1. At the request of the United States delegation the CONTRACTING PARTIES at their nineteenth session appointed a Working Party to examine the question of the application of the General Agreement to international trade in television programmes (SR.19/11, page 182).

2. The Working Party was established with the following terms of reference and membership:

Terms of reference

(i) To examine the relation between the existing provisions of the GATT and measures affecting international trade in material for showing on television programmes.

(ii) In the light of this examination, to consider whether these provisions adequately deal with the problem of access to markets and, if not, what action should be taken in the matter.

(iii) To report their findings and recommendations to the CONTRACTING PARTIES.

Chairman

Mr. E. Emmel (Germany)

Members

Austria
Australia
Brazil
Canada
France

Germany
Japan
Sweden
United Kingdom
United States

The Governments of Belgium, Italy and Switzerland, together with the United Nations and the Organisation for Economic Cooperation and Development, were represented by observers.
3. The Working Party had before it documents L/1646, L/1615, SR.19/5, SR.19/9 and SR.19/11.

4. The representative of the United States in recalling the main points on which his delegation at the nineteenth session had based their request for the consideration of the problem of international trade in television programmes, said that since the General Agreement was drawn up, recorded television programmes had become an important article of commerce, and their importance was growing rapidly. There has been continuing multiplication in the number of television stations and the number of broadcasting facilities in the world. Many of the television broadcasting stations were State owned but the proportion of independent commercially operated facilities was rapidly increasing. The treatment of imported recorded television programmes varied greatly from country to country. Some markets were relatively free for the importation of foreign programmes, others were severely restricted by governmental measures which limited the percentage of total viewing time that might be devoted to programmes not produced by domestic industry. It was felt that as television became more universally used it would justify the creation of domestic industries in many countries. The United States was concerned lest this should lead to a tendency by these countries to protect such infant industries through the adoption of such stringent regulations as to exclude in large measure foreign television material.

5. With regard to the legal status of restrictions against the importation of recorded television material now being used by certain countries and contemplated by others the United States delegation was of the opinion that such regulations which limited the showing of imported television programmes fell within the obligations laid down in Article III. However, in view of the fact that even where television was now owned by them, governments had quite properly taken a special interest because of television's importance as a cultural and informational medium, the United States would not insist on a legal interpretation of the obligations contained in Article III provided agreement could be reached on a practical formula for dealing with the present situation.
6. The Working Party, as required by its terms of reference, examined the relation between the existing provisions of GATT and measures affecting international trade in television material. The Working Party considered the competence of GATT in relation to trade in television material. Some members maintained doubts on this score. In particular it was contended by some delegations that in many respects television bore more resemblance to a service than to a trade in physical commodities. The representative of France considered that it was sometimes difficult to distinguish between live programmes and certain programmes which had been recorded for convenience. This was a factor which had to be taken into account. The representative of the United States, however, maintained that Article III clearly recognized the competence of GATT to deal with internal regulations which affected the use of imported material, though there were undoubtedly other cases where such use would take the form of a service. The fact that Article IV had been established as an exception to Article III for cinematographic films confirmed this interpretation. It was agreed, however, to leave aside both the question of the legal interpretation of Article III and the question of GATT's competence, so that the Working Party, without prejudice to the views of some members on the matter of competence or the appropriateness of the GATT as a forum for discussing these questions, could carry through its examination.

7. The Working Party took note of the GATT provisions relating to tariffs and quantitative restrictions but concentrated its discussion largely on Articles III and IV of the General Agreement. In this connexion they noted that Article II of GATT lays down three basic rules concerning the treatment of foreign products affected by internal mixing regulations. One is that in the case of the existence of internal quantitative regulations requiring the mixture of products, such provisions should not be applied to imported or domestic products in a way so as to afford protection to domestic production (paragraph 12). The second rule is that foreign products shall be accorded treatment no less favourable than that given to like products of national origin (paragraph 4), and the third rule is that no contracting party shall establish or maintain any internal
quantitative regulation relating to mixture which requires directly or indirectly that any specified amount or proportion of any product subject to this regulation must be supplied from domestic sources (paragraph 5).

8. At the time of drafting Article III, it was, however, recognized that the application of these provisions for films could cause difficulties. The tariff was not an effective means of protecting a domestic cinematographic film industry and many countries had found it necessary to resort to a quota system. In recognition of this, Article IV of the GATT, the provisions of which are an exception to those in Article III, permit the establishment of screen quotas in favour of films nationally produced. The provisions contained in sub-paragraph (d) that "such so-called screen quotas shall be subject to negotiation for their limitation, liberalization and elimination" had led to consolidation in the Schedules of some contracting parties.

9. The United States representative stressed the importance of an international solution of this problem and explained that any such solution should aim at satisfying as far as possible the commercial interests of the countries exporting recorded television material as well as the cultural and other interests of the importing countries. He felt that this purpose would best be served by the adoption of a resolution which would recognize the fact that contracting parties are regulating the use of imported television material and would presumably continue to do so. The resolution should provide that the remaining viewing time open for foreign recorded material be "reasonable" and that due regard be paid to the allocation of favourable viewing hours. Further, the regulations should be applied without distinction among exporting contracting parties and should be negotiable in the same manner as tariffs.

10. Some members of the Working Party were prepared to accept the view of the United States representative that the problem under discussion could be approached by way of an agreed recommendation of the CONTRACTING PARTIES. They pointed out that international trade in television material was unimportant when the GATT was drafted and that consideration was not therefore given to the
problems of applying the Agreement to this trade. Any recommendation should take into account the obvious analogy between films which were covered by the provisions of Article IV and recorded television material. They considered that the problem should be solved by recognizing this analogy and by stating that the provisions of Article IV should be applied *mutatis mutandis*.

11. They stressed the point that acceptance of a recommendation as drafted by the United States representative would involve an obligation by contracting parties to accept a reasonable or an equitable share in total television time and which would create a new obligation for contracting parties, going not only beyond the provisions of Article IV, but also beyond any other obligation contained in the GATT. They would not be in a position to subscribe to the recommendation as drafted by the United States representative. The latter pointed out that in Article XVII:2, which represented an exception to the general obligations of Article XVII, there was an obligation which required that contracting parties should accord to certain trade of other contracting parties fair and equitable treatment. Thus, the idea of "reasonable treatment" in establishing an exception to the provisions of Article III would not be inconsistent with the other provisions of GATT. There was no unanimity on this point.

12. The United States representative recognized that some countries might not wish to impose quotas as a means of reserving part of transmission time to the use of domestically produced material. He felt, however, that the method used for ensuring such reservations should be such that exporting countries could clearly appreciate its nature and effects and be able to use it as a basis for consultation and negotiation.

13. Members of the Committee noted that the imposition of domestic screen quotas of 100 per cent would not be inconsistent with the provisions of Article IV. The representative of the United States agreed that this was so. However, the United States could not accept that the starting point for any recommendation on the importation of television material should be the acceptance that importing countries could impose 100 per cent domestic quotas and only subsequently extend "reasonable access" as a result of negotiation.
14. There was also considerable discussion concerning the term "reasonable" on the ground particularly that it lacked the precision necessary to become the basis of an international obligation. The Austrian representative referred to countries which had short television hours and remarked that in his view it would be difficult to apply the criterion of favourable viewing time to such countries. The United States representative agreed that in countries with short viewing hours, all viewing hours could be considered favourable.

15. The Working Party felt that the importance and the number of questions involved were such that they could reach no final conclusion at this meeting. It was agreed that in order to facilitate further consideration, the Working Party should attach as an annex to this report, a draft recommendation with alternative proposals for circulation to contracting parties. The Working Party decided to meet again at about the time of the Council meeting in May after governments had had time to study this report, unless a reassessment of the situation by the Executive Secretary indicated that such a meeting would be inopportune at that time.
ANNEX

DRAFT RECOMMENDATION

The CONTRACTING PARTIES, RECOGNIZING that, when the General Agreement was drawn up, international trade in television programmes was virtually non-existent so that the implications of the application of paragraph 4 of Article III to such trade were not considered;

RECOGNIZING that, for reasons of public policy, contracting parties may find it necessary to ensure that television programmes include such a proportion of domestically produced material as to reflect the traditions and cultures of their countries;

ALTERNATIVE A

RECOMMEND that, where contracting parties find such internal quantitative regulations necessary, they adopt the following principles:

(a) any such regulations should take the form of a reservation of a specified proportion of viewing time for programmes produced domestically;

(b) any such reservation of time shall provide, for recorded programmes imported from other contracting parties, access to a reasonable proportion of viewing time, with due regard to favourable viewing hours; and

(c) any such reservation shall be applied without distinction among exporting contracting parties and shall be negotiable in the same manner as tariffs;
ALTERNATIVE B

RECOMMEND that, where contracting parties find such internal quantitative regulations necessary, they adopt the following principles:

(a) any such regulations should take the form of a reservation of a specified proportion of viewing time for programmes produced domestically;

(b) in any such reservation of time, contracting parties shall, for recorded programmes imported from other contracting parties, avoid unnecessary damage to the commercial or economic interest of any other contracting party in providing access to viewing time, including favourable viewing hours; and

(c) any such reservation shall be negotiable in the same manner as tariffs and

ALTERNATIVE C

RECOMMEND that, when contracting parties find it necessary to impose internal quantitative regulations governing the amount of domestically produced material which shall be used in television programmes, these regulations should take the form of quotas conforming to the same requirements as those established in Article IV for cinematographic films.

DECIDE to review this recommendation within two years in the light of developments in television techniques and the practices of contracting parties in applying this recommendation.