracting parties, withdrawals, amendments, etc. Under the Protocol of Provisional Application and the protocols of accession, contracting parties are fully committed to this Part of the Agreement as they are to Part I.

PART I

I. Most-favoured-nation Treatment.- The basic provision of the Agreement is that which requires the exchange of most-favoured-nation treatment by the contracting parties. This first article provides that, with regard to duties, payments and formalities in connection with imports and exports, any "advantage, favour, privilege or immunity" granted to any country must be unconditionally accorded to all other contracting parties. It then proceeds to enumerate exceptions in the form of tariff preferences which, having been in force on a certain date, may be maintained. The territories among which the preferences were operative are listed in a series of annexes; they include both sovereign countries and dependent territories.
II. The Schedules of Concessions.— This article makes the annexed schedules of tariff rates an integral part of Part I of the Agreement and requires each contracting party to accord to the commerce of the others treatment no less favourable than that provided for in its schedule. Each schedule is in two parts: the first contains the negotiated rates in the most-favoured-nation tariff, and the second contains the negotiated preferential rates, if any, in the case of countries by which the maintenance of preferences is allowed under Article I. Contracting parties which negotiated at all three tariff conferences—Geneva, Annecy and Torquay—now have three schedules of bound tariff rates; consolidated schedules are being prepared and will be available to the public early in 1952. Other clauses of Article II are intended to prevent the impairment of the concessions provided for in the schedules by the imposition of other duties or charges, by alteration in the methods of determining dutiable value or of converting currencies or through the operations of import monopolies.

PART II

III. National Treatment on Internal Taxation and Regulation.— The contracting parties recognise that internal taxes and other internal charges should not be applied to imported or domestic products so as to afford protection to domestic production. The same rule applies to laws, regulations and requirements affecting internal sale, transport or distribution and to internal quantitative regulations requiring the use of products in specified proportions. Accordingly, imported products are to be treated as favourably as like products of national origin, and contracting parties are not to maintain internal quantitative regulations relating to the use of products which require specified amounts to be supplied from domestic sources.

IV. Cinematograph Films.— Internal quantitative regulations relating to exposed cinematograph films must take the form of screen quotas and conform to certain requirements. These quotas are subject to negotiation, like customs duties, for their modification or removal.

V. Freedom of Transit.— Contracting parties are required to provide freedom of transit for goods on route to or from the territory of other contracting parties without distinction based on the flag of vessels, the place of origin or destination, or any circumstances relating to the ownership of the goods or the means of transport.

VI. Anti-Dumping and Countervailing Duties.— A contracting party may levy a special duty in order to prevent or offset dumping, providing it is not greater than the price difference determined in accordance with a given formula. Similarly, a countervailing duty may be levied, providing it does not exceed the bounty or subsidy which has been granted on the production or export of the product. However, no anti-dumping or countervailing duty is to be levied, without the consent of the Contracting Parties, except when the dumping or subsidisation would cause injury to domestic industry.
VII. Valuation for Customs Purposes.—This article sets forth the general principles upon which imported goods are to be valued for customs purposes. In brief, valuation is to be based on the actual value of the imported merchandise, and not on the value of goods of national origin or on arbitrary or fictitious values. The contracting parties undertake to give effect to these principles "at the earliest practicable date" but, so long as they are applying the Agreement under the Protocol of Provisional Application, they are not obliged to change their methods of valuation if this would involve new legislation.

VIII. Formalities.—The contracting parties recognise that fees and charges, other than duties, imposed on imports or exports, should be limited to the cost of the services rendered and should not represent a taxation of imports or exports or an indirect protection to domestic products. Further, they recognise that formalities and documentation relating to matters such as consular invoices, quantitative restrictions, licensing, exchange control, etc. should be decreased and simplified. The contracting parties are required to take action in accordance with these principles and objectives "at the earliest practicable date".

IX. Marks of Origin.—This contains a most-favoured-nation clause for marking requirements.

X. Publication and Administration of Trade Regulations.—Laws and regulations pertaining to the valuation of products, to rates of duty, to restrictions on trade or on the transfer of payments, or affecting the sale or distribution of imported products, must be published promptly. Also agreements affecting international trade policy which are in force between contracting parties are to be published. Contracting parties are required to administer trade laws and regulations in a uniform and impartial manner, and to maintain judicial, arbitral or administrative tribunals or procedures for the prompt review and correction of administrative action.

XI. Elimination of Quantitative Restrictions.—A government adhering to the General Agreement undertakes that no prohibition or restriction (other than duties, taxes or other charges) will be applied to trade with any other contracting party. This general commitment to eliminate quantitative restrictions is qualified by a few exemptions which include export restrictions to relieve shortages of foodstuffs or other essential products and, in certain circumstances, import restrictions on agricultural or fisheries products. The terms "import restrictions" and "export restrictions", as used in Article XI to XIV, include restrictions made effective through state-trading operations.

XII. Restrictions to safeguard the Balance of Payments.—This contains the most important of the exceptions to the rule of Article XI requiring the elimination of quantitative restrictions. In certain circumstances defined in the article, a contracting party may use import quantitative restrictions
to safeguard its external financial position and balance of payments, but these restrictions must be progressively relaxed as conditions improve and must be eliminated altogether when conditions no longer justify their use. Moreover, the restrictions are to be applied so as not to prevent imports of minimum commercial quantities the exclusion of which would impair regular channels of trade.

A contracting party which is considering the need to apply restrictions is required to consult with the Contracting Parties as to the nature of its balance-of-payment difficulties, alternative corrective measures, and their effect on the economies of others. (South Africa consulted with the Contracting Parties under this provision in 1949.) And a contracting party which has substantially intensified its restrictions is required to consult within thirty days. (It was under this provision that consultations with the United Kingdom and six other countries of the sterling area and with Chile took place at the Fifth Session in November 1950.) Positive action on the initiative of the Contracting Parties is required in 1951 in the form of a review of all balance-of-payment restrictions; this was carried out in September-October 1951 and resulted in a report which has been published. Finally, if there is a persistent and widespread application of restrictions under this Article, indicating the existence of a general disequilibrium which is hampering international trade, the Contracting Parties are to initiate discussions to consider whether other measures might be taken by any of the contracting parties to remove the underlying causes of the disequilibrium.

This article contains a provision which was the subject of lengthy discussions when it was drafted. This is the provision which calls upon contracting parties to recognise that, as a result of domestic policies, such as those directed towards the maintenance of employment, a contracting party may experience a high level of demand for imports; accordingly, no contracting party will be required to withdraw or modify restrictions on the ground that a change in such policies would render unnecessary the restrictions applied under this article; on the other hand, contracting parties have undertaken when in that situation to carry out those policies with due regard to the need for restoring equilibrium in their balance of payments and to avoid unnecessary damage to the interests of other contracting parties.

XIII. Non-discriminatory Administration of Quantitative Restrictions.

The object of this article is to apply the principles of most-favoured-nation treatment to the administration of quantitative restrictions. A prohibition or restriction on imports from, or on exports to, any contracting party must be similarly applied to trade with all other countries. In applying restrictions contracting parties are required to aim at a distribution of trade approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of the restrictions, and to this end they are required to observe certain principles in the administration of quotas and licences. If, for instance, a quota is allocated among supplying countries, the allocation is to be based upon trade during a previous representative period while taking account of any special factors involved.
XIV. Exceptions to the Rule of Non-Discrimination.— As an exceptional arrangement for the transitional period following the last War, a contracting party applying balance-of-payment restrictions is permitted to deviate within certain limits from the rule of non-discrimination. Most of the contracting parties are governed by the "Havana option", written into the Agreement, while five, viz: Canada, Ceylon, Southern Rhodesia, South Africa and the United Kingdom, chose the "Geneva option" contained in Annex J of the Agreement which was based on the Geneva draft of the article. The difference between the two methods of limiting the discriminatory application of restrictions may be stated briefly: under Article XIV, a contracting party may deviate from the rule of non-discrimination during the postwar transitional period as it was doing on March 1, 1948, or in a manner having equivalent effect to restrictions on payments and transfers for current international transactions which it may apply under Article XIV of the International Monetary Fund; under Annex J, on the other hand, a contracting party may deviate to obtain additional imports provided, among other criteria, that the prices paid are not substantially higher than those which would have to be paid from other contracting parties.

The Contracting Parties are required to report annually on action being taken under these arrangements. The first report was published in March 1950; the second was prepared in September-October 1951, when the restrictions were being reviewed under Article XII of the Agreement, and was for convenience incorporated in the report on the review, which is referred to above under Article XII.

Starting in March 1952 contracting parties which are still entitled to take action under some of these provisions will be required to consult annually with the Contracting Parties. Procedural arrangements have been made for these consultations to be held at that time.

XV. Exchange Arrangements.— This article deals principally with the relationship between the Contracting Parties and the International Monetary Fund. They are expected to pursue a co-ordinated policy on exchange questions within the jurisdiction of the Fund and on quantitative restrictions and other trade measures within the jurisdiction of the Contracting Parties. When the Contracting Parties are called upon to deal with problems of monetary reserves, balance of payments or foreign exchange arrangements, they are required to consult with the Fund and to accept all the findings of statistical and other facts of a financial character presented by the Fund.

In order that the purposes of the Agreement shall not be frustrated by exchange action, a contracting party which is not a member of the Fund is required to enter into a special exchange agreement imposing limitations in respect of exchange controls and currency stability similar to those accepted by members of the Fund. At the present time, two contracting parties—Haiti and Indonesia—are governed by such agreements.
XVI. Subsidies.- A contracting party which grants or maintains a subsidy, including any form of income or price support, which has the effect of increasing exports or reducing imports, is required to notify the Contracting Parties. If the interests of another contracting party are prejudiced, the contracting party granting the subsidy is required to discuss the possibility of limiting the subsidization. Ten contracting parties have notified that they maintain subsidies of the type described in this article.

XVII. State-trading Enterprises.- This article is intended to prevent discrimination among contracting parties through state purchases and sales. Each contracting party undertakes that if it establishes or maintains a state enterprise, or grants exclusive or special privileges to any enterprise, the purchases and sales will be consistent with the principles of non-discriminatory treatment prescribed for governmental measures affecting imports and exports by private traders. Purchases and sales by such enterprises are to be made in accordance with commercial considerations, and the enterprises of other contracting parties are to have opportunities to compete.

XVIII. Governmental Assistance to Economic Development and Reconstruction.- This article contains provisions from Chapter III of the Havana Charter whereby an adhering government may obtain authority to impose non-discriminatory, protective measures for purposes of economic development or reconstruction, or, in the actual words of the article, to give "special governmental assistance to promote the establishment, development or reconstruction of particular industries or branches of agriculture". Applications for authority to impose such measures are treated in accordance with established procedures and are judged by certain criteria depending upon whether the measures would conflict with negotiated commitments and/or with other provisions of the Agreement. Authority has been given by the Contracting Parties for the temporary maintenance or imposition of several measures by Ceylon, Cuba, Haiti and India.

XIX. Emergency Action.- This article is an "escape clause" on the lines of that which has been incorporated in agreements negotiated by the United States Government under the Reciprocal Trade Agreements Act. If, as a result of unforeseen developments and of the effect of obligations incurred under the Agreement, including tariff concessions, a product is being imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers, the contracting party may suspend the obligation or modify the concession. Notice of such action must be given to the Contracting Parties, and if agreement is not reached in consultations injured parties may be authorized to suspend equivalent obligations or concessions. The United States is thus far the only country which has taken action under these provisions; in 1950 it invoked this Article to suspend concessions which it had granted on a group of products generally referred to as "women's fur felt hats and hat bodies". A report on this subject has been published by the Contracting Parties.
XX. General Exceptions.—This article contains the provisions, which have traditionally appeared in commercial treaties, for action to protect public morals, public health, national treasures, etc. In addition, the Agreement does not prevent the adoption, subject to certain safeguards, of measures essential to the acquisition or distribution of products in short supply or to the control of prices or the liquidation of surplus stocks subsequent to the War; these measures were to be removed by January 1951, but this exemption has been extended to 1 January 1954.

XXI. Security Exceptions.—Additional exceptions are set out in Article XXI, which states that the Agreement is not meant to require any contracting party to furnish information against its essential security interests, to prevent the protection of security interests relating to fissionable materials, traffic in arms, etc., or to prevent action in pursuance of obligations under the United Nations Charter for the maintenance of peace.

XXII. Consultation.—Each contracting party is required to afford opportunities for consultation on any representations that may be made concerning the operation of the Agreement.

XXIII. Nullification or Impairment.—Complaints that benefits which should accrue under the Agreement are being nullified or impaired are to be addressed in the first instance to the contracting party concerned. If no satisfactory adjustment is effected, the Contracting Parties may be asked to investigate and to make recommendations or give rulings; they may authorise injured parties to suspend obligations or concessions, but in that event the party complained against may withdraw from the Agreement.

PART III

XXIV. Customs Unions and Free-Trade Areas.—This article recognises that the closer integration of national economies is a desirable objective and that a customs union may serve to facilitate trade between the participating countries while not raising barriers against the trade of others. Accordingly, the Agreement does not prevent the formation of a customs union, provided the duties and other trade regulations will not on the whole be higher or more restrictive than those previously in force. In the event that two or more contracting parties conclude an interim agreement for the formation of a customs union they are required to notify the Contracting Parties who will examine the details of the plan and judge whether the agreement is likely to result in a union within a reasonable period of time. The formation of a free-trade area, i.e., a group of two or more customs territories in which the duties and other restrictive trade regulations are eliminated on substantially all the trade between them, is treated similarly. However, the Contracting Parties may, by a two-thirds majority, approve a proposal for the formation of a customs union or a free-trade area even though it does not fully comply with the requirements of this article. The difference between a free-trade area and a customs union is that the countries forming a free-trade area are not required to adopt a common tariff.
From the beginning, in 1948, two groups of countries participated in the application of the Agreement as customs unions, namely, Belgium, Netherlands and Luxemburg, as members of the Benelux Union, and Syria and Lebanon. More recently the Syro-Lebanese Union has been dissolved, and both countries have withdrawn from the Agreement. In 1949, the Contracting Parties gave their approval to the terms of the Interim Agreement for the re-establishment of a customs union between South Africa and Southern Rhodesia which is to be completed not later than 1959. In 1951 the Contracting Parties approved a proposal made by Nicaragua to form a free-trade area with El Salvador, a country not party to the Agreement.

Article XXIV deals also with the territorial application of the Agreement and defines the term "customs territory". In addition, it provides that the Agreement shall not be construed to prevent advantages accorded by a contracting party to adjacent countries in order to facilitate frontier traffic.

XXV. Joint Action by the Contracting Parties.- The contracting parties are required to hold meetings from time to time to give effect to those provisions which require joint action and to facilitate the operation of the Agreement. This article contains an important clause permitting an obligation imposed upon a contracting party by the Agreement to be waived provided this is approved by two-thirds of the votes cast and by more than half of the contracting parties. This waiver provision has been used on 16 occasions.

A paragraph, added to this article after the Havana Conference, provides that if a contracting party has failed to carry out negotiations for tariff reductions the Contracting Parties may authorize the withholding of concessions; and if concessions are withheld the contracting party which did not negotiate will be free to withdraw from the Agreement.

XXVI. Acceptance and Entry into Force.- At the present time the Agreement is being applied provisionally. Provisional application has been made effective for the metropolitan territories of all contracting parties and for the dependent territories of Belgium, France (with the exception of Morocco), the Netherlands and the United Kingdom (with the exception of Jamaica). Under Article XXVI, the Agreement will be brought into force definitively when it has been accepted by governments whose territories account for 85 per cent of the total external trade of those which negotiated at Geneva in 1947. The percentage requirement could be met by the adherence of the United Kingdom, the United States, Benelux, France, Canada (which were, in that order, the principal trading nations in 1938) and three other countries.

XXVII. Withholding or Withdrawal of Concessions.- A contracting party is free to withhold or withdraw any concession initially negotiated with a government which has not become, or has ceased to be a contracting party. However, since concessions are granted as of right to all contracting parties, a contracting party which withholds or withdraws a concession is required to consult with others substantially interested in the product concerned.
XXVIII. Modification of Schedules.—The rates of duty bound in the schedules were not to be altered before January 1951. Thereafter, contracting parties were free to modify or cease to apply the treatment which they had agreed to accord to individual tariff items provided they negotiated and reached agreement with the contracting parties with which the concessions were initially negotiated and subject to consultation with others having a substantial interest. If agreement could not be reached the modification or withdrawal could nevertheless be made, but in that event other contracting parties could withdraw equivalent concessions. Renegotiation of a relatively small number of items was carried out during the Torquay Conference and, with the resulting modifications, all but two of the contracting parties have agreed to prolong the assured life of the schedules until January 1954. The text of this article was amended accordingly by the Torquay Protocol.

XXIX. The Relation of the Agreement to the Charter.—The principal link between the Agreement and the Havana Charter appears in this article wherein the contracting parties undertook, pending their acceptance of the Charter, to observe to the fullest extent of their executive authority the general principles of Chapters I to VI and of Chapter IX of the Charter, i.e., the chapters dealing with the purpose and objectives of the ITO, employment and economic activity, economic development and reconstruction, commercial policy, restrictive business practices, intergovernmental commodity agreements and the general provisions; this omits only the chapters dealing with the organization, functions and procedures of the ITO. In the event that the Charter does not enter into force, the contracting parties are to decide whether the Agreement should be "amended, supplemented or maintained".

XXX. Amendments.—Amendments to Part I and to Articles XXIX and XXX require the acceptance of all contracting parties, but other amendments become effective, for those which accept them upon acceptance by two-thirds. The Contracting Parties may decide that any government which has not accepted an amendment made effective under the two-thirds rule is free to withdraw from the Agreement or to remain a contracting party only with their consent. At their six sessions, the Contracting Parties have drawn up six protocols modifying the text of the Agreement and also nine protocols making rectifications or adjustments in the schedules; ten of these, including all those relating to the schedules, have required unanimity before becoming effective.

XXXI. Withdrawal.—When the Agreement is applied definitively, under Article XXVI, a contracting party will be free to withdraw after six months' notice. Under the Protocol of Provisional Application, on the other hand, two months' notice of withdrawal is sufficient.

XXXII. Definition of Contracting Parties.—The "contracting parties" are defined as those governments which are applying the provisions of the Agreement under Article XXVI or XXXIII or pursuant to the Protocol of Provisional Application. When the Agreement is applied definitively, the contracting
parties which have accepted it under Article XXVI may decide that any contracting party which does not so accept it must cease to be a contracting party.

XXXIII. Accession.- The terms upon which governments may accede to the Agreement are fixed by the Contracting Parties. Decisions on accession are taken by a two-thirds majority. It is on the basis of such decisions that thirteen governments have acceded to the Agreement following the Annecy and Torquay Conferences.

XXXIV. Annexes.- The annexes to the Agreement are an integral part of it. Annexes A to F give the lists of territories covered by the preferential arrangements referred to in Article I. Annex G gives the dates establishing the maximum margins of preference for those governments which chose a date other than April 10, 1947. Annex H gives the percentage shares of the total external trade of the original contracting parties, to be used for the purposes of Article XXVI. Annex I contains about forty interpretative notes explaining and elaborating upon, words and phrases in the articles of the Agreement. Annex J has been described above in connection with Article XIV.

XXV. Non-application.- This article permits a contracting party to withhold application of the Agreement, or application of its own schedule, from another contracting party with which it has not entered into tariff negotiations. Under this article, India has withheld application of the Agreement, and Pakistan has withheld application of its schedule, from South Africa. Cuba has withheld application of the Agreement from twelve of the thirteen countries which acceded following the conferences at Annecy and Torquay.