ARTICLES I, II, III, XIX AND XXIV

Statement of Recommendations submitted by Sub-Group B to Working Party II

The sub-group has examined the proposals referred to it by the Working Party and has discussed them with those delegations (not members of the Sub-Group) which expressed particular interest in them when they were first considered by the Working Party.

The following statement constitutes a draft of the sections of the Working Party's report to the CONTRACTING PARTIES on Articles I, II, III, XIX and XXIV. It contains recommended amendments to the text of the Agreement and also notes on the text or on the reasons for rejecting certain proposed amendments. These are supported unanimously by the members of the Sub-Group except where otherwise noted.

Article I - General Most-Favoured-Nation Treatment

Paragraph 1

1. Insert after the words "Article III" the phrase "... and with respect to the application of internal taxes to exported goods ...".

Note: This change is proposed because the words "with respect to all matters referred to in paragraphs 2 and 4 of Article III" might be construed as relating only to taxes on imported goods. It was necessary at the Second Session for the Chairman to give a ruling on an instance of discrimination in the exemption of exports from the levy of an excise tax. The amendment will remove any uncertainty on this point.

2. Delete the second paragraph of the interpretative note.

Note: This note had significance only until the Protocol Modifying Part II and Article XXVI entered into force.

3. The representative of Germany informed the Working Party that German customs law requires that special treatment for gifts to heads of state, equipment for diplomatic and consular offices and goods for the use of representatives of foreign governments may be granted only on a basis of reciprocity, thus not permitting observance of most-favoured-nation obligations for such imports. Many other countries follow the same practice. The Working Party took note of this situation and saw no reason why established practice in these cases should be disturbed.
Paragraph 2(d)

4. Amend the words "Annexes E and F" to read "Annex E". And amend Annex E to read:

"Annex E

"Lists of Territories covered by Preferential Arrangements between Neighbouring Countries referred to in Paragraph 2(d) of Article I"

"(i) Chile, on the one hand, and

1. Argentina
2. Bolivia
3. Peru, on the other.

"(ii) Uruguay and Paraguay."

Note: Provision for the maintenance of preferences between Uruguay and Paraguay is contained in the Annecy Protocol of Terms of Accession. The present Annex F can be deleted since Lebanon and Syria are no longer contracting parties.

Paragraph 4.

5. Several delegations submitted proposals relating to the adjustment of preferential tariff margins and the establishment of new preferences. The Working Party wishes to place on record its conclusions on these matters:

(a) The New Zealand delegation suggested that a contracting party should be allowed to make slight changes in preferential margins in customs duties, which might result from readjustments of import duties and taxes, without seeking the approval of the CONTRACTING PARTIES in each instance. Some delegations opposed the insertion of an interpretative note which would authorize an increase in a preferential margin, however slight, without interested parties having an opportunity of scrutiny. Therefore, the Working Party considers that the New Zealand objective could best be sought by an application for a suitable waiver, under Article XXV:5(a) of obligations of paragraph 4.

(b) The Australian delegation proposed an amendment to Article XXIV to allow a contracting party to make an adjustment in a margin of preference permitted under Article I provided it was the result of negotiation with the contracting parties concerned and was approved by the CONTRACTING PARTIES. The Working Party considers that such an amendment of Article XXIV would not be in accordance with the principles of that Article unless the increased preferences were part of a plan for bringing about a customs union or a free-trade area.
The delegate for Australia acknowledged that the sort of adjustments his Government had in mind were not intended to lead to that result, and he enquired whether Article XXV could be amended to provide that if a contracting party submitted the results of a negotiation with other contracting parties for an adjustment in a margin of preference with a request for a waiver of obligations, the CONTRACTING PARTIES would consider the request under the provisions of paragraph 5(a) of that Article. The Working Party considers that such an addition to Article XXV is unnecessary since the CONTRACTING PARTIES are authorized under paragraph 5(a) to waive obligations under the Agreement in exceptional circumstances and since a proposal such as that envisaged could properly be submitted to the CONTRACTING PARTIES for consideration under that paragraph. It appears that the Government of Australia is concerned with the possibility that a contracting party invited to enter into negotiations for an adjustment in a margin of preference, for which it would offer compensation with a view to submitting an agreement to the CONTRACTING PARTIES with a request for a waiver of obligations under Article XXV:5(a), might base a refusal to negotiate on the ground that it is debarred from participating in such negotiations by the provisions of Article I. The Working Party therefore notes that there is nothing in Article I which would prevent contracting parties from participating in such negotiations with a view to a waiver being sought under Article XXV.

(c) The delegation of Chile proposed the incorporation in the Agreement of the provisions of Article 15 of the Havana Charter which provides for new preferential arrangements in the interest of economic development and reconstruction. This was opposed by several delegations. The delegate of Chile then suggested instead an amendment of, or an interpretative note to, Article XXV whereby the CONTRACTING PARTIES would undertake to examine, in the light of the provisions of Article 15 of the Charter, any request for a waiver for the establishment of new preferential arrangements for economic development. The Working Party considers it unnecessary to inscribe special provisions for dealing with particular problems under Article XXV:5(a), because a request for such a waiver can be dealt with under that paragraph as it stands. In their opinion each request for a waiver should be treated on its merits, and conditions or criteria should not be prescribed. Accordingly, the Sub-Group cannot recommend the adoption of the amendment proposed by Chile, but will record in its report that there is nothing in the other Articles of the Agreement which would prevent a contracting party from submitting a request under Article XXV:5(a) for authority to enter into new preferential arrangements as part of a programme for economic development.

Note: The representative of Cuba does not subscribe to the views presented in the foregoing paragraphs on the New Zealand, Australian and Chilean proposals. He states that his Government cannot accept the opinion of the Executive Secretary that the CONTRACTING PARTIES, by a two-thirds majority, can grant a waiver under Article XXV:5(a) involving, in effect, an
amendment of an article which under Article XXX cannot be amended except by unanimity. He recalled that the position of his Government had been reserved on the waivers granted at the Seventh and Eighth Sessions which the Executive Secretary had cited in support of his opinion.

Article II - Schedules of Concessions

Paragraph 1(b) and (c)

6. Amend the second sentence as follows:

"Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation, including charges of any kind imposed on the international transfer of payments for imports, in excess of those imposed on the date of this Agreement ...".

Note: The wording of the present text is the same as that used in the most-favoured-nation clause in Article I, but it does not go on to include, as does Article I, "charges .... imposed on the international transfer of payments for imports". Thus sub-paragraphs (b) and (c) could be construed as meaning that the provision does not apply to charges on transfers. But clearly the value of tariff concessions would be impaired if contracting parties were free to introduce additional levies on imports in the form of transfer charges. It is considered that the language of this sentence is all-inclusive for it speaks of "... all other duties or charges of any kind imposed on or in connection with importation ..."; and paragraph 2, which sets out the special charges which do not fall under paragraph 1, does not refer to charges on transfers. The amendment will remove any possibility of misunderstanding.

The representative of Cuba has reserved his position pending receipt of instructions. The representative of Chile opposes the foregoing amendment on the ground that ..........

Paragraph 2(a)

7. Delete the interpretative note.

Note: This note had significance only until the Protocol Modifying Part II and Article XXVI entered into force.
Paragraph 6(a)

3. Amend as follows:

"The specific duties and charges included in the Schedules relating to contracting parties members of the International Monetary Fund, and margins of preference in specific duties and charges maintained by such contracting parties, are expressed in the appropriate currency at the par value accepted or provisionally at the rate of exchange recognized by the Fund at the date of this Agreement. Accordingly, in case this par value the par value accepted or the rate of exchange recognized by the Fund is reduced consistently with the Articles of Agreement of the International Monetary Fund by more that twenty per centum, such specific duties and charges and margins of preference may be adjusted to take account of such reduction; ...".

Note: The words proposed correspond more closely than the present text to the Articles of Agreement and to the practice of the Fund. The second change is required in order to permit an adjustment of duties after a second devaluation of a currency.

Article III - National Treatment on Internal Taxation and Regulation

Paragraph 2

9. The Working Party has considered the significance of the phrase "internal taxes or other internal charges" in relation to taxes which are levied at various stages of production, and in particular whether the rule of national treatment would allow a government to tax imported products at a rate calculated to be the equivalent of the taxes levied at the various stages of production of the like domestic product or only at the rate of the tax levied at the last stage. Among the members of the Sub-Group by which this question was examined, the representatives of Chile, Cuba, France and Germany supported the former interpretation, while the representative of the United States, on the other hand, thought the reference to internal taxes covered only a tax levied on the final product competitive with the imported article. Against the latter view it was argued that that interpretation would establish a discrimination against countries which chose to levy taxes at various stages and in favour of those which levy a single turnover tax on finished products. The Canadian, Swedish and United Kingdom representatives were of the opinion that the equivalent of the taxes on components of the final product would be permitted, but not taxes (as suggested by Germany) on power consumed in manufacture, etc. In view of these differences of opinion, the Working Party does not recommend the insertion of an interpretative note as proposed by Germany, it being understood that the principle of equality of treatment would be upheld in the event of a tax on imported products being challenged under the consultation or complaint procedure of the Agreement.
Paragraph 5

10. The delegate for Sweden proposed an interpretative note, on the lines of the statement adopted at the Havana Conference (Reports of Committees, page 64, paragraph 54), as follows:

"Under the provisions of Article III regulations and taxes would be permitted which, while perhaps having the effect of assisting the production of a particular domestic product (say, butter) are directed as much against the domestic production of another product (say, domestic oleomargarine) of which there is a substantial domestic production as they are against imports (say, imported oleomargarine)."

He said his Government desired to establish this same interpretation for the GATT provisions in order to avoid any possible misunderstanding in the future; the governments at Havana had interpreted the text of paragraph 5 as permitting such regulations and taxes and his Government merely wished to confirm that the contracting parties had the same understanding. Delegations were not opposed to this interpretation of paragraph 5 provided it was understood that its acceptance in no way broadened the intentions of the paragraph and did not provide for any new form of protection than that otherwise envisaged. The Working Party considered, however, that this note in its report would be sufficient.

Paragraph 6

11. The delegate for Sweden proposed an interpretative note, on the lines of the statement adopted at the Havana Conference (Reports of Committees, page 65, paragraph 58), as follows:

"The exception permitting the continuance of existing mixing regulations has been drafted so as to bring out more clearly that a Member would be free to alter the details of an existing regulation provided that such alterations do not result in changing the overall effect of the regulation to the detriment of imports."

He explained that his Government wished to have it placed on record that the contracting parties concur in the interpretation of the proviso which was given by the governments assembled at Havana. The Working Party considers that it will not be necessary to insert a note in the Agreement if it records that the contracting parties interpret paragraph 6 in this sense.
Paragraph 3

12. The delegation of Germany proposed to amend sub-paragraph (a) as follows:

"... any advantages accorded at present or in future by any contracting party to adjacent countries in order to facilitate frontier traffic or traffic in specific frontier zones specially designated by treaty; ...".

These amendments are considered unnecessary: (i) there are many places in the Agreement where the words "at present or in future" could be inserted, but if inserted in some places and not in others confusion would result; (ii) traffic in frontier zones designated in treaties is presumably covered by the phrase "frontier traffic", and if it is not so covered the addition of the proposed phrase would extend the scope of the paragraph beyond that intended.