Tariff Negotiations Committee

DRAFT REPORT OF THE JOINT WORKING
PARTY ON ACCESSION

1. The Working Party, composed of representatives of contracting parties and acceding governments, which was appointed by the Tariff Negotiations Committee on 3 May, has considered the recommendations of the CONTRACTING PARTIES for the incorporation of the results of the tariff negotiations in the General Agreement on Tariffs and Trade, and has examined the provisions of the Draft Protocol in the light of the explanations contained in the Report (GATT/CP.3/37) of the CONTRACTING PARTIES' Working Party on Accession.

2. The method and the time by which the present contracting parties will reach decisions as to the accession of the acceding governments received special attention. The representatives of the acceding governments explained their desire to be able to report to their governments at the close of the Annecy Conference that their accession had been definitely accepted.

Their governments had accepted the invitation to the Annecy Conference on the understanding that a decision would be taken at the end of the Session by a decision of the CONTRACTING PARTIES acting jointly. Moreover, if the decisions were to be delayed beyond the close of the Session as was proposed in the Draft Protocol there would be considerable delay in the approval of the results by their parliaments since it would not be possible to present these results to parliament for consideration until it was known whether a favourable decision had been taken by the CONTRACTING PARTIES.
3. The representatives of the contracting parties explained the reasons why it had been felt necessary to allow a certain interval to elapse after the end of the Session before contracting parties could be required to make a decision under Article XXXIII. However, in an effort to meet the views of the acceding governments a questionnaire was circulated to the contracting parties enquiring which of them would be prepared to participate in a decision under Article XXXIII respecting each acceding government at the close of the present Session. It had been ascertained from the replies to this questionnaire that it was not certain that two-thirds of the contracting parties would be able to participate in such a vote or sign the Protocol at the end of the Conference.

4. Finally, the Working Party decided to recommend to the representatives of the contracting parties that if at all possible they should obtain authorization to sign the Protocol before leaving Annecy, or alternatively that they should recommend to their governments that the Protocol be signed soon thereafter instead of waiting for the final date of November 30, 1949.

5. Paragraph proposed by the representative of the United States:

\(\text{Having regard to the anxiety expressed by the representatives of the acceding governments that decisions on accession should be taken as soon as possible, the Working Party recommends that the CONTRACTING PARTIES should instruct their Chairman to convene a special meeting of the CONTRACTING PARTIES if it should be found that the Protocol has not been signed by two-thirds of the contracting parties in respect of any acceding government within 60 days after the date of this Protocol, and that at such meeting, which should be held prior to November 30th, a roll-call vote should be taken on the decision in respect of each such acceding government.}\)
6. Other questions arising from the provisions of the Draft Protocol were discussed by the Working Party, and in several cases, where there appeared to be some possibility of misunderstanding, it was decided to incorporate notes in the Working Party's Report so as to clarify the intentions of the Protocol beyond all possible doubt. These statements are as follows:

Paragraph 4: Several members suggested that there was some doubt as to the interpretation of paragraph 4, namely, as to whether an acceding government could take advantage of the right of withholding concessions as soon as that acceding government became a contracting party, or whether it would have to wait until April 30, 1950 before exercising this right. The Working Party considered that paragraph 4 as at present drafted was quite unambiguous in this respect and that it was clear that the acceding government could have recourse to the paragraph as soon as it became a contracting party and without waiting until April 30th. Paragraph 4 is modelled on the analogous provision in the GATT - Article XXVII - which had operated with respect to the present contracting parties applying the Agreement under the Protocol of Provisional Application; it had been applied in the manner described above without leading to any difficulties or complications. In order to place the intention of the paragraph beyond doubt the words "at any time" were inserted in the first sentence.

Paragraph 5 (c): With reference to the date by which the acceding governments will be expected to give notification of measures which they wish to maintain in terms of paragraph 11 of Article XVIII, the Working Party endeavoured to ensure that no more onerous obligations would be imposed upon the acceding governments than those imposed upon the present contracting parties in September and October 1947. The date recommended is thought to allow the acceding governments a maximum of
of time in which to submit their notifications and, at the same time, to allow the contracting parties sufficient time to examine the notifications before the close of the present Session.

Paragraph 6: Referring to the last sentence of paragraph 6, a member enquired whether an acceding government could be bound by a rectification, amendment or modification before it had entered into force for the present contracting parties. He was assured that rectifications, amendments and modifications to Part I, Article XXIX and Article XXX would not place obligations upon acceding governments before those obligations were accepted by the present contracting parties, since they would not enter into force until they had been accepted by all present contracting parties; and, in the case of rectifications, amendments or modifications requiring acceptance by only two-thirds of the contracting parties before entering into force, no obligation would be placed upon the acceding governments until they had been accepted by two-thirds of the present contracting parties.

Paragraph 8 (b) It was pointed out that paragraph 8 (b) as at present drafted involved a discrepancy in the position of an acceding government as compared with a present contracting party which was inconsistent with the principle accepted by the Contracting Parties that, wherever possible, acceding governments should be in a position of equality with the present contracting parties. As the paragraph had been drafted by the Contracting Parties, an acceding government which had accepted the Agreement definitively under paragraph 8 (a) would not have been admitted to participate in a decision under paragraph 2 of Article XXXII that a present contracting party which had not accepted definitively under Article XXVI, paragraph 3, should cease to be a contracting party. Moreover, the position might also arise that a decision might be taken under paragraph 2 of Article XXXII.
that an acceding government, even if it had acceded definitively, should cease to be a contracting party because it had not accepted the Agreement under paragraph 3 of Article XXVI.

As now worded, the paragraph provides that the acceptance of the Agreement, pursuant to paragraph 3 of Article XXVI, is to be interpreted, for purposes of paragraph 2 of Article XXXII, as including accession to the Agreement under paragraph 8 (a) of this Protocol, and it is the intention of the Working Party that failure to accept the Agreement should be similarly interpreted as including failure to accede to the Agreement under this Protocol.

Paragraph 10 (a): With reference to the date of April 30, 1950, by which all acceding governments will be expected to sign the Protocol, the representative of Colombia stated that he thought there was little likelihood that his government would be able to sign earlier than September, 1950. The Joint Working Party in the light of the proposal of the Working Party of the CONTRACTING PARTIES (GATT/CP.3/37) that in case of necessity this date might be extended, recommended the CONTRACTING PARTIES be invited to agree at this session to extend the date in the case of Colombia to August 31, 1950.

Preferences: The representative of Colombia informed the Working Party that the Colombian tariff included preferential rates in favour of Ecuador and Venezuela, and asked that provision be made in the Protocol for the insertion of an Annex to the General Agreement corresponding to Annex H of the Havana Charter. The Working Party agreed that provisions should be made for the insertion of this Annex.

7. The Draft Annecy Protocol on Terms of Accession to the General Agreement, which is recommended for approval by the Committee, follows.
DRAFT ANNEXY PROTOCOL OF TERMS OF ACCESSION
TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The Governments of ........................., which are the present contracting parties to the General Agreement on Tariffs and Trade (hereinafter called "the present contracting parties" and "the General Agreement" respectively), and the Governments of ................................................................. (hereinafter called "the acceding governments"),

HAVING regard to the results of the negotiations directed towards the accession of the acceding governments to the General Agreement,

In accordance with the provisions of Article XXXIII of the General Agreement:

HEREBY AGREE upon the terms on which the acceding governments may so accede, which terms are embodied in this Protocol,

AND the present Contracting Parties DECIDE by decisions of two-thirds majorities, taken in the manner provided in paragraph 11 of this Protocol, upon the accession to the General Agreement of the acceding governments.

1. (a) Subject to the provisions of this Protocol, each of the acceding governments shall, upon the entry into force of this Protocol with respect to it, apply provisionally:
   (i) Parts I and III of the General Agreement, and
   (ii) Part II of the General Agreement to the fullest extent not inconsistent with its legislation existing on the date of this Protocol.

(b) The obligations incorporated in paragraph 1 of Article I of the General Agreement by reference to Article III thereof and those incorporated in paragraph 2 (b) of Article II by reference to Article VI shall be considered as falling within Part II of the General Agreement for the purpose of this paragraph.
(c) For the purposes of the General Agreement, the Schedules contained in Annex B to this Protocol shall be regarded as Schedules to the General Agreement relating to acceding governments.

2. Upon the entry into force of this Protocol with respect to each acceding government, that government shall become a contracting party as defined in Article XXXII of the General Agreement.

3. Notwithstanding the provisions of paragraph 12, the concessions provided for in the Schedule relating to each present Contracting Party and contained in Annex A to this Protocol shall not enter into force for that Contracting Party unless notification of the intention to apply those concessions has first been received by the Secretary-General of the United Nations from that Contracting Party. Such concessions shall thereafter enter into force for that Contracting Party either on the date on which this Protocol first enters into force pursuant to paragraph 12 or on the thirtieth day following the date upon which such notification is received by the Secretary-General, whichever is the later. Such notification shall only be effective if received by the Secretary-General not later than April 30, 1950. Upon the entry into force of such concessions the appropriate Schedule shall be regarded as a Schedule to the General Agreement relating to that contracting party.

4. Any present contracting party which has given the notification referred to in paragraph 3 or any acceding government which signs this Protocol shall be free at any time to withhold or to withdraw in whole or in part any concession, provided for in the appropriate Schedule contained in Annex A or B to this Protocol, in respect of which such contracting party or government determines that it was initially negotiated with an acceding government which has not signed
this Protocol or a present contracting party which has not given such notification, **Provided** that the present contracting party or acceding government withholding or withdrawing in whole or in part any such concession shall give notice to all other present contracting parties and acceding governments within thirty days after the date of such withholding or withdrawal and, upon request, shall consult with the contracting parties which have a substantial interest in the product concerned; and **Provided further** that, without prejudice to the provisions of Article XXXV of the General Agreement, any concession so withheld or withdrawn shall be applied from the thirtieth day following the date upon which the acceding government or present contracting party with which it was initially negotiated, respectively, signs this Protocol or gives the notification referred to in paragraph 3.

5. (a) In each case in which Article II of the General Agreement refers to the date of that Agreement, the applicable date in respect of the Schedules annexed to this Protocol shall be the date of this Protocol.

(b) In each case in which paragraph 6 of Article V, sub-paragraph 4 (d) of Article VII and sub-paragraph 3 (c) of article X of the General Agreement refers to the date of that Agreement, the applicable date in respect of each acceding government shall be March 24, 1948.

(c) In the case of the references in paragraph 11 of Article XVIII of the General Agreement to September 1, 1947 and October 10, 1947, the applicable dates in respect of each acceding government shall be May 14, 1949 and July 15, 1949, respectively.

6. The provisions of the General Agreement to be applied by an acceding government shall be those contained in the text annexed to the Final Act of the Second Session of the Preparatory Committee
of the United Nations Conference on Trade and Employment as rectified, amended, or otherwise modified on the day on which this Protocol is signed by such acceding government. Signature of this Protocol by an acceding government, to be effective, shall be accompanied by appropriate action accepting any rectification, amendment, or other modification which has been drawn up by the Contracting Parties for submission to governments for acceptance but which has not become effective by the date of signature of this Protocol by that acceding government.

7. Any acceding government which has signed this Protocol shall be free to withdraw its provisional application of the General Agreement and such withdrawal shall take effect on the sixtieth day following the day on which written notice of such withdrawal is received by the Secretary-General of the United Nations.

8. (a) Any acceding government which has signed this Protocol and has not given notice of withdrawal under paragraph 7, may, on or after the date on which the General Agreement enters into force pursuant to Article XXVI thereof, accede to that Agreement upon the terms of this Protocol by deposit of an instrument of accession with the Secretary-General of the United Nations. Such accession shall take effect on the day on which the General Agreement enters into force pursuant to Article XXVI, or on the thirtieth day following the day of the deposit of the instrument of accession, whichever shall be the later.

(b) Accession to the General Agreement pursuant to paragraph 8 (a) of this Protocol shall, for the purpose of paragraph 2 of Article XXXII of that Agreement, be regarded as acceptance of the Agreement pursuant to paragraph 3 of Article XXVI thereof.
9. (a) Each acceding government signing this Protocol, or depositing an instrument of accession under paragraph 8 (a), and each present contracting party giving the notification referred to in paragraph 3, does so in respect of its metropolitan territory and of the other territories for which it has international responsibility, except such separate customs territories as it shall notify to the Secretary-General of the United Nations at the time of such signature, deposit, or notification under paragraph 3.

(b) Any acceding government or present contracting party which has notified the Secretary-General under the exception in subparagraph (a) of this paragraph, may at any time give notice to the Secretary-General that such signature, accession, or notification under paragraph 3, shall be effective in respect of any separate customs territory or territories so excepted and such notice shall take effect on the thirtieth day following the day on which it is received by the Secretary-General.

(c) If any of the customs territories, in respect of which an acceding government has made the General Agreement effective, possesses or acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in the General Agreement, such territory shall, upon sponsorship through a declaration by the responsible acceding government establishing the above-mentioned fact, be deemed to be a contracting party.

10. (a) This Protocol shall be open for signature at Annecy until ___________________________. The original text of this Protocol shall thereafter be deposited with the Secretary-General of the United Nations and shall remain open for signature at the Headquarters of the United Nations by present Contracting Parties until November 30, 1949 and by acceding governments until April 30, 1950.
(b) The Secretary-General of the United Nations shall promptly furnish a certified copy of this Protocol, and a notification of each signature thereto, of each deposit of an instrument of accession under paragraph 8 (a), and of each notification or notice under paragraphs 3, 7, 9 (a), 9 (b) or 10 (a), to each Member of the United Nations and to each other government which participated in the United Nations Conference on Trade and Employment.

(c) The Secretary-General is authorized to register this Protocol in accordance with Article 102 of the Charter of the United Nations.

11. Upon signature of this Protocol in respect of an acceding government by two-thirds of the present contracting parties it shall constitute a decision taken under Article XXXIII of the General Agreement agreeing to the accession of that government.

12. Subject to the provisions of paragraph 3, this Protocol shall, for each acceding government in respect of which it has been signed by November 30, 1949 by two-thirds of the present Contracting Parties, enter into force:

(a) if it has been signed by that acceding government by November 30, 1949, on January 1, 1950, or

(b) if it has not been signed by that acceding government by November 30, 1949, on the thirtieth day following the day upon which it shall have been signed by such acceding government.

DONE at Annecy, in a single copy, in the English and French languages, both texts authentic except as otherwise specified with respect to Schedules annexed hereto, this.............day of

....................., one thousand nine hundred and forty-nine.
ANNEXES

(to be inserted)
CERTIFICATION BY THE CHAIRMAN OF THE CONTRACTING PARTIES

AUTHENTICATING THE TEXT OF THIS PROTOCOL:

I, L. Dana Wilgress, Chairman of the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade, being duly authorized thereto by the CONTRACTING PARTIES, hereby certify as authentic the text of this Protocol.

___________________________
(date)

Chairman
Specimen Signature Page

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