GENERAL AGREEMENT ON
TARIFFS AND TRADE

Working Party on Trade Arrangements between
India, the United Arab Republic and Yugoslavia

DRAFT REPORT

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

"To examine the Trade Expansion and Economic Co-operation Agreement between India, the United Arab Republic and Yugoslavia, signed on 23 December 1967 and set out in L/2980 and Add.1, in the light of all relevant provisions of the General Agreement, having regard to the objectives of the CONTRACTING PARTIES with respect to trade expansion among developing countries and taking into account the discussion in the Council; and to report to the Council."

The Working Party met from 6 to 12 June 1968 under the chairmanship of Ambassador H. Gros Espiell (Uruguay). It had before it the text of the Trade Expansion and Economic Co-operation Agreement (L/2980/Add.1), the communication (L/2980) from the three participating States drawing the contracting parties' attention to the Agreement, and the debate in the Council on 27 and 28 March 1968.

Opening statement on behalf of the participating States

2. In his opening statement, the full text of which is contained in Annex A, the representative of India, speaking for the three participating States, referred to the opening statement made on behalf of the three countries in the Council as the basic statement of their position (see Annex B). He recalled the recommendation often made to developing countries that they adopt measures of self-help in trade expansion and recapitulated the desire of the three countries to make a contribution towards giving effect to that recommendation. In making a start, the three countries had been motivated by a desire to take practical steps, and the Agreement gave effect to an important objective of the CONTRACTING PARTIES. Further, these negotiations had been based on request lists initially exchanged in the context of the Kennedy Round, and the agreement thus embodied a more intensive effort on their part to complete the negotiations which had been started in the GATT forum but which had not been completed at that time. Moreover, from the very beginning, the three countries had regarded their agreement as part of wider efforts among developing countries in the field of economic co-operation, and for that reason they had kept open the possibility of an extension to other developing countries, on a basis of mutual benefit, of the tariff concessions exchanged among them.
3. After explaining the way in which the Agreement was intended to foster a rational expansion of production and trade in the three countries, the representative of India drew attention to the care that had been devoted to selecting products other than traditional exports of the participating countries with a view to ensuring that the Agreement would to a maximum extent be trade-creating; this approach explained the relatively modest present trade coverage of products included in the Agreement and also would minimize the risk of damage to the trade of any other country. He emphasized moreover, that Article V of the Agreement provided for full and prompt opportunities for consultations if damage should arise; and in this connexion he reiterated the earlier assurances of the three countries, in their communications to the Director-General, that they were ready to consult with any contracting party in any case of practical difficulty.

4. On the question as to which countries were eligible for accession to the Agreement, he emphasized that in the absence of an internationally agreed list of developing countries, the description of eligible developing countries contained in Article IX of the Agreement ("members of the Group of 77") had been adopted as a simple, pragmatic way of indicating the scope for accession, but he assured the Working Party that this would not exclude the possibility of the three countries engaging in similar efforts with other developing countries in the wider framework. In fact, the three countries were participating in the work of the Trade Negotiations Committee for Developing Countries, where request lists were being exchanged with some such countries.

5. As for the compatibility of the Agreement with the provisions of GATT, he suggested that, as a wider scheme would eventually come before the CONTRACTING PARTIES for appropriate action when the Trade Negotiations Committee for Developing Countries completed its work, and as it was the intention of the three countries to integrate the concessions of the present Agreement with the outcome of the negotiations in the Trade Negotiations Committee, the appropriate solution might be for the CONTRACTING PARTIES to reserve their final view about the legal framework until that time.
Discussion

6. Members of the Working Party welcomed the initiative of three countries in endeavouring to work out new techniques of co-operation among developing countries in the interests of trade expansion. They were encouraged to see that practical effect had been given to the long-standing recommendation that developing countries should devise measures of self-help.

7. In the discussion which followed, certain members of the Working Party, whilst appreciating that the Agreement had been kept open to the possibility of wider participation, took exception to the formula contained in Article IX of the Agreement determining which developing countries should be eligible for accession to the Agreement. They noted that several contracting parties which regarded themselves as developing countries, and which actively participated in the GATT Trade Negotiations Committee for Developing Countries, would be excluded from accession by the formula in the Agreement. The assurance given by the three countries that such countries might obtain the benefit of the concessions through wider arrangements now being worked out went some way to overcome their concern, but they felt, nevertheless, that the formula chosen was in their view, inappropriate in a GATT context and unnecessary in view of the past GATT practice of allowing each country to make its own determination as to whether it wished to be regarded as a developing country. At best, it was feared, the intention expressed by the three countries to integrate the concessions in a wider framework offered a rather roundabout and uncertain possibility to countries not members of the group mentioned in Article IX. The three countries, in reply, referred again to paragraph 9 of their statement (see Annex A).

8. Several members of the Working Party expressed concern as to whether, apart from strictly legal considerations, it was in the interests of the developing countries themselves to begin a process which might lead to a fragmentation of trade and the creation of a new network of special trade relationships that might in the end prove restrictive and divisive. They felt that this subject warranted further discussion in the wider interest of trade expansion and economic co-operation possibly in some GATT body specially devoted to the problems of developing countries. It was, however, agreed that it was outside the terms of reference of the Working Party to make any recommendation on that subject.
9. Many representatives expressed a willingness to seek a way of affording the three countries an opportunity to give effect to their Agreement. Several representatives felt that, because of the inconsistency of the Agreement with the basic most-favoured-nation provision of Article I, which in their view was not overcome by the adoption of Part IV of the General Agreement, legal cover could only be provided by means of a decision of the CONTRACTING PARTIES. Further in their view, the Agreement in question not only established new preferences in favour of developing countries, but also confined those preferences to the trade of participating States, to the exclusion of all other developing countries. As to the form of the decision, members were willing to take into account the possibility that the Agreement might, as the participating States contended, be regarded as a step towards a wider arrangement among developing countries along the lines recommended by the CONTRACTING PARTIES. For their part, the participating States indicated that they were willing to accept a decision which, while reserving judgment in regard to the legal framework, allowed the three countries to proceed with the implementation of the Agreement under what might be described as a "green-light" decision. They pointed out that in the past the CONTRACTING PARTIES had taken a similar flexible view on numerous past occasions. Most members of the Working Party were agreeable to this suggested course of action.

10. In considering the conditions and procedures which should attach to a decision authorizing application of the Agreement, members of the Working Party noted that they would want assurances concerning the willingness of the participating States to consult in the event of injury to trade of non-participating contracting parties. They also attached importance to the inclusion of provisions for periodical review of the operation of the Agreement, noting in particular that they would wish to have an opportunity to consult in advance concerning any proposed extension in the scope of the Agreement or any other modifications. Further, they believed that the decision should permit review of the question whether to extend or terminate the authorization, or to modify its terms, periodically after an initial short period which would allow time for work to be advanced on the multilateral arrangements now under study.
Conclusion

11. In the light of this discussion, the Working Party prepared the decision contained in Annex B. As it had been pointed out that Part IV of the General Agreement had not been accepted by all contracting parties, it was recognized that the reference to Part IV in the second paragraph of the preamble could not create any new obligations for countries which have not accepted Part IV. The Working Party recommends the draft decision to the Council for appropriate action.

Annex A - Statement by the representative of India to the Working Party (to be inserted in final document).

Annex B - Statement by the representative of Yugoslavia to the Council (to be inserted in final document).
ANNEX C

Draft Decision

CONSIDERING:

1. That the Governments of India, the United Arab Republic and Yugoslavia have notified the CONTRACTING PARTIES that they have concluded a Trade Expansion and Economic Co-operation Agreement (hereinafter referred to as the "Agreement"), dated 23 December 1967, and effective 1 April 1968, the stated objectives of which are to strengthen mutual economic co-operation, to increase trade exchanges between the three countries (hereinafter referred to as the "participating States") and to contribute to the development of international trade;

2. That a principal aim of the CONTRACTING PARTIES is promotion of the trade and export earnings of developing countries for the furtherance of their economic development and that, in pursuit of this aim, Part IV of the General Agreement is specifically devoted to Trade and Development;

3. That developing countries have been encouraged by the CONTRACTING PARTIES to explore the possibility of negotiating a multilateral exchange of tariff concessions among developing countries, and that the Trade Negotiations Committee for Developing Countries is actively engaged in the preparation of negotiations between these countries directed to this end;

4. That the participating States have drawn attention to their intent:

   (a) To create to a maximum extent new and additional trade possibilities especially in non-traditional products, and to avoid undue injury to the trading interests of other contracting parties;
(b) To seek the extension of the concessions embodied in the Agreement to all other developing countries by appropriate negotiations and to integrate these concessions, if possible, within the framework of multilateral arrangements elaborated within the Trade Negotiations Committee for Developing Countries which will be reported to the CONTRACTING PARTIES for their consideration in due course;

(c) To adapt or modify the Agreement as may be appropriate in the event of adoption of a general multilateral scheme of trade and economic co-operation among developing countries.

5. That the participating States have declared their readiness to consult with any contracting party which considers its trade to be adversely affected by the operation of the Agreement, and to report to the CONTRACTING PARTIES concerning developments under the Agreement.

TAKING NOTE:

That the Agreement accords to certain goods originating in the territories of participating States upon importation into the territories of other participating States advantages with respect to customs duties which are not accorded to like products originating in the territories of other contracting parties, and that the Agreement may be modified or extended by mutual agreement;

AND RECOGNIZING:

That it is not possible at the present time to assess fully the implications of the Agreement in terms of its stated objectives and its effects on the trade of other contracting parties.

The CONTRACTING PARTIES (Acting under the provisions of Article XXV:5)
(Acting under the appropriate provisions of the General Agreement)

DECIDE:

1. That notwithstanding the provisions of Article I:1 of the General Agreement, the three participating States may implement the Agreement, subject to the following conditions and procedures:
(a) The participating States shall consult with any contracting party which considers its trade to be adversely affected by the operation of the Agreement.

(b) The participating States shall report on any proposed modification in the scope or provisions of the Agreement and upon request consult with the CONTRACTING PARTIES thereon;

(c) This Decision shall be reviewed at the twenty-sixth session of the CONTRACTING PARTIES on the basis of a report by the participating States on the operation of the Agreement, with a view to deciding on its extension, modification or termination, as may be appropriate, taking account in particular of progress achieved in the negotiations conducted within the framework of the Trade Negotiations Committee of Developing Countries and of the contribution of the Agreement to the objectives set out above. In case of extension or modification of the Decision, the operation of the Agreement shall be subject to annual review.

2. That this Decision shall not be construed as affecting any right of any contracting party under any provision of the General Agreement.