1. Problem

The Working Party considered the problem that arose in connection with the administration of the provisions of Article XVIII by the CONTRACTING PARTIES between sessions of the CONTRACTING PARTIES. This had received preliminary attention at the second session when the CONTRACTING PARTIES drafted a questionnaire and a suggested timetable in connection with statements in support of existing measures and also suggested a procedure to be followed in the event of any application being made for the adoption of new measures.

The further delay in the entry into force of the Charter accentuates this problem and in the absence of the permanent organisation of the I.T.O. which would administer the corresponding articles in the Havana Charter, the Contracting Parties are obliged to improvise ways and means of administering Article XVIII for a further period.

For these reasons, the Working Party considered in detail procedures that could be followed both in the case of existing measures notified by acceding governments and in relation to new measures, application for which may be made by contracting parties.

2. Existing Measures.

The Working Party has been greatly concerned with the difficulties which have occurred at the third session in reaching decisions on the existing measures notified by the present contracting parties, despite the preliminary consideration of these measures at the first and second sessions and the establishment of a procedure to be followed after the close of the second session.

In the course of consultation and discussion with the contracting parties concerned, the Working Party arrived at a more precise understanding of the type of information necessary before formulating recommendations to the CONTRACTING PARTIES. Of necessity, the discussions at Annecy have been experimental but they have demonstrated the considerable amount of time taken in obtaining sufficient information.
On the basis of this experience the Working Party considers it most desirable for the CONTRACTING PARTIES to adopt a procedure for the consideration of the measures notified by acceding governments in order that decisions may be taken on those measures with the least possible delay after the acceding governments become contracting parties.

There are two stages to be considered in connection with these measures:

(a) **Preparation for Decision.** In order that the CONTRACTING PARTIES may make decisions on the measures it is necessary for a statement in support of them to be submitted by the contracting party notifying the measures. It is essential that this information be submitted in such a form that it provides a clear indication of the extent to which the criteria and conditions of Article XVIII are met.

On the basis of the information that has been sought at this session and the experience gained during the examination of existing measures of present contracting parties, the Working Party considers that there should be available to those acceding governments which request it some assistance in the preparation of the statements to be submitted in support of those measures. This assistance could take two forms:

(i) A questionnaire listing specific information relevant to the provisions of the Article, which would form the basis of the statement in support of the measure, and

(ii) consultation with the acceding government on the preparation of that statement.

A draft questionnaire is attached to this report.

The Working Party considered that consultation prior to the preparation of the statement in support of the measures should help to avoid much of the fact-finding and investigation work which has occupied so much of the time of the Working Party at this session. If this were undertaken in the interval between the sessions it would expedite considerably consideration of the cases by the CONTRACTING PARTIES.
In order to secure as complete a documentation as possible for consideration by the CONTRACTING PARTIES, the Working Party considered that the Secretariat should be authorised to consult with acceding governments on the preparation of their supporting statements.

It is assumed that acceding governments will wish to avail themselves of such an opportunity for consultation and if that is done, the Working Party considers that the examination and formulation of recommendations on the measures will be greatly facilitated.

(b) Objections. In the consideration of existing measures the application of paragraph 7 has first to be examined. If the measures fall within the criteria set out in that paragraph the automatic approval of the CONTRACTING PARTIES is required. However, it is open to any contracting party to submit for consideration views relevant to the terms of paragraph 7(a)(2).

If the measure is considered under the provisions of paragraph 8 it is necessary for the CONTRACTING PARTIES to determine which contracting parties are materially affected by the proposed measures. Although these objections are not relevant when the measure is examined under paragraph 7 it is thought that, in order to expedite consideration of these cases, it would be desirable between regular sessions to call for any objections without awaiting consideration of the measures under paragraph 7. However, any objections would not be considered until the case was examined under paragraph 8 and would not be relevant to an examination under the provisions of paragraph 7.

It was also thought that it would delay consideration of applications if the CONTRACTING PARTIES first determined the contracting parties materially affected before inviting objections from them and that in the present circumstances all contracting parties which considered themselves to be materially affected might submit objections. However, in considering the application the CONTRACTING PARTIES would determine which
were materially affected contracting parties, objections from those only would be taken into account.

It is therefore proposed that when the statement in support of the measures has been submitted to the Chairman of the CONTRACTING PARTIES, it should be circulated to all contracting parties which should, at least one month prior to the session at which the measures are to be considered, forward any objections in terms of Article XVIII to the Chairman. These objections would be circulated to other contracting parties for their consideration prior to the meeting at which the decision is to be taken.

(c) Decision. It was considered by the Working Party that the interval of time provided in Article XVIII was sufficient to enable decisions on existing measures to be taken at a regular session of the CONTRACTING PARTIES. It was thought that in most cases a decision could be taken without delay at an early regular session if there had been consultation with the Secretariat on the preparation of the statement. The investigation and research work consequently would have been concluded prior to the meeting of the CONTRACTING PARTIES and there would also have been circulated any objections by other contracting parties.

3. New Measures.

Applications may be submitted before the next session for the application of new measures that otherwise would be contrary to the terms of the Agreement. The requirements of paragraph 10 of Article XVIII which relate to the timetable within which a decision on any such application must be given are specific. Consequently careful attention must be given to practical means by which the decision on any such application made between sessions can be given with a minimum of delay.

Procedure for the new measures was considered, as in the case of existing measures in stages.

(a) Advance Notice. In present circumstances, it would be of great value if as much advance notice as possible could be given to the Chairman of the CONTRACTING PARTIES of the intention to apply under paragraphs 7 or 8.
(b) Consultation. To save time as much information as possible should be given in the original application. For this purpose it is recommended that the same facilities for consultation with the Secretariat should be provided as in the case of existing measures, to be available on request by applicant contracting parties. Some applicants may wish to avail themselves of these facilities even before submitting a formal application and in such cases might ask for advice in the preparation of the application at the same time as advance notice is given to the Chairman. It would, however, be open to the Contracting Party concerned to consult the Secretariat at any time.

(c) Time Limits. As soon as a formal application is submitted the time limits provided in paragraph 10 of the Article will begin to apply. Within 15 days it will be necessary to advise the applicant within what period a decision will be given. It is suggested that the CONTRACTING PARTIES should delegate to the Chairman authority to determine this period. Because of the special administrative difficulties occurring between sessions it will generally not be practical for the Chairman to determine a period less than 90 days.

(d) Examination of Applications. A careful examination was made of the means by which a decision on an application could be given between sessions of the CONTRACTING PARTIES. Experience has shown that before a decision could be taken it would be necessary to have the application examined by a Working Party responsible for determining in a technical and objective way whether the provisions of the Article had been fulfilled by the application.

It was felt that for practical convenience a committee of the Contracting Parties could in the first instance examine applications submitted between sessions. Such a Committee would be responsible for making recommendations to the CONTRACTING PARTIES.

Because of the importance of securing uniformity in the administration of Article XVIII, and because of the important functions which are delegated to a Working Party
on measures under Article XVIII, it is recommended that such a committee should be established at this session, to be convened by the Chairman as necessary.

It is suggested that this committee consist of not more than 10 members and that it should be a representative sample of the Contracting Parties.

The committee would be authorised to invite for any necessary discussion representatives of the applicant government and any objecting Contracting Parties.

On receipt of an application in respect of a new measure, the Chairman of the CONTRACTING PARTIES would convene this committee at the earliest practicable date.

In the case of an application under the provisions of paragraph 3(b) or 5, the Committee would consider the application in relation to the provisions of the Article. It would also be responsible for determining initially the Contracting Parties materially affected for establishing a time schedule for the negotiations.

In the case of an application under paragraph 7, the committee would consider whether the criteria of the paragraph had been fulfilled and if so recommend a period of release. In cases where the committee decided that the criteria had not been fulfilled it would be open to the contracting party concerned to submit a further application under paragraph 8. In this case the procedures of paragraph 8 would then apply and the time limits would be effective from the date of the second application.

(e) Objections. Paragraph 8 of the Article provides that objections shall be invited from contracting parties which are determined by the CONTRACTING PARTIES to be materially affected by the proposed measure. In the present circumstances, however, it was considered that, as in the case of existing measures, it would delay consideration of the application if such a determination were made before objections were invited. It is, therefore, suggested that the Chairman should circulate copies of any application under Paragraph 8 to all contracting parties which would be asked to submit any objections they might have within a period to be determined by the Chairman.
In considering an application under Paragraph 8 the Intersessional Committee would consider whether the contracting parties which had submitted objections were materially affected or no and if so would take account of their objections in reaching a conclusion.

In making this recommendation, the Working Party wished to draw attention to the fact that the wide circulation of any such applications among contracting parties would require special care to be taken to maintain secrecy in accordance with the provisions of Paragraph 2 of the Article.

(f) **Decisions.** The Committee would be responsible for recommending to the Chairman of the CONTRACTING PARTIES the method by which its report should be considered and a decision taken by the CONTRACTING PARTIES. The following possibilities were considered most likely but it was recognised that the Committee could make recommendations to the Chairman only on the basis of the circumstances applicable in each instance.

(i) **Regular session.** In general the most practicable course would be for the Committee, in consultation with the applicant, to recommend that its report should be considered at the next regular session.

(ii) **Airmail or cable.** Some applications might be sufficiently clearly established, by a unanimous recommendation of the committee, as not to require debate in the CONTRACTING PARTIES and in these cases the summoning of a session of the CONTRACTING PARTIES would not be justified. In such cases, the CONTRACTING PARTIES could decide upon the recommendation of the Committee by airmail or cable.

(iii) **Special session.** In urgent cases it might be necessary for an application to be considered at a special session of the CONTRACTING PARTIES especially if there were a long interval before the next scheduled session. In the event of more than one application being made, it might be possible for these to be considered at the same special session.
Conclusion

It was suggested that if it is possible adequately to develop the functions of consultation and guidance by the Secretariat, the tasks of the inter-sessional committee or Working Party established during regular sessions would be considerably lightened. Eventually, it might be possible for the CONTRACTING PARTIES, without reference to a Working Party to give a decision on the basis of an application prepared after consultation and discussion with the Secretariat.

It is suggested by the Working Party that this report should be considered solely on the basis of technical experience and requirements. The problem of providing the facilities should be considered by the CONTRACTING PARTIES and the Executive Secretary in connection with related problems arising during the course of this session.

Summary

The Working Party accordingly recommends that:

(i) The questionnaire set out in Annex A be adopted as listing information to be submitted by acceding governments that have notified existing measures and by applicant contracting parties requesting approval for new measures.

(ii) The Secretariat be authorised, on request, to consult with acceding governments and contracting parties on the completion of the statements in support of existing measures or application for new measures.

(iii) The Chairman be authorised to determine the period within which a decision will be given on an application for the adoption of a new measure.

(iv) Objections to existing measures or new measures should be sought by the Chairman immediately on receipt of an application and a determination as to materially affected members should be made after receipt of these objections.

(v) Decisions in respect of existing measures notified by acceding governments should be taken at a regular session.

(vi) A committee consisting of not more than 10 members, being a representative sample of the CONTRACTING PARTIES, should be appointed at this session to consider any applications for new measures submitted by present contracting parties between regular sessions and to make recommendations thereon to the CONTRACTING PARTIES.

(vii) Decisions in respect of new measures to be taken in accordance with the procedure recommended by the committee.