WORKING PARTY 2 ON ARTICLE XVIII

SECTION OF DRAFT REPORT RELATING TO CONSIDERATION OF PROCEDURES UNDER ARTICLE XVIII WITH RESPECT TO MEASURES PERMITTED UNDER THE PROTOCOL OF PROVISIONAL APPLICATION AND THE ANNECY PROTOCOL OF ACCESSION

1. At the fourth meeting of the CONTRACTING PARTIES the representative of Pakistan raised the question whether a contracting party need notify under Article XVIII any measure which, though contrary to the provisions of Part II of the Agreement, is permitted by the provisions of the Protocol of Provisional Application. At the fourteenth meeting of the CONTRACTING PARTIES, the representative of Pakistan again raised, in connection with the statement submitted by the Government of Ceylon, the question of procedure under Article XVIII, both with respect to notification and to action by the CONTRACTING PARTIES in these circumstances. The Working Party was required by its terms of reference to take account of the points raised in the discussion at these meetings and to report thereon to the CONTRACTING PARTIES.

2. In considering this subject, the Working Party had the advantage of the participation of the representative of Pakistan, who also submitted a written statement setting forth the views of his delegation.

3. The Working Party directed its attention to the question whether a government is obliged to notify the CONTRACTING PARTIES in accordance with the provisions of paragraph 6 or 11 of Article XVIII, if the measure in question is permitted during the period of provisional application by virtue of sub-paragraph 1 (b) of the Protocol of Provisional Application or sub-paragraph 1 (a) (ii) of the Annecy Protocol of Terms of Accession. The Working Party agreed that a measure is so permitted provided that the legislation on which it is based is of a mandatory character, that is, it imposes on the
executive authority requirements which cannot be modified by executive action. There was disagreement on the question whether the date on which legislation was "existing" in terms of the Protocol of Provisional Application was the date of the Protocol or the date of signature of the Protocol by individual governments.

1. The Working Party believed that there is no obligation on the part of a contracting party to notify a measure permitted by sub-paragraph 1 (b) of the Protocol of Provisional Application or sub-paragraph 1 (a) (ii) of the Annecy Protocol. On the other hand the Working Party recognized that the provisions of Article XVIII should not be denied to a contracting party simply because the measure in question is permitted under either Protocol, as such a contracting party should be allowed to ascertain whether it will be permitted to maintain a measure for economic development during a specified period even if that period extends beyond the time when the Agreement enters definitively into force pursuant to Article XXVI. Further, if a measure existing on the date prescribed in paragraph 11 were not notified under the provisions of that paragraph, it would be continued in force after the Agreement entered definitively into force only if it had been approved by the CONTRACTING PARTIES as a new measure under paragraph 7 or 8.

5. In addition, even where a release is not requested, there would be advantages if the contracting party concerned were to inform the CONTRACTING PARTIES of any existing or new measure.

6. The Working Party therefore concluded that during the period of provisional application:

   (i) a contracting party need not notify a measure which is already exempted by virtue of sub-paragraph 1 (b) of the Protocol of Provisional Application or sub-paragraph 1 (a) (ii) of the Annecy Protocol;
(2) In case it chooses to notify the measure for the purpose of obtaining a release under paragraph 7, 8 or 12, as the case may be, the full procedures and the criteria of the relevant parts of Article XVIII would apply as if the Agreement were definitively in force. However, if as a result of examination the Contracting Parties decide that the measure should be withdrawn or modified, the Contracting Party concerned would nevertheless be free to maintain the measure during the period of provisional application only; and

(3) It would be open to the contracting party to inform the Contracting Parties of any measure for which it was not seeking a release under paragraph 7, 8 or 12 but which it was imposing or retaining in accordance with sub-paragraph 1(b) of the Protocol of Provisional Application or sub-paragraph 1(a)(ii) of the Annecy Protocol.

7. The above conclusions relate both to existing measures under paragraphs 11 and 12 and to new measures under paragraphs 6, 7 and 8. However, the Working Party considered that in practice these conclusions were unlikely to affect new measures because it is improbable that a future measure would have been required by "existing" legislation.