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/Rev.1, 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 has 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 Sub-Group IV-A agreed upon its present wording only after considerable discussion, the Committee did not think it advisable to undertake to re-draft the Article.

Article 2

Although it is desirable that all contracting parties to the General Agreement should as soon as possible become Members of the Organization, the Committee considered it necessary to draw to the attention of the Sub-Group that, as the drafts stand, there is no effective sanction to force a contracting party which accepts the amendments dealing with the Organization 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.

The Committee considered that the provisions of the second sentence of Article 2 would 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, and especially, which decisions of the CONTRACTING PARTIES should lose effect when the transfer is made. The Committee was of the opinion that no special provision was necessary to provide for this; it was clear that decisions would lapse only insofar as they were inconsistent with the new structure set up to administer the General Agreement.

Spec/107/55/Rev.1
Article 7(a)

The expression "elected periodically by the Assembly" should not be intended to preclude the election by the Assembly of a member of the Executive Committee when a vacancy occurs. The Committee feels that the rules of procedure should cover the possibility of such an election without having to wait until the following periodical elections.

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 a construction narrower than was intended by the Sub-Group, the expression "various types of economy represented by Member countries" appearing in the draft article was considered necessary to be re-worded and to refer briefly 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 9(b)

The Committee thought that it was not possible to give such a liberal interpretation to this article as was given to Article 7(c) so as to give a party to a dispute the right to join in the vote in the Executive Committee. The feeling in the Committee was that it was necessary to provide for the possibility to limit the exercise of voting rights in this case by the rules of procedure.

Article 10(b)

It seemed to the majority of the Committee that the last sentence was legal insufficient to entitle the Assembly to deprive a Member of voting rights or membership 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)

Although the expression "organizations and agencies" is used more frequently in documents pertaining to the United Nations and the specialized agencies, the expression "bodies and agencies" has a wider meaning than the former.

Article 15(a)

The scope covered in the expression "intergovernmental organization" appearing in the last sentence is understood to be sufficiently wide although not as wide as that covered by the expression "bodies and agencies" in Article 12(a).

Article 16

If action were taken inconsistent with such a provision of the Agreement an infringement would result for which no express sanction would be available.

Article 17

In principle and depending upon the final drafting of Article XXX, the Committee suggested 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.

Articles 15, 16 and 17

In connection with these articles it appeared to the Committee that no provisions of the General Agreement or the organizational Agreement prevented the recourse to any other procedure than those provided for in these Agreements in order to settle disputes with regard to questions relating to the application of the General Agreement or the organizational Agreement. The Committee has discussed this subject and is considering the possibility of submitting a special note on it to Working Party IV.

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. 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.