1. The terms of reference of the Working Party were:

"To consider the request by the Government of the United States to the CONTRACTING PARTIES, in accordance with paragraph 5 of Article XXV of the General Agreement, to waive its obligations under paragraph 1 of Article I of the General Agreement to permit it to eliminate customs duties and other charges imposed on or in connexion with the importation of automotive products of Canada without being required to extend the same treatment to like products of any contracting party, and to report to the Council with appropriate recommendations."

The Working Party met from 4 to 12 November 1965 under the chairmanship of Mr. A. Weitnauer (Switzerland). It had before it the text of the United States/Canada Automotive Products Agreement (L/2339), the report of the earlier Working Party on the Agreement (L/2409), and the text of the request by the United States for a waiver (C/62).

Opening statement by the representative of the United States

2. In his opening statement the full text of which is contained in Annex A, the representative of the United States said that the factors which characterized the automotive industries of the United States and Canada - geographic proximity, close corporate relationships, interchangeability of products and identical consumer demand - made for a unique situation, even as compared with other industrial relationships between the two countries. It had, he said, become increasingly clear in recent years that the automotive industries of the United States and Canada constituted in reality a single North American
industry and that the customs border which lay in its middle was an anomaly, giving rise to artificial and uneconomic practices. It was the objective of the United States/Canada Automotive Products Trade Agreement to correct this anomaly.

3. Turning to the feature of this Agreement that gave rise to the waiver request by his Government, he recalled that it provided that the United States would extend duty-free treatment to imports of vehicles and original parts (but not replacement or service parts) of Canadian origin and did not contemplate that similar treatment would be extended to automotive products imported into the United States from other countries. This feature of the Agreement was carried over into the implementing legislation recently signed by the President.

4. The North American automotive industry was virtually self-sufficient in the production of original parts. Where the import of original parts occurred this was the result of special situations which would not be affected by the Agreement. It followed that these imports would not be affected to any significant or measurable extent. As regards trade in assembled vehicles, his delegation was convinced on the basis of careful study that no trade diversion affecting third countries would result from the Agreement. The price of vehicles in the United States would not be affected by the removal of duties on vehicles from Canada and there would, therefore, be no change in the competitive situation in the United States market as between United States produced vehicles and those imported from overseas sources.

5. His Government had given most serious consideration to the suggestion which had been made at the previous working party that United States duties on automotive products be eliminated on a most-favoured-nation basis, thus
avoiding the inconsistency with Article I of the General Agreement and the need for a waiver. His Government did not consider that it was feasible to take such action at this time, bearing in mind the large volume of United States imports of automotive products, the discriminatory situation facing North American type vehicles in many countries and the fact that the Agreement would not adversely affect the trade interests of any other contracting party. The United States had, moreover, the lowest import duties on vehicles and did not impose non-tariff barriers on imported vehicles. Assuming a successful Kennedy Round, it was possible to envisage United States duties on imported cars of about 3 per cent and duties on parts of 4 per cent. Following the Kennedy Round they would expect to consider again the complete removal of United States duties on imported automotive products.

6. The representative of the United States said that his Government recognizes that the approach it had adopted was inconsistent with the letter of Article I. But because they were convinced that no contracting party would suffer trade damage they firmly believed this inconsistency to be technical in nature and not be inconsistent with the underlying purpose of Article I. They believed also that the United States/Canada Agreement represented an exceptional circumstance in the sense provided in paragraph 5 of Article XXV.

7. In stating that the departure from Article I was technical in nature he emphasized that his Government did not thereby minimize its significance. The United States therefore proposed to seek a waiver that was limited in its terms and was clearly conditional upon the absence of trade diversion, and
thought it fit and appropriate for the waiver to lapse where any substantial trade damage to the products of any contracting party is established by the CONTRACTING PARTIES. His delegation had prepared a draft of a waiver which was illustrative of the type of waiver they had in mind and they were prepared to circulate this to members of the Working Party.

Discussion

8. The representative of the United States had distributed to members of the Working Party copies of the Automotive Products Trade Act of 1965 signed by the President on 21 October this year. In reply to questions, the representative of the United States said that on that date the President had also issued a Proclamation exercising the authority given to him under the Act to remove United States duties on automotive products of Canada. The provisions of the Proclamation would become effective after sixty days, i.e. on 20 December; the removal of United States duties then being retroactive to 18 January this year, the date on which the Government of Canada had brought their part of the Agreement into effect.

9. Certain members of the Working Party expressed regret that the Proclamation had been issued before the Working Party met and expressed concern that, since the United States legislation would now automatically come into force on 20 December and on that date United States duties on automotive products of Canada would be removed retroactively as far back as 18 January this year, for all practical purposes this meant that the United States was already in breach of paragraph 1 of Article I of the General Agreement. The representative of Canada pointed out, however, that Canadian exports of automotive products to the United States were at that time still paying import duties. The representative of the United States recalled that provision for retroactive
implementation had been contained in the United States/Canada Agreement, which was examined by the earlier Working Party, and emphasized that no breach of the General Agreement had yet occurred.

10. Some members of the Working Party expressed their disappointment that in his opening remarks the representative of the United States had said that his Government had not felt itself able to adopt one of the two possibilities to which reference was made in paragraph 31 of the report of the previous Working Party (L/2409). It had been pointed out in that paragraph that if the United States abolished its duties on automotive products the question of a waiver would not arise at all; if, as a second possibility, Congress empowered the United States administration to negotiate the elimination of duties on automotive products during the current round of trade negotiations, the United States would only require a temporary waiver. The representative of the United States reiterated that his Government had given most serious consideration to the suggestion that duties on automotive products be eliminated on a most-favoured-nation basis but for the reasons given in his opening statement had felt that it was not feasible to take such action at the present time. In answer to further questions the representative of the United States recalled that his country had made a sweeping offer of tariff reductions in this sector in the Kennedy Round. He further indicated that the United States would later be willing to consider the further reduction or elimination of United States duties on automotive products and that neither a unilateral nor a multilateral approach could now be ruled out.

11. Some members of the Working Party noted that in his opening remarks the representative of the United States had said that while his Government acknowledged that the approach it had adopted was inconsistent with the letter of Article I of
the General Agreement, it felt that this inconsistency was technical in nature. These members of the Working Party could not accept that the inconsistency with Article I was only with the letter and not with the spirit of the Article. Some members of the Working Party also expressed concern that the implementation of the Agreement by the United States might lead to trade diversion. They emphasized the importance which they attached to the introduction of suitable safeguards against this in any waiver decision. The importance of setting a time-limit to any waiver decision was also underlined by some delegations.

12. The representative of the United States recalled the remarks which he had made on the subject of trade diversion and on the type of waiver decision envisaged by his Government in his opening statement. He noted that the draft waiver also contained a time-limit in that it would lapse for those products where any significant trade diversion was established by the CONTRACTING PARTIES. Other members of the Working Party pointed out, however, that contracting parties might, as a matter of principle, feel that the waiver should be granted only for a specified period of time.

13. Several members of the Working Party also expressed their concern that the granting of a waiver in the present case might constitute a precedent and lead to the proliferation of similar agreements on other products and in other parts of the world. These members emphasized that for this reason any waiver decision should emphasize the unique features of the present case. Other members of the Working Party expressed their concern that the United States/Canada Agreement, while studiously avoiding the word, in fact instituted a system of preferences
between two highly developed countries. This led them to fear that "anomalies" such as the tariff border between the United States and Canada on automotive products might easily be discovered in other cases. These countries recalled that at the earlier Working Party on the United States/Canada Agreement they had enquired whether the signature of the Agreement indicated a change in the positions of these Governments with regard to the granting of new preferences, especially preferences in favour of less-developed countries. While the earlier Working Party had noted that this question was under consideration in another organ of the CONTRACTING PARTIES this was a point which engaged their interest in connexion with the present waiver request. Several members of the Working Party drew attention to the apparent inconsistency of the attitude of the United States to applications for waivers from the provisions of Article I of the General Agreement.

14. The representative of the United States, supported by the representative of Canada, said that his delegation's illustrative draft waiver emphasized the special situation of the North American automotive industry and the conviction of his delegation that the Agreement would not lead to trade diversion affecting third countries. It was this in particular which made the present waiver application a unique case which could, therefore, not be used as a precedent.

15. Some members reiterated their suggestion that the Working Party should examine the general question as to the conditions under which the waiver procedure could be applied with a view to solving the trading problems presented
to the CONTRACTING PARTIES by individual contracting parties. The less-developed contracting parties would certainly wish to know from the present exercise how similar approaches could contribute to possible solutions to their problems which were not envisaged when the General Agreement was entered into and which demanded a solution. Other members felt, however, that the present Working Party should confine itself to the examination of the particular request before it.

16. Certain members of the Working Party indicated that they were unable at that stage to indicate immediate approval of the application or to agree to any precise form of words for an eventual waiver. The Working Party felt that it was for the CONTRACTING PARTIES to judge the merits of the case for a waiver as presented in the relevant documentation and as elaborated in the present report. The Working Party proceeded to consider the appropriate terms and conditions for such a waiver and reached agreement on the text which is contained in Annex B to this report.

17. During the discussion of this text the points noted in the following paragraphs were raised. One member pointed out that his country was a newcomer to the market and that its exports to the United States had grown rapidly in recent years. In response to a question by this member, it was agreed that no one particular year would necessarily be taken or ruled out as the base period to be used in determining whether a significant diversion of trade had occurred or was threatened.

18. One member raised the question whether the ninety-day period could be used to delay action to remedy a situation where there was a significant diversion of trade. The representative of the United States assured the Working Party...
that his Government had the intention of expeditiously taking remedial action where such action was possible prior to the expiry of the ninety-day period.

19. It was pointed out that the term "substantial interest" had a particular connotation in the GATT. It was understood that for the purposes of the Decision the term "substantial interest" would be given a liberal interpretation and be judged in a pragmatic way on the merits of each particular case. It would not be interpreted by reference to total imports into the United States of a particular automotive product so as to exclude the interest of exporters of one type of product within a broad tariff item.

[ANNEX A - United States Opening Statement]
ANNEX B

Text of Draft Waiver

Having been notified that the Governments of the United States of America and Canada concluded on 16 January 1965 an agreement providing for duty-free treatment for trade in automotive products between their two countries;

Having received the request of the Government of the United States for a waiver from their obligations under paragraph 1 of Article I of the General Agreement in accordance with paragraph 5 of Article XXV;

Considering that the automotive industries of the United States and Canada are characterized by an exceptionally high degree of integration, and

Considering that, by reason of the close similarity of market conditions in the two countries and the close relationship which exists and could be further developed in their production facilities of automotive products, there are special factors which offer exceptional opportunities further both to rationalize the production of automotive products in the two countries and integrate production facilities and to increase the efficiency of United States/Canadian automotive production;

Considering moreover that the Government of the United States accepts that the facilities granted in paragraph 1 below should not be used in a way to prejudice the interests of other contracting parties and that it is not its intention to cause imports into the United States market of automotive products imported from Canada to replace imports of like products from other sources;

Taking note of the declaration of the Governments of the United States and Canada that they will continue their efforts to seek reduction or elimination of tariff and non-tariff barriers to the expansion of international trade in automotive products; and
Noting, furthermore, the assurances given by the Government of the United States that it will, upon request, promptly enter into consultations with any contracting party to the GATT considering that the elimination of United States duties on Canadian automotive products is causing or imminently threatens to cause a significant increase of imports of any such products from Canada at the expense of imports from the requesting contracting party;

THE CONTRACTING PARTIES

Decide, in accordance with paragraph 5 of Article XXV of the General Agreement and in accordance with the procedures adopted by them on 1 November 1956, as follows:

1. The Government of the United States, notwithstanding the provisions of paragraph 1 of Article I of the General Agreement, is free to eliminate the customs duties at present imposed on automotive products of Canada without being required to extend the same tariff treatment to like products of any other contracting party.

2. The Government of the United States shall enter into consultations with any contracting party that requests consultation on the grounds (i) that it has a substantial interest in the trade in an automotive product in the United States market, and (ii) that the elimination of customs duties by the United States on imports of that automotive product from Canada has created or imminently threatens to create a significant diversion of imports of that automotive product from the requesting contracting party to imports from Canada.

3. If, in consultations in accordance with paragraph 2 above, it is agreed there is no significant diversion or imminent threat of diversion of trade in the sense of that paragraph, the waiver shall continue to apply.

4. In the event the parties to consultation in accordance with paragraph 2 above agree there has been a significant diversion or is an imminent threat of diversion of trade, the waiver shall terminate in accordance with paragraph 5,
with respect to the automotive product or products in question. If the parties to consultation fail to reach agreement, either may refer the question whether the requesting party has a substantial interest or whether there has been a significant diversion or is an imminent threat of diversion of trade to the CONTRACTING PARTIES. If the CONTRACTING PARTIES decide that the requesting country has a substantial interest and that there has been a significant diversion or is an imminent threat of diversion of trade, the waiver shall terminate in accordance with paragraph 5, with respect to the automotive product or products in question.

5. Unless the requesting party has previously withdrawn its request, any termination of this waiver pursuant to paragraph 4 shall take effect on the ninetieth day after agreement by the parties to consultation, or after a finding by the CONTRACTING PARTIES, with respect to diversion or imminent threat of diversion of trade.

6. In addition to receiving an annual report as referred to in the procedures adopted by the CONTRACTING PARTIES on 1 November 1956, the CONTRACTING PARTIES will, two years from the date when this waiver comes into force and, if necessary, biennially thereafter, review its operation and consider how far in the circumstances then prevailing the United States would continue to need cover to implement the agreement with Canada, having regard to the provisions of paragraph 1 of Article I of the GATT.

7. For the purposes of this Decision, the phrase "automotive product" or "automotive products" shall mean a product or products listed in the Annex hereto, as they are described in the Tariff Schedules of the United States.

The list of products distributed to members of the Working Party will be annexed.