ANNEX

Statement by Sub-Group E
to Working Party II
on Proposals rejected by the Sub-Group

Article I - General Most-Favoured-Nation Treatment

Paragraph 1

1. The sub-group considered the proposal of the Scandinavian
delegations (W.9/53) to insert an interpretative note to the effect
that the provisions of the most-favoured nation clause should not
be frustrated by manipulated tariff descriptions such as those
based on distinctive regional or geographical criteria. There was no
opposition to this proposal, although some delegates thought it added
nothing to the provisions of paragraph 1, which could only be applied
and interpreted as individual cases arose, and since no agreement
could be reached on a text, the proposal was withdrawn. For the same
reason a similar proposal by the secretariat (L/189) was not pressed.

2. The delegation of Germany suggested an amendment to provide
that the words "charges of any kind" in the first line should not be
regarded as including internal taxes or their equivalents imposed
on imported goods, since such taxes are covered by reference to Article
III. It was considered, however, that there is no duplication, since
the words in question refer to charges imposed on or in connection with
importation, while the reference to paragraphs 2 and 4 of Article III
covers internal taxes imposed on imported goods.

3. The German delegation proposed that, to assist towards a
definition of "like products", provision should be made in Article I
that products which are classified under different items or sub-items of
any customs tariff are not to be regarded as "like" products. This
proposal received no support in view of the great differences in the
nomenclature of the customs tariffs of contracting parties and because
it would allow one country to decide for all countries that two pro-
ducts were unlike whatever were the views of other contracting parties.

1 The numbers in square brackets are the numbers of the proposals
listed in W.9/45.

2 "Manipulated" is to be translated in French as "arbitraire."
Paragraph 2

4. The delegate for Turkey withdrew his Government's proposal that if preferential tariffs are not abolished compensatory advantages should be granted to under-developed countries.

Paragraph 3

5. The secretariat suggested that the Government of Turkey might be asked whether this paragraph need be retained, since it had been inserted at the request of Syria, which is no longer a contracting party. The delegation of Turkey requested that the paragraph should remain; the Turkish Government had no present intention of having recourse to this provision, but it is in accordance with its contractual rights under the Treaty of Lausanne. The sub-group agreed that the paragraph should be retained.

Article II - Schedules of Concessions

Paragraph 1

6. The second sentence of sub-paragraphs (b) and (c) has the phrase: "... imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date". The secretariat enquired whether these words need be retained. The sub-group favoured the retention of these provisions.

Paragraph 2

7. Consideration was given to a secretariat suggestion that the wording of sub-paragraph (a) might be improved by making the following changes:

"a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III in respect of on the like domestic product or in respect of an article from which the imported product has been wholly or partly manufactured or produced in whole or in part;".

This proposal was not adopted. It was pointed out that "in respect of" was more appropriate where the tax was on a transaction involving the domestic product, and that "in whole or in part" might be more apt where the "article" entered into the imported product uniformly as an ingredient.
Consideration was given to a secretariat suggestion that the wording of sub-paragraph (c) might be brought into conformity with that of Article VIII:1 by making the following change:

"(c) fees or other charges/commensurate with/ limited in amount to the approximate cost of services rendered."

This was rejected on the ground that there is a substantive difference in the wording of the two provisions and that the proposed amendment of Article II, which is in Part I of the Agreement, would impose a stricter obligation on contracting parties.

Paragraph 4

The proposals by the United Kingdom delegation (W.9/70) and the secretariat, concerning the interpretative note, were referred to Review Working Party III, which was examining proposals relating to state trading, i.e., Article XVII of the Agreement and Article 31 of the Havana Charter.

Paragraph 5

The secretariat suggestion that, if this paragraph (which deals with a specific problem of limited interest) is to be retained, it might be removed to an annex of regulations and interpretative notes, received some support. Some delegates, including the United States delegate at the instance of whose government the paragraph was originally inserted, thought that the paragraph might have value. It was agreed by the majority that the paragraph contained a provision of substance and should be retained in the text of the Article.

Paragraph 6

The delegation of Czechoslovakia proposed several changes (W.9/109/Rev.1) in sub-paragraph (a) to provide for the status and adjustment of specific duties of countries which have no par values or recognized exchange rates under the Fund. The sub-group considered that there would be very few cases which would not be covered by the phrase "... at the par value accepted or at the rate of exchange recognized by the Fund ...", and that any such cases should be treated by special measures rather than by an amendment of the text. Consequently, the sub-group decided they could not recommend the changes proposed.
12. The United States delegation also proposed amendments in addition to those recommended by the sub-group, viz: "... at the par value accepted or at the effective rate of exchange recognized by the Fund..." and "... in case the par value accepted or the rate of exchange recognized by the Fund as most generally applicable for commercial transactions is reduced...". These changes were intended to cover the case of a country with multiple exchange rates and which had granted concessions in specific duties on products to which different rates were applicable. The sub-group understood that every country with multiple currencies would normally exist a par value accepted or rate of exchange recognized by the Fund. There was little support for the proposal and it was withdrawn by the United States delegation.

13. The proviso in sub-paragraph (a) requires the concurrence of the CONTRACTING PARTIES that the adjustments will not impair the value of "concessions provided for in the appropriate schedule or elsewhere in this Agreement...". The secretariat enquired whether the words "or elsewhere in this Agreement" need be retained. The United Kingdom representative pointed out that they might be taken to cover the binding of margins of preference in specific duties and charges under the no-new-preference rule of Article I.

14. The proviso in sub-paragraph (a) states that, in determining whether an adjustment of specific duties will impair the value of concessions, the CONTRACTING PARTIES shall take due account of "all factors which influence the need for, or urgency of, such adjustments". The delegations of Germany and the United Kingdom (W.9/70) proposed interpretative notes to secure that changes in price should be taken into account in judging impairment. The sub-group agreed that such price changes would have to be considered in judging impairment, but thought it was not desirable to insert a note dealing with only one of the factors that might be relevant; it is not possible to foresee all the circumstances which would prevail at times when these determinations must be made and no note should be provided which could possibly prejudice the freedom of judgment of the CONTRACTING PARTIES in such matters.

15. The delegations of Czechoslovakia and Germany proposed that the provision for the adjustment of specific duties when the par value of a currency is reduced should apply mutatis mutandis when a par value is increased. Most members were of the opinion that this eventuality need not be expressly provided for because it was unlikely to occur and because in the case of an upward revaluation of a currency a failure to reduce specific duties could be the subject of a complaint under Article XXIII. It was considered that an amendment was not necessary.
16. The representative of Czechoslovakia told the sub-group that his Government still wished to find some means of bringing the specific duties in its GATT Schedule into conformity with its customs tariff as adjusted to take account of the revaluation of the currency in June 1953. When this question was discussed by the sub-group it appeared to members that it was a matter which should be dealt with by the CONTRACTING PARTIES rather than by a Review Working Party. The representative of Czechoslovakia said he would consider submitting an application for the rectification of the schedule in the protocol being prepared by a Working Party of the Ninth Session.

Article XIX - Emergency Action on Imports of Particular Products

Paragraph 1(a)

17. The delegation of Greece proposed to delete the words "and under such conditions". The Greek representative explained, however, that his Government was seeking clarification of the meaning of this phrase and that if there was, in fact, no ambiguity he would withdraw the request for deletion. The sub-group considered that the phrase should be retained since there could be cases of temporarily increased importation in which, but for the inclusion of the phrase, a country might maintain, without sufficient justification, that serious injury was threatened. Moreover, other circumstances should be taken into account, for example, there might at the same time be an expanding demand for the product sufficient to avert the threat of serious injury.

The sub-group also considered the proposal that had been made in the course of discussions in Working Party II that the word "and" should be replaced by "or", on the ground that the difficulties which Article XIX is intended to solve might be the result of circumstances not necessarily accompanied by an increase of imports. This proposal also received little support. It was considered that importation in increased quantities should always be a condition of recourse to emergency action.

18. Two amendments were proposed by the Scandinavian delegations:

(i) to require the Organization to fix a "reasonable period" during which emergency action might be maintained, and

(ii) to limit action to cases in which imports are equivalent to a considerable part of domestic production of like or directly competitive products;

and in addition the Danish delegation proposed to limit action to cases in which the injury to domestic producers is not insignificant to the national economy. These proposals received no support as it
was considered that the text of the Article was well-balanced. Referring to (i), action is limited to such period "as may be necessary to prevent or remedy the injury", and the Organization cannot be in position to determine in advance the length of time for which the action will have to be maintained. With reference to (ii) and to the Danish proposal, it was said that even a small increase in imports can in some circumstances cause serious injury to producers and the intent of the Article is to provide for action in defence of any industry thus threatened, whatever its size.

19. The Scandinavian delegations also proposed a new sub-paragraph on the lines of the interpretative note to Article 40 of the Havana Charter. As this proposal did not meet general approval of the Sub-Group it was withdrawn.

20. Paragraph 2

The Sub-Group examined another Scandinavian proposal providing for a recommendation by the Organization as to the period of time within which the restoration of the obligations or concession should take place. This amendment was also considered to be unnecessary.

Article XXIV - Territorial Application

Frontier Traffic - Customs Unions and Free-Trade Areas

21. Paragraph 11

The delegations of India and Pakistan explained that, because of the many problems confronting their governments since partition, the trade relations of India and Pakistan have not yet been established on a definitive basis. To an enquiry by the secretariat they replied that paragraph 11 and its interpretative note should be retained.

Note: The following item will be transferred to the report:

Paragraph 10

It was suggested by the secretariat that the voting provision be modified by replacing the words "by a two-thirds majority" by the phrase "by a majority comprising two-thirds of the contracting parties". Several members of the Sub-Group favoured this proposal, but others were opposed. The question is therefore referred back to the Working Party for decision.