1. The Working Party was appointed by the CONTRACTING PARTIES at their eighteenth session and was instructed to conduct a review, under paragraph 2 of Article XXXV, of the operation of that Article with respect to Japan. The composition of the Working Party and its terms of reference are as set out in document L/1482.

2. The Working Party met from 28 August to 1 September 1961. In the absence of its Chairman the meetings were presided over by Mr. Wyndham White, the Executive Secretary. Corresponding to the terms of reference of the Working Party the present report sets out (i) the findings of the Working Party in the course of the factual review, and (ii) certain general considerations which might be taken into account by the CONTRACTING PARTIES in formulating recommendations pursuant to paragraph 2 of Article XXXV.

I. Review of the Facts

3. As requested by the CONTRACTING PARTIES, the Executive Secretary had prepared a note on the origin of Article XXXV and its application in the case of Japan (L/1466) as well as a paper on the trade relationships between Japan and contracting parties invoking Article XXXV against it (L/1531). The last-mentioned secretariat paper sets out the import treatment granted to Japanese products by the contracting parties concerned. These secretariat papers are annexed to this report.

4. The Working Party noted that at present there were fourteen contracting parties invoking the Article in question against Japan (in addition, Cambodia and Tunisia have indicated that they may want to invoke Article XXXV against Japan when they accede to the General Agreement). It was noted that among the fourteen contracting parties only two, namely Haiti and South Africa, withheld most-favoured-nation customs tariff treatment to imports from Japan. All the other contracting parties in question granted imports from Japan, either unilaterally on a de facto basis or pursuant to bilateral agreements,
most-favoured-nation tariff treatment. In the case of South Africa, maximum
duty rates existed in regard to about one-fourth of the customs tariff items.

5. As regards import restrictions and controls, it would be difficult to
categorize the different kinds of treatment which varied greatly from country
to country. They may, however, be broadly described as follows: in some
countries no special restrictions were applied and imports from Japan were
admitted on a completely non-discriminatory basis; these provisions were
embodied in bilateral agreements. In some other countries, there was also
a general commitment to extend non-discriminatory treatment to imports from
Japan, but provisions were made for the continued application of restrictions
to a selected list of significant products. In other cases, restrictions
were applied to a range of imports from Japan subject to periodic bilateral
negotiations on a product-by-product basis. In the remaining cases, no
undertakings existed in the importing countries regarding the access of
Japanese products to their markets. The actual treatment varied from a
liberal to a fairly restrictive régime.

6. In cases where most-favoured-nation treatment, or most-favoured-nation
treatment in principal, was accorded to Japan in bilateral agreements,
provision was made that if serious injury to a domestic industry were
caused or threatened by imports of a particular product, the importing country
would be entitled to suspend its obligations under the agreement in respect
of that particular product. These agreements also made provisions for
consultation between the partner governments with the objective of avoiding
the need for any discriminatory action.

7. The Working Party noted that in no case did Japan give more favourable
treatment to any contracting party invoking Article XXXV than to any other
contracting party.

8. The Working Party was also instructed to examine the effects of the
invocation of Article XXXV against Japan on the trade of Japan. From the
statements supplied by the countries invoking Article XXXV and from statistics,

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1 In regard to France's customs treatment of Japanese products, see
paragraph 27 of Annex I (L/1531).
the Working Party noted that in most cases there had been a considerable increase in imports from Japan in absolute terms into these countries; in some cases, their imports from Japan as a proportion of their total imports had also shown a significant increase. The Working Party noted that the invocation of Article XXXV as such did not necessarily constitute an inhibition to the expansion of trade between the countries concerned. More relevant to a consideration of trade possibilities was the existence or absence of discriminatory import restrictions or other restraints on trade. Where Japan's exports were faced with such restrictions not applicable to other countries, imports from Japan would tend to stay at a relatively lower level or to increase at a slower rate than imports from other sources.

9. In order to make its assessment of the effects of the invocation of Article XXXV in the case of Japan the Working Party took note of the trading relationships between Japan and countries applying the General Agreement to Japan. It was noted that in some cases these countries did not extend to Japanese goods equality of import licensing treatment. It was understood that Japan had made certain arrangements with some of the countries concerned which gave some assured access for Japanese goods. For certain countries which, in conformity with their GATT obligations, did not apply import restrictions against Japan, Japan had undertaken to exercise voluntary restraints to exports of a limited number of products to those markets.

II. General considerations

10. In the light of the factual review the Working Party puts forward the following considerations which the CONTRACTING PARTIES might wish to take into account in formulating their recommendations pursuant to paragraph 2 of Article XXXV.

11. The Working Party noted that an important element motivating the invocation of Article XXXV had been the fear that some Japanese goods might be imported under such conditions as to result in serious damage or threat of serious damage to domestic industries. In the view of some members of the Working Party the apparent severity inherent in the invocation of the Article was disproportionate with the problems which had in practice arisen.
In the view of some countries the problem of imports referred to above was not the sole obstacle to their disinvocation of Article XXXV. These countries, before taking such a step, would have to satisfy themselves that, having regard to the trading system operated by Japan, the application of the provisions of the General Agreement would in practice afford non-discriminatory access for the exports of the disinvoking country in the Japanese market.

12. Although clearly the invoking countries were legally entitled to maintain their invocation of the Article, the fact nevertheless remained that restrictions maintained under cover of the invocation not only affected the trade between two countries directly concerned but also created problems for third countries.

13. While it was true that trade was affected by restrictions whether or not these were based on an invocation of Article XXXV, the Working Party considered that there was a distinction between restrictions applied by countries invoking the Article and those applied by countries not invoking it; restrictions against Japanese products imposed by countries not invoking Article XXXV were subject to the provisions of the General Agreement concerning control and remedial procedures and the absence of such control and procedures would seem in some cases to have some significant effects on trade.

14. The Working Party while noting that trade between the countries invoking Article XXXV and Japan had as a whole in recent years developed in a reasonably encouraging manner, considered that the atmosphere of uncertainty created by the lack of contractual GATT relations between Japan and a number of important countries had had inhibitive effects on Japan's exports to some markets. This situation was a cause of serious concern to countries for which Japan was an important export market.

15. The Working Party noted that Japan had announced its intention of proceeding in the near future with a substantial elimination of its import restrictions. It had been suggested that Japan's efforts to fulfill its obligations in this regard might be hampered by reason of the widespread invocation of Article XXXV. Although Japan would have no obligations under GATT to extend liberalization measures to countries invoking Article XXXV, it had indicated a reluctance to refrain from doing so unless
no satisfactory solution were found.

16. The Working Party also examined the contention of Japan that the widespread invocation of Article XXXV had other effects detrimental to the attainment of the objectives of GATT, notably in regard to the lowering of customs tariffs. In its view, the lack of GATT relationship with a number of important trading nations had hampered and might further hamper Japan's efforts in meaningfully participating in tariff negotiations. The Working Party recognized the validity of this contention and felt that contracting parties should give it due weight in the context of the present report, and in connexion with any future arrangements for tariff negotiations. It was also noted that because of the concentration in the markets of some countries of certain Japanese products those countries found it more difficult to reduce tariffs on those products.

17. The Working Party felt that progress in this direction might well be facilitated if concerted action were taken by the countries concerned. Because the problems arising for the contracting parties concerned varied from case to case solutions might have to be sought through bilateral negotiations. However, solutions evolved through bilateral discussions might be such as to require action by the CONTRACTING PARTIES for their implementation.
18. The Working Party was also aware that there appeared to be certain special problems arising for many countries in their trade with Japan, problems which had been discussed by the CONTRACTING PARTIES under the description of "market disruption." The Working Party is of the view that if satisfactory multilateral solutions were found for such problems, this would facilitate the solution of the problem of the widespread invocation of Article XXXV against Japan.

19. The Working Party also discussed the question of invocation of Article XXXV by governments assuming in their own right the status of contracting parties pursuant to Articles XXVI:5(c) or acceding to GATT under Article XXXIII. It wishes to point out that there can be no doubt that a government becoming a contracting party under Article XXVI:5(c) does so on the terms and conditions previously accepted by the metropolitan government on behalf of the territory in question. Consequently, if Article XXXV had been invoked in respect of that territory (or if that territory had not been specifically excluded from such invocation), it would continue to be valid unless expressly dis-invoked by the succeeding government. If this were clearly understood, it would then be unnecessary for the new government to take an immediate decision on whether the invocation should or should not be maintained. The government could give the matter the consideration due to it after its acquiring the status of a contracting party. This question arises, however, only in cases of governments invoking Article XXVI:5(c) immediately after acquiring full autonomy; in the case of a government making use of the Recommendation of 1 November 1957 providing for delayed sponsorship, the delayed action would of course provide the necessary period in which the matter could be considered. In both cases it is suggested that the government in question would wish to reconsider the question of the application of Article XXXV in the light of the changed circumstances resulting from its acquisition of full autonomy. The contracting parties might wish to consider recommending to these countries that in the course of their reconsideration they afford the country against which Article XXXV might be maintained an opportunity for
an exchange of views.¹

20. As regards countries acceding to the General Agreement under Article XXXIII, the Working Party felt that there could be no question of depriving them of the right of making use of Article XXXV in appropriate circumstances. The CONTRACTING PARTIES might, however, wish to take steps to dispel the idea that the invocation of Article XXXV was a part of the normal practice of accession or that the invocation of Article XXXV could legitimately be used as a bargaining lever for gaining privileges or advantages over and above that provided for in the General Agreement. The CONTRACTING PARTIES might wish to consider recommending to acceding countries that they afford the government against which Article XXXV might be invoked an opportunity for an exchange of views.

Annex I - L/1531
Annex II- L/1466

¹The representatives of France and the United Kingdom stated that when the Working Party's Report was discussed at the 19th session their delegations might wish to comment further on the recommendations in paragraphs 19 and 20.