"1/ There is no internationally accepted definition of the term "agriculture" as used in trade. The General Agreement does not define "agriculture". For purposes of negotiations, it was agreed in the Multilateral Trade Negotiations and in previous rounds, that agricultural products in general were deemed to be products falling within Chapters 1 to 24 inclusive of the CCCN (MTN/AG/7). Participants were free to indicate differences between this definition and their own. Certain countries indicated that in addition to the above products, they considered one or more products under one or more of the following CCCN chapters to be agricultural products: 29, 31, 33, 35, 38, 39, 44, 50, 53, 54, and 55; while one country notified that fish, marine mammals and products thereof (Chapters 2, 3, 5, 15, 16, 21, 23) should not be regarded as agricultural products for the purpose of the MTN (MTN/AG/W/30-36 and 40). No two of these notifications had the same definition."

In footnote 1, add "Japan" to list of countries cited and add "See also L/5202 and L/5625".
Add the following before "3. Article XVII":

"Article III

Article III contains the national treatment obligation as regards internal taxes and regulations on products. The provisions of this Article are complex, as could be expected in any attempt to deal with the various internal measures governments can take to protect their domestic production against imports.

With the exception of Article III:10 which relates to cinematograph films, there are no distinctions made in Article III between agricultural and non-agricultural products. There are two other exceptions, however, in the Article; one in paragraph 8(a) relating to government procurement, the other in 8(b) which allows the payment of subsidies exclusively to domestic producers, including that from the proceeds of internal taxes or charges applied consistently with the provisions of Article III.

Over the years, there have been several complaints that certain measures applied by certain contracting parties were not in conformity with this Article. Some of these complaints resulted in formal recourses to Article XXIII:2 and a few of these cases related to agricultural products.

A working party was established in 1949 to examine the discriminatory internal taxes imposed by Brazil in the light of Article III\(^1\). Spirituous beverages of foreign origin were subject to higher rates of consumption taxes in that country than domestic products, as were also foreign watches, clocks, playing cards and tobacco. The working party agreed that the taxes imposed by the 1945 Brazilian law were permitted by the terms of Brazil's Protocol of Provisional Application\(^2\). However, the members of the working party disagreed on the legal status of amendments made to the tariff rates
thereafter in 1948: whether the proportionate relationship between the rates on imported and domestic products should be retained in absolute or relative terms and whether trade damage must be demonstrated before a breach of Article III can be alleged. Eventually, Brazil abolished the tax discrimination in 1957\(^2\).

In 1978, there was a report from the Panel, which examined the complaint by the United States, that the EEC import deposits and purchasing requirements affecting non-fat dry milk and certain animal feed proteins were not consistent with the EEC's obligations under the GATT, including *inter alia* Article III\(^1\). The Panel concluded that the various products used for adding protein to animal feeds could not be considered as 'like products' within the meaning of Article III but that vegetable proteins and skimmed milk powder were technically substitutable in terms of their final use and that the effects of the EEC measures were to make the latter product competitive with these vegetable proteins. The Panel concluded that the EEC measures, which were intended to ensure the sale of a given quantity of skimmed milk powder, constituted an 'internal quantitative regulation' and protected this product in a manner contrary to the principles of Article III:1 and to the provisions of Article III:5 second sentence. The Panel further concluded that the EEC measures accorded imported corn gluten less favourable treatment than that accorded corn gluten of national origin (to which the measures did not apply), in violation of Article III:4.

In 1981, a Panel, which was established to examine a complaint by the United States on Spanish measures concerning domestic sales of soybean oil, issued a report containing findings in relation to the consistency of these measures with *inter alia* Article III\(^1\). During the examination of this report by the Council, several delegations expressed disagreement with the Panel's findings and the Council 'took note of' - but did not adopt the report\(^4\).

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\(^1\) See Annex I
\(^2\) See discussion under Chapter I, Section A 8(a) existing legislation
\(^3\) L/729, SR.12/14 p.99
\(^4\) C/M/152"
"Another important feature of the agricultural sector is the existence of State-trading enterprises, marketing boards, or monopolies in numerous countries. Article XVII:4(a) requires a contracting party to notify the products which are imported or exported by any 'State enterprise' it establishes or maintains, or by any enterprise to which it grants 'exclusive or special privileges', including marketing boards. The terms within quotation marks are not specifically defined in the Article. Paragraph 4(d) of Article XVII exempts the disclosure of 'confidential information' that, inter alia, 'would prejudice the legitimate commercial interests of particular enterprises.'

Over the last four years, twenty-four countries have submitted notifications on the basis of reporting procedures adopted by the CONTRACTING PARTIES. Six of these notifying countries stated that they had no State-trading enterprises in the sense of Article XVII. Two countries reported that their whole foreign trade is carried out by State-trading enterprises. The remaining sixteen notifying countries reported a total of ninety-six enterprises of which sixty-eight were concerned with agricultural products. It is apparent that not all contracting parties are fulfilling their notification requirements. Moreover, there is a lack of adequate detail provided in some of the notifications.

The notifications reveal that the majority of State-trading enterprises appear to be in the agricultural sector; however no clear overall picture emerges as to the extent of their effective control over agricultural trade. The enterprises notified differ markedly from country to country, and even from enterprise to enterprise as to size, product coverage, volume of trade engaged in, relationship to the State, etc. They run the range from producers' cooperatives to government agencies. Sometimes it is indicated that an enterprise has statutory powers to be the sole importer and/or exporter or that it has licensing authority. Whereas in other cases, the powers and influence of an
enterprise are less clearly defined but no less effective, due to its marketing position, or trade with private traders etc. Moreover, the presence of a State-trading enterprise in a country may not always be the only or single most important factor influencing trade in a particular sector. The effect of governmental measures such as export taxes, quotas, high tariffs, phyto-sanitary restrictions or internal tax discrimination, may also have to be taken into consideration. It would appear from the notifications, that State-trading enterprises are about evenly divided among those which control exports, those which control imports and those which control both. They are particularly prevalent in the grains and alcohol sectors and many exist also in the dairy, tobacco and fruit sectors. Oftentimes the stated objectives of governments in establishing these enterprises is to ensure the orderly marketing of domestic farm production and adequate supplies to consumers.

Besides the obligation to notify, Article XVII also specifies that State-trading enterprises shall, in their purchases or sales involving either imports or exports, act in a non-discriminatory manner 'as prescribed in the Agreement for governmental measures affecting imports or exports by private traders'. The enterprises are also required to 'make any such purchases or sales solely in accordance with commercial considerations'.

2/ Notification procedures contained in BISD 9S/184 and BISD 11S/58. Notifications on which information in this sector is based are contained in L/4623 Add.5, 9 and 16, L/4933 Add.2, 3, 8 and 9, and L/5104 Add.1-15.
3/ Belgium, Luxembourg, Denmark, Ireland, Malawi, and Yugoslavia.
4/ Czechoslovakia and Romania.
5/ Numbers within parentheses indicate enterprises notified that deal with agricultural products. The symbol '+' thereafter indicates that one or more enterprise dealing with non-agricultural products was also notified. Australia (9), Austria (3+), Canada (5), Finland (2), Federal Republic of Germany (1+), France (2+), Japan (4+), New Zealand (8), Norway (2+), Peru (4+), South Africa (17+), Sweden (1), Switzerland (2), Tunisia (7+), United Kingdom (0+), and United States (1+)."
Page 7:

In first sentence under "4. Article XIX", change "108" notifications to "109". In footnote 6, after "Canada", change "(18)" to "(19)".

Page 13:

In the second to the last paragraph, change reference to waiver from "Article XI:1" as regards Turkey-Stamp Duty to "Article II:1". Also, add "1/" after "United States - Agricultural Adjustment Act" and insert at bottom of the page "1/ See Annex II". Revise numbering of footnotes which follow as appropriate.

Page 14:

In last paragraph after first sentence, add:

"In 1949, a working party concluded that in view of the 'mandatory nature' of a 1945 Brazilian law, 'the taxes imposed by it, although discriminatory and hence contrary to the provision of Article III were permitted by the terms of the Protocol of Provisional Application and need not be altered so long as the General Agreement was being applied only provisionally by the Government of Brazil'. However, the members of the working party disagreed as to whether subsequent tariff changes imposed by Brazil in 1948 were permitted under its Protocol of Provisional Application. At bottom of page add "3a/ See Annex I and discussion under Chapter I Section A 3. Article III.""

Page 15:

Change reference to "L/5073" in footnote 5 to "L/5208".

Page 21:

Last paragraph and footnotes referring thereto should read as follows:
"There are two main obligations under XVI:1. The first is to notify the extent, nature and effect of subsidies, including any form of income or price support, which operate directly or indirectly to increase exports or reduce imports. This obligation to notify applies to subsidies on agricultural and non-agricultural products.

Over the last four years, 19 countries and the European Communities have submitted notifications on the basis of current reporting procedures adopted by the CONTRACTING PARTIES. Seven of these countries reported that they did not maintain any measures within the meaning of Article XVI:1. Two countries notified subsidies only in non-agricultural sectors. One country notified a general system of tariff drawbacks. The remaining 9 countries and the European Communities notified subsidies essentially in the agricultural sector. These subsidies included: production aids, income support, structural aids, price support guarantees, underwriting arrangements, consumer price support, freight subsidies, storage aids, and export refunds. These notifications tend to imply that most subsidies are concentrated in the agricultural sector. However, it is apparent that not all contracting parties are fulfilling their obligation to notify under XVI:1. Furthermore, it has been stated that 'serious gaps have been found to exist' in the responses to questionnaire L/5102; in particular, 'practically no details on the situation in the industrial sector' have been provided. It should also be noted that measures which may have the effect of export subsidies, e.g. non-commercial credit facilities are seldom notified.

2/ BISD 98/193 and BISD 118/58. Latest notifications are contained in L/4622, L/4932, and L/5102 series. See also p.18 of C/W/373.
3/ Chile, Czechoslovakia, Denmark, Luxembourg, Malawi, Romania and Tunisia.
4/ Belgium and Federal Republic of Germany.
5/ Yugoslavia.
6/ Austria, Australia, Canada, EC, Finland, Norway, South Africa, Sweden, Switzerland and United Kingdom. Australia, South Africa, and Switzerland notified subsidies in the non-agricultural sector as well.
7/ SCM/8"
Page 23:

Delete last line in first paragraph and add the following:

"The Council reviewed the situation in September, 1981 and decided to establish a Working Party which will report to the Council not later than 1 March, 1982. 3a/"

3a/ C/M/150, L/5245"

Page 26

Add the following in footnote 4:

"This resolution urged members of the United Nations to adopt as general guide in intergovernmental consultation or action with respect to commodity problems, the principles laid down in the chapter relating to intergovernmental commodity agreements contained in London Draft Charter for an International Trade Organization."

Page 27:

In footnote 3, delete document numbers and replace with "L/4914/Rev.5 and Add.1"

Page 29:

Add the following under "2. Arrangement Regarding International Trade in Textiles":

"This arrangement regulates international trade in textile manufactured products of cotton, wool, man-made fibres or blends thereof. Measures taken under the provisions of this Arrangement may affect the market situation for cotton and wool, which are not included as agricultural products for purposes of this paper."
Add the following after last paragraph under "6. Subsidies Code":

"The United States has requested consultations with the EEC concerning its export subsidies on wheat flour, within the context of Article 12 of the Agreement. Previously the two parties have held consultations on the matter under Article XXII:1 of the General Agreement 1/.

1/ L/5231, L/5014"

Page 35:

Add the following after last paragraph:

"IV. Summing-up

In conformity with the mandate given by the Consultative Group of 18, this paper has sought to analyze the rules of the GATT, including the Codes, as they applied to agriculture, highlighting any differences in obligations as between agriculture and industry. The paper reveals that there are differences between agricultural and industrial trade with respect to certain rules of the GATT and how they are applied. The differences can be categorized as follows:

1. Special references to and exceptions for agriculture drafted in the provisions of the General Agreement itself (e.g. Articles XI:2, XVI:3 and XX:(b) and (h) );

2. Derogations from GATT obligations, granted through waivers, or included in the provisions of Protocols of Provisional Application or Accession (e.g. U.S. Agricultural Adjustment Act waiver, Protocol of Accession of Switzerland, grandfather clauses);
3. Lack of observance or application of certain provisions of the GATT (e.g. low level of tariff bindings - Article II, and residual restrictions - Article XI);

4. Divergent interpretations of certain provisions of the GATT (e.g. Articles III, XVI, and XXIV);

5. Measures not expressly provided for in the General Agreement (e.g. variable levies, non-commercial financing facilities, voluntary restraint agreements, long-term arrangements)

These differences must be considered in the light of two factors. The first is that the information on which this paper has been based is limited to those governmental measures that have been reported to or raised in the GATT by contracting parties. The reality of agricultural trade policy may or may not be much different from this visible protection. Despite recent improvements in the mechanisms concerning notification, consultation, dispute settlement and surveillance in the GATT, the agricultural trade sector is not completely transparent.

The second factor that must also be taken into account is that the standard, against which the treatment of agricultural trade is to be compared, is not a perfect one. It has been noted already that many Articles of the General Agreement, which do not distinguish between agricultural and non-agricultural trade, are themselves exceptions to other GATT Articles, and that, in addition, certain provisions within some of the Articles are exceptions to other provisions. The General Agreement also contains exceptions for certain non-agricultural products (e.g. films), and measures involving non-agricultural products may be covered under exceptions regarded as "agricultural", (e.g. Articles XVI:3 and XX:(b) and (h) ). Derogations from GATT obligations have been granted through waivers and Protocols of Provisional Application or Accession, on measures affecting mostly non-agricultural products. Most importantly, GATT rules are not always observed in the non-agricultural sector as well. A large proportion of trade in textiles and clothing
has been regulated by special arrangements involving departure from the rules of GATT. Sectoral difficulties have been encountered in trade in steel, automobiles, shoes, consumer electronic products, and certain petrochemicals. Many of these have been handled through bilateral agreements or other actions falling outside the scope of the GATT rules¹/.

¹/ CG.18/W/61 p.4 "

Page 36:

Under "B. Panels and other actions under XXIII:2" add where appropriate:

"France/Brazil internal taxes on, inter alia, spirituous beverages and manufactured tobacco (BISD II/181, 186) 1949."


Page 37:

In last line delete "(pending)" and insert "(L/5198)" 1981.