1. At the twenty-third session the CONTRACTING PARTIES adopted a decision on procedures under Article XXIII aimed at facilitating more effective use of the provisions of this Article in the interests of the trade and economic development of less-developed contracting parties and agreed that work should be continued on the two outstanding issues mentioned in paragraph 46 of the Committee Report L/2614. The Committee on Trade and Development agreed at its last meeting that the Group on Legal Amendments should be convened to resume examination of the outstanding issues, taking into account any new proposals circulated in advance by interested delegations.

2. The Group met on 1 and 9 December 1966 to discuss a joint proposal by the delegations of Brazil and Uruguay for a supplementary decision on procedures under Article XXIII, which had been circulated in document COM.TD/F/W/7.  

3. Some members of the Group recalled that the decision on procedures under Article XXIII had been adopted only nine months ago. They felt that, unless there were very good reasons to the contrary, it would be preferable to await practical experience on the use made of procedures set out in the decision before any alterations were contemplated. Others felt that not only had the proposal little to add to what was already provided under Article XXIII, but adoption of such a proposal would complicate the existing procedures and limit the choice of solutions.

Reproduced in the Annex to this note with modifications introduced subsequently by the sponsors in consultation with other delegations.
which could be worked out in any given case. One member indicated that his government would have difficulty in accepting the proposal. Some members pointed out that the Group had been given a mandate by the Committee on Trade and Development following the clear understandings reached at the twenty-third session that these issues would be further examined, and that the item appeared on the agreed provisional agenda for the next meeting of the Committee to be held in January in Uruguay.

4. The Group proceeded to a preliminary exchange of views in the course of which the sponsors of the proposal provided clarification on various points. The sponsors affirmed that the intentions behind the present proposal were the same as those which had motivated their earlier proposals set out in COM.TD/F/W/4, and recalled the views which they had expressed at the previous Group meeting and to the Committee as noted in COM.TD/F/4 and L/2614. The present proposal represented a modified version of the original proposals and the modifications had been made to meet the objections and take account of the views which had been expressed by developed contracting parties.

5. With regard to the reference in paragraph 1 of the proposal to "the elimination of the measures complained of", the sponsors thought that the recommendations mentioned in paragraph 1 should be taken to extend to any measure, whether or not it conflicted with the provisions of the General Agreement, that caused nullification or impairment. Some members recalled past discussions on the meaning and significance of the term "nullification and impairment of any benefit accruing directly or indirectly under the Agreement" in the sense of Article XXIII, and stressed the view that it would be going beyond the provisions of the GATT to require a contracting party to remove measures which were not inconsistent with the Agreement.

6. Some members observed that the phrase "where this should not prove possible" in the third line of paragraph 1 of the proposal was ambiguous and capable of several interpretations since it was not clear as to whether the
judgment as to whether the measure could or could not be removed was that of the contracting party to whom the recommendation was addressed or some other body. The point of time at which this judgment could be reached was also not clear from the phrase. It was also pointed out that the phrase "with the agreement of the two parties" may also have the effect of limiting the Decision of 5 April 1966 as the Panel would be able in all cases to make recommendations only when participants were in agreement. The sponsors explained that it was their intention that paragraph 1 of their proposal would be invoked only in cases where the contracting party causing damage had found it impossible to remove the measures complained of and subsequently would relate to situations where all the possibilities offered in the Decision of 5 April 1966 had been exhausted without satisfactory settlement.

7. Some members of the Group enquired whether the term "other measures of a commercial policy or other character" employed in paragraph 1 of the proposal meant financial compensation. They drew attention to the statement made by them on this question in previous meetings of the Group concerning the difficulties this would pose for their governments. The sponsors replied that it was not intended that the Panel’s recommendations should be limited to any particular method of adequately offsetting the damage suffered; financial compensation would, however, be one of the many possibilities and should be asked for only when the party concerned was in a position to provide it (paragraph 1 of the proposal had provided that any particular measure would be recommended only if this were agreed upon by the parties concerned). The sponsors also explained that it was intended that the offsetting measures which may be agreed on under paragraph 1 of their proposal would apply retroactively in order to cover the whole period during which a developing country suffered damage as a result of measures applied by a developed country. Replying to a question on the meaning of the term "economic prospects" appearing in paragraph 1 of the proposal, the sponsors explained that the term was meant to cover situations where the projections or assumptions made in the context of the development plans of developing countries were upset by harmful measures applied by developed countries.
8. Some members felt that paragraph 2 of the proposal by providing for the suspension of obligations by the developing contracting party prior to the consideration of the recommendation of the CONTRACTING PARTIES by the developed country concerned would make the eventual satisfactory adjustment more rather than less difficult. The sponsors recalled that their views and intentions on this point were fully reflected in the records of previous discussions of the Group. In their view governments should have no difficulty in accepting paragraph 2 since sufficient guarantees were provided to ensure that the country suspending concessions or other obligations under the General Agreement could not act in an arbitrary manner. One member of the Group noted that any provisional suspension of concessions authorized under paragraph 2 would presumably be applicable only to the contracting party causing the damage. Another member enquired whether the provisions of paragraphs 2 and 3 of the proposal would only apply in cases where paragraph 1 was not invoked. The sponsors replied that the three paragraphs were to be independent of each other.

9. One member of the Group suggested that since the purpose of the present exercise was to find ways and means of ensuring that the developed countries carried out their obligations vis-à-vis the developing countries, governments of developed countries might wish to give consideration to the possibilities of suspending or removing duties on items of export interest to developing countries which were subjected to quantitative restrictions. Several representatives, while indicating that they would report the suggestion to their governments, considered that the Group was not the proper forum to raise such a matter. Certain other members gave preliminary views on some of the difficulties which this proposal would present to their governments.

10. The Group agreed to adjourn in order to facilitate informal consultations and to enable delegations to receive further instructions from their capitals. The Brazilian and Uruguayan delegations agreed to make available a modified text
of their proposal which would take account, as far as possible, of any modifications which delegations might wish to suggest to them. The Chairman would reconvene the Group at an appropriate date to be determined in the light of circumstances.

ANNEX

/To be included when received from the Brazilian and Uruguayan delegations/