ADMINISTRATIVE AND FINANCIAL QUESTIONS

Staff Regulations and Rules and Financial Regulations and Rules for GATT

Note by the Director-General

I. INTRODUCTION

1. At its meeting in May 1981, the Committee on Budget, Finance and Administration requested the secretariat to provide additional information in connexion with its suggestion that the time had come for the GATT to have Staff and Financial Regulations and Rules of its own, instead of continuing to apply the United Nations (UN) Regulations and Rules. This suggestion must be examined in the context of GATT's position in, and relationship to, what is known as the UN "family" and the "common system".

II. THE UN FAMILY, SPECIALIZED AGENCIES AND THE COMMON SYSTEM

2. The UN "family" is composed of eighteen different organizations, each with its own separate legal personality, governing body and executive head. Out of the seventeen members of the family (excluding the UN itself), fifteen have concluded a formal agreement with the UN as defined by Article 57(2) of the United Nations Charter, and are considered as specialized agencies. 1/ The International Atomic Energy Agency (IAEA) has concluded a special agreement which does not give it the status of specialized agency. GATT has not concluded any type of agreement with the UN.

3. Out of the fifteen organizations which are specialized agencies, four do not apply common personnel standards and therefore do not participate in the "common system". These are: the International Bank for Reconstruction and Development (IBRD), the International Monetary Fund (IMF), the International Finance Corporation (IFC) and the International Development Association (IDA).

1/ See Annex.
4. The remaining eleven organizations, namely the International Labour Organisation (ILO), the Food and Agriculture Organization of the United Nations (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Civil Aviation Organization (ICAO), the World Health Organization (WHO), the World Meteorological Organization (WMO), the Inter-Governmental Maritime Consultative Organization (IMCO), the Universal Postal Union (UPU), the International Telecommunication Union (ITU), the World Intellectual Property Organization (WIPO) and the International Fund for Agricultural Development (IFAD), as well as IAEA and GATT, have agreed to implement similar provisions regarding the management of their respective organizations and, in particular, salaries, allowances and pensions. They are, therefore, considered as participants in the common system. Including the UN itself, there are thus fourteen organizations in the common system.

5. Out of these fourteen members, thirteen participate in the UN Pension Fund, while UPU has a pension fund of its own. Three organizations (UN, ICAO and IMCO) submit their non-pension fund disputes to the UN Administrative Tribunal, whereas the eleven other organizations submit them to the ILO Administrative Tribunal. All organizations submit their pension fund disputes to the UN Administrative Tribunal, except UPU which submits them to the ILO Administrative Tribunal.

6. As mentioned above, the GATT has no separate or formal agreement with the UN regarding its status within the UN family. However, on the basis of exchanges of letters between the UN and the GATT, GATT has always been considered as being de facto part of the UN family and it has been treated like a specialized agency for co-ordination purposes.

7. Consultations are regularly held among all members of the UN family to provide administrative co-ordination. The machinery for this purpose is, principally, the Administrative Committee on Co-ordination (ACC), which is attended by the Executive Heads of the various organizations under the Chairmanship of the UN Secretary-General, and its subsidiary organs which are the Consultative Committee on Substantive Questions (CCSQ) and the Consultative Committee on Administrative Questions (CCAQ), composed of administrative representatives of the organizations.

III. STAFF AND FINANCIAL REGULATIONS AND RULES

8. Each of the eighteen organizations which form part of the UN family, except GATT, have Staff Regulations and Staff Rules of their own. The Staff Regulations embody the fundamental conditions of service and the basic rights, duties and obligations of the staff members of these organizations, and are determined by their respective governing bodies.

9. The provisions of the Staff Regulations are implemented through the Staff Rules. The Staff Rules are established by the Executive Heads of each organization and must, perforce, be consistent with the provisions of the Staff Regulations under whose authority they are drawn up.
10. The Staff Rules of the various organizations may present certain differences, depending on the nature of the activities performed, historical development and the location of headquarters and branch offices. Moreover, identical regulations and rules do not necessarily mean identical personnel policies in every respect.

11. As in the case of Staff Regulations and Rules, all the organizations in the UN family, except GATT, have their own Financial Regulations and Rules. The Financial Regulations and the Financial Rules govern the administration of the financial activities of the various organizations. Here again, as for the Staff Regulations and Rules, the Financial Regulations of the various organizations are basically similar, whilst the Financial Rules are adapted to the nature of the activities performed by the organizations.

IV. THE POSITION OF GATT

12. According to the Final Act of the Havana Charter of 1948 establishing the International Trade Organization (ITO), this new organization was to become a Specialized Agency like the other organizations referred to above. Article 86 of the Havana Charter is worded as follows:

"Relations with the United Nations

1. The Organization shall be brought into relationship with the United Nations as soon as practicable as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations."

13. Annexed to the Final Act of the Havana Charter is a Resolution of the United Nations Conference on Trade and Employment establishing an Interim Commission for the International Trade Organization (ICITO). The Annex to this Resolution outlines the functions of ICITO and states that it shall, inter alia, "submit ... documents and recommendations ... relating to ... draft financial and staff regulations".

14. Thus, the governments participating in the Havana Conference clearly expected ITO to have its own Staff Regulations and Rules and Financial Regulations and Rules and empowered ICITO to draft them.

15. Although, pursuant to the above instructions, the ICITO secretariat did prepare draft staff and financial regulations for ITO in the course of 1949, the non-ratification of the Havana Charter interrupted these activities. As for itself, ICITO continued to apply provisionally the UN Regulations and Rules.

16. The non-ratification of the Havana Charter strengthened the ties between ICITO and GATT. The General Agreement on Tariffs and Trade, which had been negotiated concurrently with ITO, entered into force on
1 January 1948 through the Protocol of Provisional Application and, at their First Session in March 1948, the CONTRACTING PARTIES decided that secretariat services for GATT should be supplied by ICITO. In fact, as of 1950, this remained the only role of ICITO since the other functions had lapsed through the non-ratification of the Havana Charter.

17. Thus, with the emergence of GATT as the only quasi-permanent body in the trade field, the CONTRACTING PARTIES decided in 1950 that, henceforth, the ICITO/GATT secretariat should take over the functions performed heretofore on its behalf by the various UN offices, but instructed the Executive Secretary to continue to be guided by UN Staff and Financial Regulations, insofar as these Regulations met the requirements of the secretariat.

18. In 1957 the CONTRACTING PARTIES, on the initiative of the Delegations of Brazil and the Federal Republic of Germany, instructed the Executive Secretary of GATT to submit draft Staff Regulations and Rules "which should be based on the United Nations Staff Rules and Regulations with such modifications which, in his (the Executive Secretary's) opinion, would be needed in view of the small size of the GATT secretariat". The Executive Secretary was also expected to submit for the 1958 session of the CONTRACTING PARTIES draft Financial Regulations.

19. Pursuant to these instructions, Staff and Financial Regulations and Rules were in fact drafted. But although the matter was discussed at the 1958 and 1959 sessions of the CONTRACTING PARTIES, it was not pursued and the Executive Head of GATT continued to apply the UN Staff Regulations and Rules and the UN Financial Regulations and Rules.

20. In 1970, in response to a request by the GATT Staff Council, the CONTRACTING PARTIES approved the continued application to the GATT of the above-mentioned Regulations and Rules. The present status is, therefore, that the Director-General applies the UN Staff and Financial Regulations and Rules, including amendments by the UN General Assembly and the Secretary-General of the UN, and has sought the approval of the CONTRACTING PARTIES for any deviation from these Regulations and Rules.

V. SUMMARY AND CONCLUSIONS

21. To summarize:

(a) The reason for the absence of separate Staff Regulations and Rules and Financial Regulations and Rules for the GATT is to be found in the historical development of this institution. GATT - and its administrative infrastructure, namely ICITO - was, at the outset, considered as a provisional organization. When Governments were negotiating the Havana Charter, they expected ITO to be established and to regulate world trade relations in the same way as IBRD and IMF would eventually regulate other aspects of international economic
life. Therefore, pending the ratification of the ITO Charter, Governments avoided providing GATT with institutional backdrops of its own, over and above those provided by ICITO. However, with the non-ratification of the Havana Charter, this provisional set-up was prolonged and given an extended lease of life. Now, more than a quarter of a century later, it can be assumed that GATT has acquired a quasi-permanent standing (notwithstanding the Protocol of Provisional Application).

(b) This being the case, it would seem only natural for GATT to be provided with its own administrative infrastructure, as is the case for all the other organizations in the common system.

(c) The provision of separate Staff Regulations and Rules and Financial Regulations and Rules cannot be construed as a departure from the common system. By removing an anachronistic anomaly, GATT would merely be put on the same footing as all the other organizations in the common system, all of which have their own Staff and Financial Regulations and Rules.

(d) The CONTRACTING PARTIES have recognized the necessity of separate Regulations and Rules for GATT, since they have raised this issue themselves on various occasions.

(e) The present situation presents serious drawbacks since it forces the CONTRACTING PARTIES to accept decisions automatically; not only those of the UN General Assembly as far as the Staff Regulations are concerned, but also those of the UN Secretary-General regarding the Staff Rules, whether or not these are applicable to the special circumstances of GATT. In this connexion, the difference in membership between the UN and GATT should be borne in mind.

(f) The purpose of the present proposal is, therefore, to strengthen the authority and prerogatives of the CONTRACTING PARTIES and to give them control over the administration of their own institution by providing them with their own Staff and Financial Regulations and Rules.

(g) The Regulations and Rules to be drafted for submission to the CONTRACTING PARTIES would be based, mutatis mutandis, on the Regulations and Rules of the UN and of the organizations within the common system, with whatever modifications are dictated by the requirements of GATT.

22. In conclusion, the Director-General proposes to initiate preparatory work on the drafting of GATT Staff Regulations and Rules and Financial Regulations and Rules for consideration by the Committee on Budget, Finance and Administration. It is understood that GATT, in the meantime, would continue as heretofore to apply the UN Staff and Financial Regulations and Rules.

1/ It should be noted that even today the range of membership of IBRD and IMF is different from that of other specialized agencies.
ANNEX

ARTICLES 57 AND 63 OF THE UNITED NATIONS CHARTER

Article 57

"1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

"2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies."

Article 63

"1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

"2. It may co-ordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations."