DRAFT NOTES CONCERNING THE AGREEMENT
ON THE ORGANIZATION FOR TRADE COOPERATION

Report to Sub-Group IV-A

The Legal and Drafting Committee, in examining the text of the draft Agreement on the Organization for Trade Cooperation contained in Annex 1 to document Spec/86/55, has made the comments and suggestions given below in relation to the articles of the draft Agreement for consideration by the members of Sub-Group IV-A. Final consideration of Articles 3, 17 and 20 have been postponed temporarily by the Committee.

Title

The Committee suggests that another term would be preferable to that of "Agreement" for the title of the instrument establishing the Organization, in order to avoid the inevitable confusion that would arise with the General Agreement.

Article 1

It was felt that the drafting is extremely awkward but in view of the fact that a strong balance of Sub-Group IV-A agreed upon its present wording the Committee did not think it advisable to undertake to re-draft the Article.

Article 2

Although desirable that all contracting parties to the General Agreement should as soon as possible become Members of the Organization, the Committee considered necessary to draw to the attention of the Sub-Group that, as the drafts stand, there is no effective sanction forcing a contracting party which accepts the amendments to become a Member. In its consideration of Article XXV the Committee has drafted a provision for a sanction which Working Party IV may find desirable to include in that Article.

Spec/107/55

English only
The Committee considered that the provisions of Article 2 should be interpreted so as to cover the case of a customs territory becoming a contracting party under Article XXVI:4(c).

Article 3

A member of the Committee raised the question of the problem arising from the transfer of the functions of the CONTRACTING PARTIES to the Organization in so far as which decisions of the CONTRACTING PARTIES should lose effect after the transfer is made. The Committee felt that the Sub-Group should address itself to this question by perhaps allowing for a provision to this effect in Article 3 on Functions.

Article 7(a)

The expression "elected periodically by the Assembly" should not be intended to preclude a meeting of the Assembly to elect a member of the Executive Committee created by a vacancy. The Committee feels that the time of meetings of the Assembly should be included in the rules of procedure to cover the possibility of ad hoc meetings.

Article 7(b)

In the second sentence the expression "Decisions or other actions" put forward by the Committee could be replaced by "Decisions or recommendations" if the Sub-Group found it preferable. The former conforms to the terminology used provisionally in Article 3.

Article 8(d)

To avoid construing the meaning of the expression "various types of economy represented by Member countries" appearing in the secretariat draft article, the Committee considered it necessary to re-word the first sentence to correspond to the types of economies enumerated in Article 7(a).

Article 8(e)

In order to conform to the intention of Sub-Group IV-A the Committee has used the wording contained in Article 88, paragraphs 1 and 3, of the Havana Charter, the terminology of which is in agreement with that used commonly in the charters of other international organizations.
Article 10(b)

It seemed to the Committee that the last sentence was legally insufficient to account for the Assembly to take any sanction, e.g. depriving a Member of voting rights, in the case of unpaid contributions.

Article 11

The question of the legal representation of the Organization required on certain occasions would be accounted for in the actual appointment of the Director-General by the Assembly; mention of this function of the Director-General should be made in the terms of his appointment.

Article 12(a)

The expression "bodies and agencies" should be construed to have a wider interpretation than "organizations and agencies".

Article 15(a)

The scope covered in the expression "inter-governmental organization" appearing in the last sentence is understood to be as wide as that covered by the expression "bodies and agencies" in Article 12(a).

Article 16

The Committee felt that any provision in the organizational Agreement restricting the freedom of the contracting parties would have only a contestable legal value. It would only prevent the contracting parties from effecting any modifications they considered useful and would find themselves in default vis-à-vis the organizational Agreement. In spite of such a default no sanction would be conceivable.

Article 17

In principle and depending upon the final drafting of Article XXX, the Committee decided that a provision should be included in Article 17 for the procedure for the adoption of amendments to the Agreement, as well as a phrase providing a thirty day period after which amendments would enter into effect.
Article 19

Under the provisions of this Article it was not clear to the Committee how the purported alteration to the General Agreement would affect the application of this Agreement or how such application would inter-act with the General Agreement which was not, in fact, amended. It also might seem to be an attempt to amend the General Agreement by an unauthorized method. Moreover, the Committee was satisfied that this situation was sufficiently provided for in Article 13, since any reference in the unamended General Agreement to "the CONTRACTING PARTIES" would be covered by the words in the second half of the first sentence which deal with "joint action". The Committee suggests, therefore, that Article 19 could with advantage be omitted from the organizational Agreement.