The Sub-Group was established in order to consider in the light of the discussions in the Working Party organizational provisions and related questions. It submits as a basis for the Working Party's report to the CONTRACTING PARTIES a draft Agreement for the International Organization for Trade Cooperation (Annex I). In drawing up these Articles, the Sub-Group based itself upon the proposals of the French, Norwegian and United States delegations (L/290, L/276 and L/292). Specific reservations to the various Articles are recorded in the footnotes, including reservations which were recorded in the earlier discussions in the Working Party.

In addition the Sub-Group suggests the following texts for inclusion in the Working Party's report to the CONTRACTING PARTIES.

1. General

(a) It was agreed that the Organizational Agreement should contain only the basic provisions relating to the structure and functions of the Organization. Many questions of detail to give effect to the intent of the Articles of the Agreement would clearly have to be contained in the rules of procedure to be drawn up by the Assembly and the subsidiary bodies of the Organization. For example, it would be left to the Assembly in its rules of procedure to provide rules governing elections to the Executive Committee so that the criteria for its composition (contained in Article 10) can be fulfilled, rules regarding the election of officers, etc. The rules of procedure of the Executive Committee would set out the rights reserved to non-members of that Committee (Article 12) with respect to notification of and attendance at meetings, circulation of documents, and so forth. It should be noted that the rules of procedure of the Executive Committee and other subsidiary bodies will be subject to approval by the Assembly.

(b) It was agreed that the continuing validity of Decisions taken by the CONTRACTING PARTIES prior to the entry into force of the Organizational Agreement was adequately covered by the amended Article XXV of the General Agreement and Articles 3 and 27 of the Organizational Agreement.

2. Article 1 - Establishment

(a) In order to enable the Organization to administer the General Agreement an amendment is suggested to Article XXV, providing that the powers at present exercised by the CONTRACTING PARTIES shall be vested in the Organization when established (see Annex 2). It will be noted that, in addition to substituting a new paragraph for the existing first two paragraphs, the deletion of paragraphs 3, 4 and 5(a) is proposed since corresponding provisions are included in the Organizational Agreement.

Spec/86/55
(b) The Working Party considered that the entry into force of the amended Article XXV and of the amendment substituting references to the Organization throughout the General Agreement for the existing references to the CONTRACTING PARTIES should be postponed until the entry into force of the Organizational Agreement. Accordingly, it proposes the insertion, in the appropriate Protocol, of language to cover this (see Annex 2). It follows, from the language proposed for the replacement of references to the CONTRACTING PARTIES by references to the Organization that the texts of all amendments should continue to use the expression "the CONTRACTING PARTIES".

3. Article 2 - Membership

(a) It will be noted that this Article specifies that members of the Organization shall be the contracting parties to the General Agreement. Parallel amendments are proposed to Articles XXV and XXXIII of the General Agreement so as to specify that all contracting parties, as soon as possible, and any country which accedes to the General Agreement, should become members of the Organization (see Annex 2). It was agreed that the right of governments which are not parties to the General Agreement to participate in certain activities of the Organization, when authorized pursuant to the last sentence of the Article, should be carefully defined in the Decision taken by the Organization so as to indicate the duration and extent of such participation.

(b) It was not considered necessary to maintain, in the amended Article XXV, the existing reference to "facilitating the operation and furthering the objectives" of the General Agreement since Articles 1 and 3 of the Organizational Agreement referred to this, in the one case directly and in the other by reference.

4. Article 3 - Functions

(a) Enabling clause

(b) The Working Party considered that it was clear that the "recommendations" referred to in sub-paragraph (b) would not be binding on members.

(c) The Working Party considered that sub-paragraph (c) of this Article would cover the proposals of the Scandinavian delegations (L/273, L/275 and L/276) and of the German delegation (L/261/Add.1, page 16) for the insertion of paragraphs or articles authorizing the undertaking of studies, collection of statistics, etc. It was also considered that sub-paragraph (b) of this Article, and Article 27, would permit the Organization to undertake the study of definitions of value, procedures for determining value, standardization of rules and procedures relating to dumping, subsidization and anti-dumping and countervailing duties, and the making of recommendations to members thereon.
The Working Party suggests that the CONTRACTING PARTIES specifically endorse this interpretation and agree that the Organization should, in accordance with these provisions, consider studying such questions where appropriate.

(d) The German representative explained the proposal of his delegation (L/261/Add.1, page 17), the intention of which was to create certain obligations in the field of foreign trade statistics, in order that adequately detailed statistics of foreign trade (imports and exports) as well as of customs revenue and related matters, be established and published. This would be in the interest of contracting parties, particularly with relation to tariff negotiations and the collective reduction of tariff levels, and also in the interest of the international commercial world. The German delegation after hearing the views of the Sub-Group, agreed that it was not possible at this stage to insert the proposed Article, either into the General Agreement or into the Organizational Agreement. It was clear that many contracting parties would not be able to assume such obligations at present and it was pointed out by the representatives of the under-developed countries that many of them do not have the necessary technical knowledge or other facilities for the establishment of up-to-date statistical services. Furthermore, it appeared to be a matter of too great detail to be adequately covered by a general provision, and one that might better be worked out by the Organization, if it so desired, as circumstances seemed propitious. The Working Party, while sympathizing with the reasons which had prompted the German proposal and agreeing that it would be helpful if contracting parties were to publish regularly and promptly statistics of external trade and of governmental revenue from import and export duties, considered that the precise means of implementing this objective might better be studied by the Organization.

In the course of the discussion of this question, the German delegation proposed that countries having well-developed foreign trade statistics might place their experience at the disposal of other countries within the framework of the technical assistance or other programmes of the United Nations or, if this were not practicable, as a form of technical assistance through the General Agreement. The Working Party agreed on the importance of adequate statistics (from the special point of view of customs statistics) for the administration of the General Agreement and for all concerned with international trade, and considered that this was a subject that the Organization might undertake to study when it considered it appropriate.

5. Article 9 - The Assembly

It was agreed that, although not desirable to specify the meeting place of the Assembly and the Executive Committee in the Agreement, both bodies should meet at the headquarters of the Organization unless there were strong reasons to meet elsewhere.
6. **Articles 11-13 - The Executive Committee**

(a) The Working Party agreed that it was essential to the effectiveness of the Executive Committee that it should be restricted in size and representative in character. Some members felt that, in the event that membership of the Organization increased substantially or included countries with economic systems different from those of the present contracting parties, it might be necessary to provide for a larger Executive Committee. It was, however, considered that this eventuality could more appropriately be met by an amendment to the statutes of the Organization.

(b) It was agreed that the reference in Article 11, sub-paragraph (c) to "different types of economies" should be interpreted as also covering small and medium economies.

(c) Some members felt that any delegation of powers by the Assembly (Article 12) should be subject to a two-thirds majority vote. Other members observed that there was no reason, legal or otherwise, why the Assembly should be obliged to abide by stricter voting rules for the delegation of its powers than those which the Agreement imposed for taking decisions of substance. Still others felt that it was in practice unlikely that the Assembly would agree to such delegation unless in fact there were general agreement to do so, and that an express limitation was not necessary.

(d) It was agreed that the Executive Committee would be the only subsidiary body to which the Assembly could delegate the authority to make final decisions without the right of appeal.

(e) Article 13 of the draft Agreement gives members the right to participate in meetings of the Executive Committee when matters of concern to them are under discussion, and it was emphasized that this Article should be liberally interpreted. It was, of course, understood that in cases where only one party, in a matter before the Executive Committee that concerned two or more parties, was a member of the Executive Committee either that party would be excluded from voting or the other party or parties would join in any vote.

7. **Article 20 - Budget**

It was agreed that the last sentence, "The Assembly shall take necessary measures to ensure that the contributions are paid by all members" would permit withdrawal of the vote from a member in arrears in the payment of its contribution or expulsion from the Organization.

8. **Article 22 - Relations with the United Nations**

The Working Party felt that the provision that "... the Organization may, by an agreement approved by the Assembly, be brought into relationship with the United Nations as one of the specialized agencies" should not preclude the possibility that the Organization might wish to enter into some other form of arrangement with the United Nations, differing from specialized agency status. Such arrangements are considered to be covered by Article 21.
The Working Party took into account a suggestion by the Secretary-General of the United Nations that the CONTRACTING PARTIES should consider carefully a very close integration of the proposed Organization with the central organ of the United Nations. Whilst agreeing on the desirability of coordination and the avoidance of overlapping, the Working Party felt, having regard to the nature of the General Agreement and the functions which the Organization would have to carry out with respect to it, that the Articles proposed in the Organizational Agreement represent a more appropriate basis for working out a suitable relationship with the United Nations.

9. Articles 32 and 33 - Entry into force and relation to amendments to the General Agreement.

The Working Party calls the attention of the CONTRACTING PARTIES to the Joint Report on the Establishment of an Organization by the Rapporteurs (W.9/93) which formed the basis for some of the articles relating to the establishment of the Organization, entry into force, etc.
This third revision contains the most recent changes made by Sub-Group IV-A and changes made by the Legal and Drafting Committee to Article 5, 6, 7 and 8. The Articles marked with an asterisk have not been altered, except by the Legal and Drafting Committee, since they went before the CONTRACTING PARTIES with the Chairman's Report (W.9/123).

PART I - GENERAL

Article 1 - Establishment

The Organization for Trade Cooperation (hereafter referred to as the Organization), is hereby established to further, in the manner provided for in the General Agreement and herein, the achievement of the purposes and objectives set forth in the General Agreement on Tariffs and Trade (herein referred to as the General Agreement).

Article 2 - Membership

The Members of the Organization shall be the contracting parties to the General Agreement. Governments which become or cease to be contracting parties to the General Agreement, shall become or cease to be Members of the Organization. The Organization may, by a two-thirds majority of the votes cast, invite governments which are not or which cease to be contracting parties to the General Agreement to participate in such activities of the Organization and on such terms as it shall decide, provided that in no case shall such participation involve the right to be counted in determining the fulfillment of the relevant voting requirements when the Organization is exercising any function relating to the General Agreement.

Article 3 - Functions

The Organization shall administer the General Agreement and generally facilitate the operation of that Agreement.

1. The United Kingdom reserves its position on the phrase "in the manner provided for in the General Agreement and herein".

2. Canada reserves its position on the proviso.

3. The United States proposes that the last paragraph read as follows: "The Organization shall have no authority to amend the provisions of the General Agreement, and no decision or other action of the Assembly or any subsidiary body of the Organization shall have the effect of imposing on a Member any new obligation."

4. The Japanese delegation requests the Legal and Drafting Committee to consider whether this Article and Article 27 and the revised Article XXV of the General Agreement, leave any room for legal ambiguity as to the taking over by the Organization of all past Decisions of the CONTRACTING PARTIES.
Other functions of the Organization shall be:

(a) to facilitate intergovernmental consultations on questions relating to international trade;

(b) to study questions of international trade and commercial policy and, where appropriate, make recommendations thereon;

(c) to collect, analyze and publish information and statistical data relating to international trade and commercial policy, due regard being paid to the activities in this field of other international bodies.7

The Organization shall, in carrying out these functions, endeavour to give full effect to the provisions of Article 1.

No decision or other action of any body of the Organization shall have the effect of imposing on a Member any new obligation which the Member has not specifically agreed to undertake.

Article 4 - Settlement of Disputes and Difficulties

The Members recognize that the purposes and objectives referred to in Article 1 will be furthered by the prompt and amicable discussion and adjustment of disputes or difficulties arising in international trade. Any such dispute or difficulty which the Members cannot resolve by direct consultation or by some other method of amicable settlement may be submitted to the Organization which may study the matter and, where appropriate, make recommendations.

PART II - STRUCTURE OF THE ORGANIZATION

Article 5*

The Organization shall have an Assembly, an Executive Committee and a secretariat.

1. The United States reserves its position.
The Assembly

Article 6*

The Assembly shall consist of all the Members of the Organization.

Article 7(*)

The Assembly shall determine the seat of the Organization and shall establish such branch offices as it may consider desirable.

Article 8*

It shall be the responsibility of the Assembly to carry out the functions of the Organization.

Article 9*

The Assembly shall meet in regular annual session and in such special sessions as may be convened in accordance with the rules of procedure.

Article 10*

The Assembly shall establish its own rules of procedure and shall approve the rules of procedure of the Executive Committee and of other subsidiary bodies.

The Executive Committee

Article 11

The Executive Committee shall consist of sixteen Members of the Organization elected periodically by the Assembly. Each election shall be for a single term and each member shall be eligible for re-election. In such elections, the Assembly shall be guided by the following criteria:

(a) The Executive Committee shall include the Members of chief economic importance, in the determination of which particular regard shall be paid to their shares in international trade.

(b) The Executive Committee shall be representative of the broad geographical areas to which the Members belong.

(c) The Executive Committee shall be representative of different degrees of economic development, different types of economies and different economic interests.

(*) This Article has been inserted by the Legal and Drafting Committee

1. Brazil reserves its position on this clause.
Article 12

The Executive Committee shall exercise the powers and perform the duties assigned to it by the Assembly, subject to a right of appeal thereto except under such conditions as may be prescribed by the Assembly.

Article 13*

Any Member of the Organization which is not a member of the Executive Committee shall be entitled to participate, without the right to vote, in the discussion by the Executive Committee of any matter of particular concern to it.

The Secretariat

Article 14*

The Assembly shall appoint a Director-General as chief administrative officer of the Organization. The powers, duties, conditions of service and term of office of the Director-General shall conform to regulations approved by the Assembly.

Article 15*

The Director-General shall appoint members of the staff and shall fix their duties and conditions of service in accordance with regulations approved by the Assembly.

Article 16*

The Director-General or his representative shall be entitled to participate, without the right to vote, in all meetings of the Assembly and subsidiary bodies of the Organization.

Article 17*

The Director-General and the members of the staff shall have the status of international officials. In carrying out their duties they shall neither solicit nor accept instructions from any government or any authority outside the Organization. They shall refrain from any act incompatible with their position as international officials. Members shall respect the international character of the responsibilities of these officials and shall not seek to influence them in the discharge of their duties.

1. Brazil, Chile and India specifically reserved their position on this Article, to the effect that any assignment of powers from the Assembly should be by a two-thirds vote.

2. The Japanese delegation suggests the replacement of the words "without the right to vote" by "in accordance with the rules of procedure".
Article 18*

The selection of the members of the staff shall as far as possible be made on a wide geographical basis and with due regard to the various types of economy represented by Member countries. The paramount consideration in the selection of candidates and in determining the conditions of service of the staff shall be the necessity of securing the highest standards of efficiency, competence, impartiality and integrity.

Voting

Article 19*(*)

At meetings of the Assembly each Member of the Organization shall be entitled to have one vote and, except as otherwise provided for in the General Agreement or in this Agreement, decisions of the Assembly shall be taken by a majority of the votes cast.

Members of the Executive Committee and other subsidiary bodies shall have one vote therein.

PART III - BUDGET AND ADMINISTRATIVE PROVISIONS

Budget

Article 20*¹

The Director-General shall present to the Assembly, through the Executive Committee, the annual budget estimates and financial statements of the Organization. The Assembly shall approve the accounts and the budget. It shall apportion the expenditures of the Organization among the Members, in accordance with a scale of contributions to be fixed by the Assembly, and each Member shall contribute promptly to the Organization its share of these expenditures. The Assembly shall take necessary measures to ensure that the contributions are paid by all Members.

(*) Except for the deletion of the paragraph originally in square brackets.

¹. The United States reserves its position to the effect that loss of voting rights and expulsion should be provided for in the Article.
Relations with other organizations

Article 21*

The Organization shall make arrangements with intergovernmental bodies and agencies which have related responsibilities to provide for effective cooperation and the avoidance of unnecessary duplication of activities.

Article 22*1

In pursuance of the provisions of the preceding Article, the Organization may, by an agreement approved by the Assembly, be brought into relationship with the United Nations, as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations.

Article 23*

The Organization may make suitable arrangements for consultation and cooperation with non-governmental organizations concerned with matters within the scope of the Organization.

Status

Article 24*

The Organization shall have legal personality and shall enjoy in the territory of each of the Members such legal capacity, privileges and immunities as may be necessary for the exercise of its functions.

Article 25*

The representatives of the Members and the officials of the Organization shall similarly enjoy such privileges and immunities as may be necessary for the independent exercise of their functions in connexion with the Organization.

Article 26*

The privileges and immunities to be accorded by a Member to the Organization and to its representatives and officials shall be similar to those accorded by that Member to specialized agencies of the United Nations, their representatives and officials under the Convention on the Privileges and Immunities of the Specialized Agencies, or under similar arrangements.

1. South Africa reserves its position.
PART IV - SPECIAL PROVISIONS RELATING TO THE
ADMINISTRATION OF THE GENERAL AGREEMENT

Article 27 - Administration in General

The Organization shall give effect to those provisions of the General Agreement which provide for action by the Organization, and shall carry out such other activities in relation to that Agreement which involve joint action. This shall include the making of decisions, the sponsorship of negotiations and consultations, the conduct of studies, the circulation of proposals and the receipt of reports, in any case in which such action is required or appropriate to carry out the purposes of that Agreement.

Article 28 - Waivers in Exceptional Circumstances*

In exceptional circumstances, not elsewhere provided for in this Agreement, nor provided for in the General Agreement, the Assembly may waive an obligation imposed upon a contracting party by the General Agreement; provided that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the Members.

The Assembly may also by such a vote (i) define certain categories of exceptional circumstances to which other voting requirements shall apply for the waiver of obligations imposed by the General Agreement upon a contracting party thereto, and (ii) prescribe such criteria as may be necessary for the application of this Article.

Article 29 - Nullification and Impairment

(a) If a claim of nullification or impairment of a benefit accruing under the General Agreement is referred to the Organization, it shall promptly investigate the matter and shall make appropriate recommendations to the contracting parties to that Agreement which it considers to be concerned, or give a ruling on the matter, as appropriate. The Organization may consult with contracting parties, with the Economic and Social Council of the United Nations, and with any appropriate intergovernmental organization in cases where it considers such consultation necessary.

(b) If the Organization considers that the circumstances are serious enough to justify such action, it may authorize a contracting party or parties to suspend the application to any other contracting party or parties of any concession or other obligation under the General Agreement as it determines to be appropriate in the circumstances. If the application to any contracting party of any obligation or concession is in fact suspended, that contracting party shall then be free, not later than sixty days after such action is taken, to give written notice to the Secretary-General of the United Nations of its intention to withdraw from the General Agreement and such withdrawal shall take effect upon the sixtieth day following the day on which such notice is received by him.

1. See footnote 4 on page 6.
Article 30 - Continued Application of Provisions of this Part

The Members shall not, acting as contracting parties to the General Agreement, amend that Agreement so as to provide therein for procedures, other than consultation, negotiation or recommendation, applicable to the general situations to which Articles 28 and 29 relate.

PART V - OTHER PROVISIONS

Article 31 - Amendments

Amendments to this Agreement shall become effective, in respect of those Members which accept them, upon acceptance by two-thirds of the Members of the Organization and thereafter in respect of each other Member upon acceptance by it.

Article 32 - Entry into Force

(a) The original of this Agreement shall be open for acceptance at Geneva on ______________ by signature or otherwise, by those governments which are contracting parties to the General Agreement. It shall thereafter be deposited with the Secretary-General of the United Nations, and on and after ______________ it shall be open for such acceptance at the Headquarters of the United Nations.

(b) Notwithstanding the provisions of Article 2:

(i) This Agreement shall enter into force, as among the governments which have accepted it, on the thirtieth day following the day on which it shall have been accepted by governments, the territories of which account for X per cent of the total external trade of the territories of the governments which were contracting parties to the General Agreement on 1 January 1955. Such percentage shall be determined in accordance with the table set forth in the Annex to this Agreement. It shall enter into force for each other government on the thirtieth day following the day on which it is accepted thereby.

(ii) If by ______________ this Agreement shall not have entered into force pursuant to sub-paragraph (i) of this Article, those governments, being contracting parties to the General Agreement, which are prepared to do so may nevertheless decide to apply it: Provided, that the territories of such governments account for the percentage of trade required for the entry into force of this Agreement under sub-paragraph (i).

1. Chile, France and the United Kingdom reserve their positions.

2. The Legal and Drafting Committee should consider the Japanese proposal that paragraph (a) read as follows:

(a) The original of this Agreement shall be deposited with the Executive Secretary of ICITO-GATT, and after entry into force of this Agreement, with the Director General of the Organization; and it shall be open for acceptance on and after ______________ by signature or otherwise by those governments which are contracting parties to the General Agreement;
Article 33 - Relation to Amendments to the General Agreement

If this Agreement enters into force before the entry into force of amendments to the General Agreement contained in the Protocol Amending the General Agreement dated _________, this Agreement shall, until the entry into force of such amendments, be applied as if all references in the General Agreement to "the CONTRACTING PARTIES" were references to the Organization.

Article 34 - Notification and Registration

(a) The Secretary-General of the United Nations shall promptly furnish a certified copy of this Agreement and a notification of its entry into force, and of each acceptance thereof, accession, thereto, or withdrawal therefrom, to each contracting party to the General Agreement, to each member of the United Nations which is not such a contracting party, and to all specialized agencies of the United Nations.

(b) The Secretary-General is authorized to register this Agreement in accordance with Article 102 of the Charter of the United Nations.

Done at Geneva, in a single copy, in the English and French languages, both texts authentic, this ________ day of _________, one thousand nine hundred and ___

1. The Legal and Drafting Committee should consider the Japanese proposal that this Article be placed after Article 34 and grouped under a heading "Transitory Provisions" together with the following new Article.

Article (35)

Pending the entry into force of this Agreement, "Director-General of the Organization" in Articles 28(b) and 33(a) shall read "Executive Secretary of ICITO-GATT" (or "Secretary-General of the United Nations").
ANNEX 2

PROPOSED AMENDMENTS AND PROVISIONS FOR INCLUSION IN THE PROTOCOL OF AMENDMENTS

1. Article XXV

Replace paragraphs 1, 2, 3, 4 and 5(a) by the following:

"1. The Organization for Trade Cooperation, the functions and powers of which are set forth in the Agreement on the Convention Organization for Trade Cooperation bearing the date of 1955, shall give effect to those provisions of this Agreement which provide for action by the Organization and such other provisions as involve joint action, and may carry on any other activities with respect to the General Agreement which are provided for by the Agreement establishing the Organization.

"2. All contracting parties shall, as soon as possible, become Members of the Organization."

2. Provision to be included in the Protocol of Amendments

The Protocol of Amendments should include in the part relating to Article XXV

(a) a qualification relating to new paragraphs 1 and 2 of that Article as follows:

"These amendments shall, notwithstanding the provisions of Article XXX, not become operative until the day upon which the Agreement establishing the Organization for Trade Cooperation shall have entered into force."

and (b) the following phrase should be included:

"Whenever the expression 'CONTRACTING PARTIES' occurs elsewhere in the General Agreement, or in any amendment to the General Agreement which is pending acceptance in accordance with Article XXX or in any protocol relating to the General Agreement which has been entered into by the contracting parties, it shall be replaced by the expression 'the Organization' as from the date upon which the Agreement on the Organization for Trade Cooperation, dated 1955, enters into force. The consequential grammatical and drafting changes shall also be made."

1. See footnote 4 on page 6.
3. **Article XXXIII**

Add, at the end of the sixth line the following words:

"and provided that such government shall accept, at the time of accession, the Agreement on the International Organization for Trade Cooperation."