DRAFT REPORT BY SUB-GROUP III-B ON STATE TRADING, ETC.

The Sub-Group was directed by the Working Party:

- to consider the various proposals with respect to the subjects listed below
- to attempt to reconcile as far as possible conflicting points of view, and
- to report on the measure of agreement and the nature of disagreement on the various problems involved:

A. State Trading
B. Liquidation of non-commercial stocks
C. Disposal of surpluses
D. General exceptions

On these subjects the Sub-Group reports as follows:

A. State Trading

The Sub-Group considered a proposal submitted by the delegation of Denmark (L.273) aimed at the insertion into the General Agreement of the provisions of Article 31 of the Havana Charter, plus an additional provision requiring contracting parties to report annually on their state trading operations.

The conclusion was reached on the Sub-Group that the General Agreement at present contained a number of provisions which, in whole or in part, were repeated in the Danish proposal, and consequently the recommendations of the Sub-Group have been limited to clarifying certain existing provisions and supplementing the Agreement with those elements of the proposal which were accepted by a majority. In this connection reference may be made to an analysis of the existing provisions on state trading, contained in the Annex to document W/9/99.

1. The Sub-Group reached agreement on the following point:

Negotiations between contracting parties entered into for the purpose of limiting the protection which is afforded on a product through the operation of a monopoly with a view to expanding international trade, should be guided by principles consistent with those which govern tariff-negotiations. The Sub-Group was not yet in a position to submit a concrete recommendation on this subject in view of the fact that Working Party II has not yet reached definitive conclusions in respect of principles for tariff-negotiations. However, it recommends, subject to approval by the Working Party of the agreement described above, that the Sub-Group be instructed to submit detailed recommendations on this subject as soon as Working Party II has reached a decision on tariff-negotiations.

Spec/77/55
2. The Sub-Group herewith submits recommendations pertaining to:

(a) an interpretative note to Article II, paragraph 4, to replace the present interpretative note (Annex I).

The attention of the Sub-Group was drawn to this problem both by the Danish proposal, which incorporated Article 31 of the Havana Charter, and by a proposal by the United Kingdom delegation (document W.970) for the amendment of this interpretative note.

The members of the Sub-Group agreed that the present interpretative note was intended to refer to the provisions of paragraphs 2 (a and b) and 4 of Article 31 of the Charter. Consequently the note recommended by the Sub-Group contains the substance only of these paragraphs.

The Sub-Group agreed to recommend the text of the interpretative note which is included in the Annex, though a number of representatives found it necessary to maintain a formal reservation until they had received new instructions from their governments.

(b) new paragraphs to be added to Article XVII (Annex II).

Except for the delegates for Indonesia and Italy who reserved their positions on the whole of the proposed addition, because of lack of instructions, and the Czechoslovak delegate, who, for the same reason, reserved his position in respect of the new sub-paragraph 3(b), the Sub-Group was in agreement on all points.

Briefly, the new paragraphs require contracting parties to notify the CONTRACTING PARTIES of all products which are subject to monopoly trading (paragraph 3a). Furthermore contracting parties operating an import monopoly on a product the import duty on which is not bound in the schedules, are required to inform interested contracting parties, at their request, of the import mark-up on such product (paragraph 3b). Requests for information, however, shall be made through the intermediary of the CONTRACTING PARTIES. Paragraph 3 (c) provides for the submission of reports on the operation of monopolies, but this paragraph contains a general condition, viz. that such reports shall only be requested in order to ascertain whether or not these monopolies operate in conflict with the provisions of the General Agreement. Finally paragraph 3(d) provides for a general exception (as at present contained in Article X) which excludes from the above-mentioned obligations all information which would impede law enforcement, etc.

An interpretative note to paragraph 3(b) contains (by cross-reference to the note to paragraph 4 of Article II) a definition of "import mark-up", for the purpose of that paragraph.

Finally, the Sub-Group recommends an alteration in the title of Article XVII.
B. Liquidation of non-commercial stocks

The Sub-Group considered two proposals, viz. one, submitted by the Chilean delegation (L/272, Add.1) dealing with non-commercial stocks only, and one put forward by the Australian delegation (W.9/78) referring to both non-commercial stocks and stocks of surplus-products. Because of a number of pertinent differences between the two problems the Sub-Group decided to deal with them separately.

The Sub-Group agreed to recommend to the Working Party the insertion into the General Agreement of a new article dealing with the liquidation of non-commercial stocks (Annex III).

The delegate for the United States was unable to support this recommendation because, as he explained, existing legislation in his country would make it difficult for his Government, if not impossible, to fulfil all the obligations, resulting from this proposed new article.

The general aim of the new article is to require contracting parties liquidating non-commercial stocks to endeavour to minimize injury to the interests of producers and consumers, as well as to avoid any undue disturbances to the markets for such commodities. The article stipulates that the contracting party wishing to liquidate a substantial quantity of such stocks shall notify the CONTRACTING PARTIES and substantially interested contracting parties of their intentions, affording at the same time to all concerned an adequate opportunity for consultation so as to reach a mutually satisfactory solution for problems that may arise in this connection.

The article contains a provision which excludes from the general notification - and consultation - provisions routine disposals to avoid deterioration, rotation of stocks, emergency sales and the disposal of gold and silver from monetary stocks.

While recommending this new article for approval by the Working Party the Sub-Group decided to leave two points open for discussion in the Working Party viz. the fixing of a time-limit for requests for consultations and a maximum period for such consultations.

The Sub-Group proposes the addition of an interpretative note to this new article, providing that stocks held at the request or under the control of a contracting party, as well as those held by the contracting party itself are equally covered by this article.

The Sub-Group agreed, that the term "primary commodity" should be interpreted as defined in article 56 of the Havana Charter. Since another Working Party deals with a formal proposal, directed to the inclusion in the General Agreement of the definition included in Article 56 it was considered unnecessary to recommend the same in this connection, provided that such a definition appears at the proper place in the General Agreement.
C. Disposal of Surpluses

The Sub-Group considered an Australian proposal (W.9/78) which contained a set of strict rules for consultations between contracting parties to be held prior to the disposal of surplus products, so as to avoid unnecessarily harmful disturbance to the markets of such products. Furthermore attention was devoted to a number of statements of various delegates, made during earlier meetings of the Working Party.

A majority in the Sub-Group was in favour of an inclusion in the General Agreement of a new article providing strict rules governing the disposal of agricultural surplus commodities. However, the delegate for the United States, referring to the statement he made in the Working Party (W.9/117) explained that his Government, while being fully prepared to accept certain unilateral obligations, would not be in a position to agree to formal commitments in the General Agreement.

Since it seemed impossible to reach a unanimous agreement which, in view of the position of the United States in this matter was considered to be of paramount importance, the majority agreed that the best solution would be to formulate their points of view on the orderly disposal of agricultural surpluses in a draft Resolution to be submitted for approval by the CONTRACTING PARTIES. This draft Resolution is attached to this report as Annex IV.

The delegate for Denmark explained that his instructions compelled him to insist upon the insertion into the General Agreement of formal obligations, but that he was prepared to seek new instructions from his Government in respect of the draft Resolution. He stated that the chances of this draft Resolution being accepted by his Government would be increased if the Resolution should contain a reference to the principles for the disposal of agricultural products, as agreed to by the Council of the Food and Agriculture Organization. Other delegates felt that, if such reference were considered of any value in the light of the draft Resolution, this should be decided by the Working Party.

D. General Exceptions

The Sub-Group considered a number of proposals which were submitted by the delegations of Denmark, Germany, Norway and Sweden in respect of Part II of Article XX, by the delegations of Denmark concerning an interpretative note to sub-paragraph (b) of Part I of Article XX, by the delegation of Australia in respect of sub-paragraph (g) of Part I, as well as an oral proposal made by the delegate for Italy concerning a new provision relating to measures in cases of natural catastrophies etc.

The results of the Sub-Group's consideration of these matters may be summarized as follows.
Part I of Article XX

1. **Sub-paragraph (b)**

   The proposed interpretative note to this sub-paragraph envisaged the possibility that a contracting party might be requested to revise its standards and regulations (in respect of the protection of human, animal or plant life or health) if they were found to have an unduly restrictive effect on trade.

   In the light of the view of other delegates that the preamble of Article XX should be considered as adequate to cope with such situations, the delegate for Denmark agreed to withdraw his proposal.

2. **Sub-paragraph (g)**

   There was no discussion of the Australian proposal, as this was withdrawn.

Part II of Article XX

1. **Italian suggestion concerning a general exception for measures taken in cases of natural catastrophies, etc.**

   In view of the explanations given by other delegates that the General Agreement contained at present the necessary provisions which would allow contracting parties to take emergency action in cases of natural catastrophies, etc., the delegate for Italy agreed to withdraw his proposal.

2. **Sub-paragraph (a)**

   (Text to be supplied by Mr. Smith (Australia) and Mr. Richards (Canada)).

3. **Sub-paragraphs (b) and (c)**

   The Sub-Group agreed to recommend (in conformity with the proposals of a number of delegations) that these paragraphs which refer to war - or immediate postwar periods - be deleted from the General Agreement.

   In respect of sub-paragraph (c) two reservations of a general nature were put forward: the Chilean delegate supports the recommendation of the Sub-Group, subject to a satisfactory outcome of the deliberations in respect of the proposed new article on non-commercial stocks; the United States delegate reserved his position until his delegation has received more definitive information on certain matters dealt with by another Working Party.

E. **Summary**

(a) The following recommendations submitted for approval by the Working Party refer to:

   (i) A new interpretative note to Article II, paragraph 4 (Annex I).
(ii) A new paragraph 3 to be added to Article XVII (Annex II) (including one interpretative note and a change in the title).

(iii) A new article concerning the liquidation of non-commercial stocks (including one interpretative note) (Annex III).

(iv) A draft Resolution concerning the disposal of agricultural surpluses (Annex IV).

(v) A new text for paragraph (a) Part II of Article XX and the deletion of paragraphs (b) and (c) of Part II of Article XX (Annex V).

(b) The Sub-Group recommends that the following points of agreement, if accepted by the Working Party, be recorded in the report of the Working Party:

(i) principles and procedures for negotiations concerning monopoly protection;

(ii) incorporation of the definition of "primary commodities" (Article 56 of the Havana Charter) in the General Agreement;

(iii) measures taken in cases of natural catastrophies, etc.
Interpretative Note to paragraph 4 of Article II

The provisions of this paragraph will be applied in the light of the following:

1. The protection afforded through the operation of an import monopoly in respect of products described in the appropriate schedule shall be limited by means of:

   (a) a maximum import duty that may be applied in respect of the product concerned; or

   (b) any other mutually satisfactory arrangement consistent with the provisions of this Agreement; any contracting party entering into negotiations with a view to concluding such arrangement shall afford to other interested contracting parties an opportunity for consultation.

2. The import duty mentioned in 1(a) above shall represent the margin by which the price charged by the import monopoly for the imported product (exclusive of internal taxes conforming to the provisions of Article III, transportation, distribution, and other expenses incident to the purchase, sale or further processing, and a reasonable margin of profit) exceeds the landed cost; Provided that regard may be had to average landed costs and selling prices over recent periods; and provided further that, where the product concerned is a primary commodity which is the subject of a domestic price stabilization arrangement, provisions may be made for adjustment to take account of wide fluctuations or variations in world prices, subject to agreement between the countries parties to the negotiations.
ANNEX II

ARTICLE XVII

State-Trading Enterprises

1. .................................................................

2. .................................................................

3(a) Contracting parties shall notify the CONTRACTING PARTIES of the products which are imported into or exported from their territories by enterprises of the kind described in paragraph 1(a).

(b) A contracting party establishing, maintaining or authorizing an import monopoly of a product, which is not the subject of a concession under Article II shall, on the request of another contracting party having a substantial trade in the product concerned, notify the CONTRACTING PARTIES of the import mark-up on the product during a recent representative period.

(c) The CONTRACTING PARTIES may, at the request of a contracting party which has reason to believe that its interests under this Agreement are being adversely affected by the operations of an enterprise of the kind described in paragraph 1(a), request the contracting party establishing, maintaining or authorizing such enterprise to supply information about its operations related to the carrying out of the provisions of this Agreement.

(d) The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

Interpretative Note to paragraph 3(b) of Article XVII

The term "import mark-up" in this paragraph shall be understood to have the same meaning as the "import duty" referred to in paragraph 2 of the interpretative note to paragraph 4 of Article II.
ANNEX III

Liquidation of non-commercial stocks

1. Any contracting party wishing to liquidate a substantial quantity of its stocks of any primary commodity accumulated for non-commercial purposes shall notify its intention to the CONTRACTING PARTIES and to the contracting parties substantially interested and shall not proceed with any liquidation otherwise than in accordance with the procedure set out below.

2. Following such notification, the CONTRACTING PARTIES, at the request of any contracting party which considers itself substantially interested, shall arrange consultations with the parties substantially interested, in which the contracting party intending to liquidate stocks shall participate, with a view to reaching an agreement concerning the liquidation which is satisfactory to all concerned. If no consultations are requested within 15 days or, if agreement is not reached within 30 days of the notification, the contracting party holding such stocks shall be free to proceed, acting so as to minimise injury to the interests of producers and consumers of the commodity affected and giving due consideration to any recommendations of the CONTRACTING PARTIES.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to:

(a) routine disposal of supplies to avoid deterioration or the rotation of stocks which do not have the effect of altering the total volume of the stockpile; but in such cases the contracting party concerned shall act in a manner which avoids any undue disturbance to the market;

(b) emergency sales for the maintenance of internal consumption in the event of an interruption of supplies from normal sources;

(c) stocks of gold and silver disposed of for non-commercial purposes.

Interpretative Note:

Stocks held at the request or under the control of a contracting party, as well as those held directly, are covered by the provisions of this Article.
ANNEX IV

DRAFT RESOLUTION ON THE DISPOSAL OF SURPLUSES

RECOGNIZING

1. That surpluses of agricultural products may be expected to arise from time to time in the territories of certain contracting parties,

2. That the disposal for export of such surpluses without adequate regard to the effect on the normal commercial trade of other contracting parties could cause serious damage to their interests by restricting markets for their regular competitive exports and by disrupting world prices,

3. That disturbing effects of such disposals can be substantially diminished, and that the risk of injury can be minimized, if interested contracting parties consult with respect to the disposal of such surpluses,

NOTING

That the contracting parties hereby express their intention to liquidate any agricultural surpluses they may hold in such a way as to avoid unduly provoking disturbances on the world market that would adversely influence other producers,

RECOMMEND

That when arranging the disposal of surplus agricultural products in world trade contracting parties should undertake a procedure of consultation with the principal suppliers of those products and other interested contracting parties, which would contribute to the orderly liquidation of such surpluses, including where practicable disposals designed to expand consumption of the products, and to the avoidance of prejudice to the interests of other contracting parties, and that they give sympathetic consideration to the views expressed by other contracting parties in the course of such consultations.