1. The Council at its meeting on 10 January 1967 (C/M/39) appointed a Working Party to examine the request of the Government of Brazil for a waiver from its obligations under Article II of the General Agreement in order to apply a new customs tariff on 1 March 1967 without prior renegotiation of Brazil's Schedule III (L/2723).

2. The Working Party met on 12, 19 and 23 January 1967. It had before it, inter alia, the text of the Decree Law No. 63 of 21 November 1966 reformulating Brazil's customs tariff (C/W/110), some additional legal texts relating to Brazil's tariff (C/W/110/Add.1), a Memorandum on the Elimination of Charges and Controls of Imports into Brazil (C/W/111) and the statement by the representative of Brazil in the Council on 10 January (C/W/112).

3. The representative of Brazil said that the Brazilian customs tariff reform should be considered in the context of the efforts to liberalize international trade, thus complementing the set of liberalizing measures already adopted in the fiscal exchange and financial fields, with a view to meet the increased requirements of the country's economic development. He particularly stressed that after 1 March 1967 the exchange treatment applied to "general category" items would be extended to "special category" items which meant a very considerable reduction of the actual level of protection. The reformulation of the tariff as it stood now would leave for over 4,400 tariff positions - 69 per cent of all positions - the rates at their previous level, while for 1,800 positions - about 28 per cent of the total number - the rates would be reduced. For 214 positions only - 3 per cent of all positions - the rates would be increased. It should also be noted that the Customs Clearance Tax of 5 per cent would be abolished as from 1 January 1968.
4. With regard to items bound in Schedule III, the representative of Brazil pointed out that for 372 positions the rates had not been affected by the tariff reform. Thirty-five of these items previously were in the special category; for these items the effective level of protection would thus be considerably reduced. For eighteen items the bound rates would be reduced. Three of these items were special category ones. For 188 items the bound rates had been increased. For 131 of these items the increases were, however, not more than 10 percentage points. Twenty-eight of those items previously were special category items and their transfer to the general category meant a drastic reduction of the margin of protection. Fifty-eight items in Chapters 84 and 85 were furthermore eligible for a 50 per cent tariff reduction under Article 8 of Decree Law No. 63.

5. In reply to questions put by members of the Working Party the representative of Brazil explained that so far only a few requests for an upward adjustment of the proposed tariff rates under the 60 per cent rule in Article 2 of Decree Law No. 63 had been made. No decisions had yet been taken. It was expected that the 60 per cent authority would be used sparingly to raise duties before 1 March. The criteria and procedures to be used in the judging of the claims were strict. After the coming into force of the tariff on 1 March 1967 the only authority to increase rates would be the 30 per cent authority under the provisions of the 1957 law, while the Decree Law No. 63 created a new possibility, in Article 5, of reducing rates by up to 100 per cent ad valorem. The representative of Brazil confirmed that, theoretically, a rate in the draft tariff could be increased by 90 per cent - 60 per cent before 1 March and 30 per cent after that date - but he stressed that such an accumulated increase was very unlikely as it would run contrary to the philosophy of the Brazilian foreign trade reform. After the conclusion of the renegotiations under the waiver no bound rates would be raised under the 30 per cent increase authority without compliance with the proper GATT procedures. The representative of Brazil, in reply to a question, said that while the 30 point authority to raise tariffs could be used when negotiations had started but were not yet concluded, this possibility was not very likely.
6. The representative of Brazil said that the emergency provisions of Article 6 of Decree Law No. 63 would be invoked particularly in cases where the reduction of the import price in connexion with the granting of general category treatment to items of the special category would exert an extreme pressure on the Brazilian market or when unfair competition was found to exist. The minimum values referred to in Article 6 would take into account the normal prices in export markets abroad. The additional charge mentioned in Article 6 would take the form of a specific rate in addition to the regular ad valorem rate. Measures taken under Article 6 would not be discriminatory. Bound items were unlikely to be subject to action under Article 6, but if they were, normal GATT procedures would apply. With regard to the expression "unfair competition", the representative of Brazil said that it would not be given an interpretation that would unduly restrict trade. It would mainly cover dumping, as was the case in most countries. It was pointed out that a similar provision, although of a more general nature, relating to dumping, existed in the 1957 Law.

7. Members of the Working Party asked about the interpretation of the expression "raw material or primary product" in Article 7 of the Decree Law No. 63 containing rules about duty exemption and reduction when national production was insufficient. The representative of Brazil said that no rigid definition had been fixed but that it would, inter alia, include agricultural products, metals in the form of ingots, billets etc., and in general imports needed in industry.

8. In reply to questions about the authority granted to the Customs Policy Council under Article 8 of Decree Law No. 63 to reduce duties on machinery and equipment in Chapters 84 and 85 by 50 per cent, when there was no like national product, the representative of Brazil explained that items in Chapter 84 - machinery and mechanical items - had been eligible for such reductions already
under the 1957 Law. In the new law the authority had been extended to electrical machinery and equipment in Chapter 85.

9. In reply to a question as to the meaning of the phrase "within the limits established by Brazilian Law" in paragraph 8 of the Brazilian statement in document L/2723, the Brazilian delegate said that this was intended to mean within the limits established by the various laws and resolutions governing the tariff reform.

10. A member of the Working Party pointed out that the provisions relating to the special category would remain in existence, although all such items were to be transferred to the general category. He asked whether there was any likelihood of items later being moved back to the special category. The representative of Brazil said that such action would only be taken in the exceptional case of a very serious deterioration of the balance-of-payments situation. It was particularly unlikely that bound items would be transferred back to the special category.

11. A member of the Working Party pointed out that the renegotiations under the waiver would obviously be independent of the Kennedy Round negotiations and asked if it was the intention of the Government of Brazil to initiate the renegotiations immediately after the entry into force of the Customs Tariff. The representative of Brazil confirmed that his Government was prepared to initiate renegotiations as soon as possible after the tariff had entered into force in its definitive form on 1 March 1967. The renegotiations would be concluded not later than 29 February 1968. Relevant trade statistics would be supplied before the start of the negotiations.

12. In the light of the discussion and taking into account the information supplied by the representative of Brazil, the Working Party agreed to recommend to the Council that the request of the Government of Brazil for a waiver be granted. The Working Party has prepared a draft decision, the text of which is annexed to this report.
Annex

SCHEDULE III - BRAZIL

Draft Decision

Considering that the Government of Brazil has notified the CONTRACTING PARTIES that it has made far-reaching changes in its commercial policy and, in particular, is revising and bringing up to date its Customs Tariff as a complementary measure in the rationalization of its foreign trade regulating mechanism in accordance with its programme of stabilization and development;

Considering the assurances of the representative of Brazil that his Government’s measures have already resulted in a substantial liberalization of Brazil’s international trade policy;

Considering further that the new Customs Tariff is designed to promote Brazilian economic development;

The CONTRACTING PARTIES, acting pursuant to the provisions of Article XXV:5 of the General Agreement and in accordance with the procedures adopted by them on 1 November 1956,

Decide, in view of the exceptional circumstances, to suspend the application of the provisions of Article II of the General Agreement to the extent necessary to enable the Government of Brazil to apply the rates of duty provided in its new customs tariff to be put into force on or after 1 March 1967 which may exceed those bound in Schedule III, pending completion of negotiations for the modification or withdrawal of concessions in that Schedule, subject to the following conditions:

1. The Government of Brazil will enter into negotiations or consultations with interested contracting parties pursuant to paragraphs 1 to 3 of Article XXVIII. These negotiations or consultations shall be related to the concessions to be offered by the Government of Brazil as compensation for the modifications and
withdrawals of concessions at present specified in Schedule III, and to any requests made by interested contracting parties for other or additional compensation with a view to reaching a satisfactory adjustment consistent with the requirements of paragraph 2 of Article XXVIII.

2. Part IV of the General Agreement, including Article XXXVI:8, is applicable to the negotiations between Brazil and the contracting parties which have accepted the Protocol amending the General Agreement on Tariffs and Trade to Introduce a Part IV on Trade and Development; and other contracting parties, negotiating with Brazil, likewise accept the principle enunciated in Article XXXVI:8 as applicable to the negotiations.

3. The negotiations or consultations mentioned above shall be completed before 29 February 1968.

4. Pending the entry into force of the results of the negotiations or consultations mentioned above, the other contracting parties will be free to suspend concessions initially negotiated with Brazil to the extent that they consider that adequate compensation, bearing in mind the provisions of paragraph 2 of this Decision, is not offered within a reasonable time by the Government of Brazil (subject to the right of any third contracting party having a principal supplying interest or a substantial interest therein to withdraw substantially equivalent concessions initially negotiated with such other contracting parties).

5. Except as may be otherwise provided in this Decision, the negotiations or consultations mentioned above shall be conducted in conformity with the relevant provisions of Article XXVIII.