Note by the Executive Secretary

There are circulated herewith drafts of the documents to be drawn up at Torquay embodying the results of the negotiations. Provision has been made for a Final Act which will merely authenticate the texts of the various instruments to be attached to it. These instruments will enter into force in accordance with their terms.

It has been thought advisable to cover in the same protocol both terms of accession and the results of negotiations between contracting parties with a view to a further reduction of tariffs. If those additional concessions were covered by a separate protocol it would be necessary to introduce a complicated machinery to safeguard the rights of the acceding governments which have counted concessions exchanged between contracting parties as indirect benefits in their own negotiations. With the proposed scheme no such complication would arise and at the same time the contracting parties would be free to put into force the concessions granted to other contracting parties without waiting for the entry into force of the protocol in respect of acceding governments. Paragraph 5 of the protocol would enable a contracting party having put into force such concessions to withhold concessions initially negotiated with a contracting party for so long as the latter is not able to put into force the concessions granted by it.
As regards terms of accession the Annecy Protocol has been followed as closely as possible. The Annecy text, as explained in the report of the Working Party of the Contracting Parties which drew it up at Annecy, was drafted with the object of enabling an acceding government to be in substantially the same position as existing contracting parties.

Particular attention is drawn to the procedure for taking the necessary decision or decisions under Article XXXIII regarding the accession of the acceding governments. At Annecy this was a matter which gave rise to considerable controversy. The Annecy acceding governments felt that they were entitled to know at the end of the negotiations whether their accession was approved by the Contracting Parties. This would enable them to place before their legislatures the results of the negotiations together with the decision of the Contracting Parties on the application to accede. If the latter decision were delayed it would be necessary to delay presentation of the results of the negotiations until the decision of the Contracting Parties under Article XXXIII was known. Moreover, they argued that Article XXXIII clearly calls for a decision taken by the Contracting Parties jointly - i.e. a decision arrived at by the contracting parties in joint session - and not by the recording of separate votes by individual contracting parties. On the other hand, certain contracting parties felt that it would be impossible for their governments to subscribe to a decision or decisions under Article XXXIII without having had an opportunity to consider the results of the negotiations as a whole. The procedure finally adopted in the Annecy Protocol was intended as a compromise between these two views. It was provided that a decision would be taken in respect of each acceding government after an interval designed to allow all contracting parties to make a judgement whether to subscribe to such a decision in respect of any particular acceding government in the light of the results.
of the negotiations as a whole. At the same time a short interval was agreed upon in order to meet the desire of acceding governments to know as soon as possible what their position was.

This same formula has been adopted in the draft Torquay Protocol. It is felt that a number of contracting parties will again be reluctant to subscribe to decisions under Article XXXIII at the end of the negotiations, and there is in the case of Torquay an additional complication that the Contracting Parties will not be in session at the end of the negotiations and therefore in a position to make a joint decision or decisions.

The draft Torquay Protocol has been annotated. Participating governments will also find additional explanatory material in the reports of the Contracting Parties' Working Party at Annecy (GATT/CP.3/37) and of the joint Working Party on Accession (GATT/TN.1/23/Rev.1). The attached documents are being circulated well in advance of the Torquay meetings in order to give governments ample opportunity to study and comment upon them. It is hoped that it will be possible in this way to avoid the repetition of the extended discussions which took place at Annecy.

The Contracting Parties to the General Agreement, by an intersessional decision of 30 October, 1949 decided to arrange for tariff negotiations to be held in September 1950.

The negotiations, which opened at Torquay, England, on 28 September, 1950 and concluded on 1951, were of three categories:

(a) Negotiations directed towards the accession of countries which had not become contracting parties as a result of the 1947 and 1949 negotiations.

(b) Negotiations between contracting parties which participated in the Geneva and Annecy conferences without concluding bilateral negotiations and wished to enter into tariff negotiations during 1950.

(c) Negotiations between contracting parties which concluded tariff negotiations at Geneva or Annecy and desired to enter into negotiations for new or additional reciprocal tariff concessions.

As a result of these negotiations the following instruments were prepared:

(a) Torquay Protocol embodying the results of further Tariff Negotiations and Terms of Accession to the General Agreement on Tariffs and Trade;

(b) Protocol Modifying Article XXVIII of the General Agreement on Tariffs and Trade;

(c) Declaration on the Continued Application of the Schedules to the General Agreement on Tariffs and Trade, and Annex.
The texts of these instruments in the English and French languages are annexed hereto and are hereby authenticated.

IN WITNESS WHEREOF, the duly authorised representatives of the Governments participating in the negotiations have subscribed their names below.

For the Commonwealth of Australia,

... ... ... ... etc.
THE TORQUAY PROTOCOL EMBODYING THE RESULTS
OF FURTHER TARIFF NEGOTIATIONS AND TERMS
OF ACCESSION TO THE GENERAL AGREEMENT ON
TARIFFS AND TRADE

The Governments of the Commonwealth of Australia, the
Kingdom of Belgium, the United States of Brazil, Burma,
Canada, Ceylon, the Republic of Chile, the Republic of Cuba,
the Czechoslovak Republic, the Kingdom of Denmark, the
Dominican Republic, the Republic of Finland, the French
Republic, the Kingdom of Greece, the Republic of Haiti,
India, the United States of Indonesia, the Republic of
Italy, Lebanon, the Republic of Liberia, the Grand-Duchy
of Luxemburg, the Kingdom of the Netherlands, New Zealand,
the Republic of Nicaragua, the Kingdom of Norway, Pakistan,
Southern Rhodesia, the Kingdom of Sweden, Syria, the Union
of South Africa, the United Kingdom of Great Britain and
Northern Ireland and the United States of America, 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 the Republic of Austria, the Federal
Republic of Germany, Guatemala, the Republic of Korea, Peru,
the Philippine Republic, and the Republic of Turkey (herein-
after called "the acceding governments")

HAVING REGARD to the results of the negotiations
between the present contracting parties for new or additional
tariff concessions, and of the negotiations directed towards
the accession of the acceding governments to the General
Agreement,

HAVE through their representatives agreed as follows:

1. The schedule relating to each contracting party and
contained in Annex A to this Protocol shall be regarded as
a schedule to the General Agreement relating to that contrac-
ting party upon the entry into force of the concessions embo-
died in that schedule. The concessions provided for in that
schedule shall enter into force for that contracting party after notification of the intention to apply these concessions has been received by the Secretary General of the United Nations from that contracting party; such concessions shall enter into force for that contracting party not later than the thirtieth day following the day upon which such notification is received by the Secretary General. Such notification shall only be effective if received by the Secretary General not later than ____________.

Note: Legislative procedures in different countries may require a period of time before which the concessions could not be made effective. It may, however, be possible before the expiration of this time for present contracting parties, by signature of the Protocol, to agree to the accession of individual governments and consequently to the extension to them of the existing concessions in the General Agreement. This paragraph therefore gives present contracting parties which have signed the Protocol until ____________ to notify to the Secretary-General their intention to apply the Torquay concessions.

2. The terms on which the acceding governments may accede to the General Agreement shall be those which are embodied in this Protocol and the present contracting parties shall 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.

3. (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.
Note: This sub-paragraph is identical with a similar provision contained in the Interpretative Note to Article I of the General Agreement (see Annex I thereof).

(a) 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.

4. 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.

Note: By virtue of this paragraph, after a Decision has been taken, an acceding government, by signature of the Protocol and the lapse of the period provided for in paragraph 12, will receive all the existing benefits under the General Agreement. The entry into force of the concessions negotiated at Torquay by present contracting parties is provided for in paragraph 1 above.

5. Any present contracting party which has given the notification referred to in paragraph 1 or any acceding government which has signed this Protocol shall be free at any time to withhold or to withdraw in whole or in part any concessions, 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 day upon which the acceding government or present contracting party with which it was initially negotiated signs this Protocol or gives the notification referred to in paragraph 1.
6. (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, subparagraph 4 (d) of Article VII and subparagraph 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 November 1, 1950, and December 10, 1950, respectively.

Note: This paragraph contains suggestions for dates applicable to acceding governments for the purpose of the General Agreement. In three cases, dates contained in the Havana Charter have been considered more appropriate than the dates in the General Agreement. In other cases new dates have been suggested with the object of placing acceding governments in a comparable position to that in which the original contracting parties were at Geneva, and the Annecy acceding governments at Annecy, e.g., in Article II, paragraphs 1 (b) and (c) and 6 (a), and Article XVIII, paragraph 11.

7. 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.

Note: For the purposes of the application of the General
Agreement by an acceding government in accordance with the
Protocol, the form of the General Agreement is stated in
paragraph 7 of the Protocol to be that contained in the
text attached to the Final Act dated October 30, 1947, as
subsequently rectified, amended or otherwise modified on
the date of signature of the Torquay Protocol by that
acceding government. To prevent the accession of new
governments from delaying the entry into effect of amend­
ments to the General Agreement, it is also proposed that
the acceding government, at the time of its signature,
should also accept any amendment or other modification
which has been drawn up and formalized but which has not
at that date become effective. Such acceptance would be
considered, together with any other like acceptance in
determining when such a modification would enter into
force.

8. 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.

Note: This paragraph is in substance identical with the
provision contained in paragraph 5 of the Protocol of
Provisional Application.

9. (a) Any acceding government which has signed this Protocol
and has not given notice of withdrawal under paragraph 8 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 9 (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.

Note: This paragraph provides for accession to the General Agreement when it enters into force pursuant to Article XXVI or thereafter.

The procedure for such definitive accession is similar to the procedure for acceptance contained in Article XXVI which, by the wording of paragraph 1 of that Article, applies only to signatories of the Final Act of Geneva in 1947. It envisages that the deposit of an instrument of accession may take place either prior to or following the entry into force of the Agreement, but that such accession would not take effect until the definitive entry into force of the Agreement.

As in Article XXXIII of the General Agreement, provision has been made in paragraph 9 (b) of the Protocol to allow the then contracting parties which have accepted or acceded definitively, after the Agreement has entered into force, to decide that an acceding government which has not deposited an instrument of accession shall cease to be a contracting party.

The Annecy Protocol included here a paragraph on territorial application based upon Article 104 of the Havana Charter. The reason for this insertion was that in its absence acceding governments would be governed as regards territorial application by the provisions of Article XXVI of the Agreement. This was felt to be unfair to acceding governments since the then contracting parties are governed in this respect by the less rigid provisions of paragraph 2 of the Protocol of Provisional Application. At the same time, as the new provisions were inserted in the Annecy Protocol a Protocol was drawn up by the Contracting Parties to amend Article XXVI to the same effect. This Protocol has since entered into force and it is therefore considered unnecessary to make any special provision in the Torquay Protocol.

10.(a) The original text of this Protocol shall be deposited with the Secretary-General of the United Nations and shall be open for signature at the Headquarters of the United Nations by present contracting parties from until , and by acceding governments from until .
Note: In selecting a final date for signature by contracting parties consideration should be given to two factors, (a) the desirability of providing sufficient time for these governments to consider the results of the Torquay negotiations and thus enable them to take the necessary decisions under Article XXXIII and (b) the desirability of fixing a date as early as possible in order that the acceding governments shall know with the minimum of delay whether their accession is approved by the Contracting Parties. It is suggested therefore that the Protocol should be open for signature by contracting parties at the close of the negotiations and remain open for signature by them up till the end of the second calendar month following the close of the negotiations.

For the application of Torquay concessions by present contracting parties and for signature of the Protocol by acceding governments a longer period would no doubt be necessary and it is suggested that in each case a period of six clear months should be allowed, i.e.: the Protocol would be open for signature by acceding governments at the end of the negotiations and remain open for signature until the end of the sixth calendar month following the close of the negotiations. A similar period would be allowed for notification under paragraph 1.


Notification under paragraph 1 to be effective must be made not later than July 31, 1951.

(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 9 (a) and of each notification under paragraph 1 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 1, this Protocol shall, for each acceding government in respect of which it has been signed by two-thirds of the present contracting parties, enter into force:

(a) if it has been signed by that acceding government by _________ on _________ or;

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

Note: following the example in Note to paragraph 11, the missing dates would be:

Introductory phrase - April 30, 1951
(a) April 30, 1951 and June 1, 1951.

13. The date of this Protocol shall be _________.

DONE at Torquay, in a single copy, in the English and French languages, both texts authentic except as otherwise specified with respect to Schedules annexed hereto.
The contracting parties to the General Agreement on Tariffs and Trade (hereinafter referred to as the General Agreement),

Desiring to continue the application of the Schedules to the General Agreement until January 1, 1954; and

Desiring, for that purpose, to effect an amendment to Article XXVIII of the General Agreement, pursuant to the provisions of Article XXX thereof,

HEREBY AGREE as follows:

1. The text of paragraph 1 of Article XXVIII of the General Agreement shall be amended by the deletion of "On or after January 1, 1951" and the substitution therefor of "On or after January 1, 1954".

2. The provisions of the preceding paragraph shall not apply to concessions initially negotiated, by a contracting party with respect to which the amendment specified in the preceding paragraph is in effect, with a contracting party with respect to which neither such amendment nor the Declaration on the continued application of the Schedules of the General Agreement is in effect.

3. This Protocol shall, following its signature at the close of the Torquay tariff conference, be deposited with the Secretary-General of the United Nations.

4. The deposit of this Protocol will, as from the date of deposit, constitute the deposit of the instrument of acceptance of the amendment set out in paragraph 1 of this Protocol by any government the representative of which has signed this Protocol without any reservation.

5. The instruments of acceptance of those governments which have not signed this Protocol, or which have signed it with a reservation as to acceptance, will be deposited with the Secretary-General of the United Nations.
ANNEX III

DECLARATION ON THE CONTINUED APPLICATION OF THE SCHEDULES TO THE GENERA1 AGREEMENT

The contracting parties to the General Agreement on Tariffs and Trade (hereinafter referred to as the General Agreement),

DESIRING to continue the application of the Schedules to the General Agreement until January 1, 1954,

HAVING taken note of the modifications made by the contracting parties concerned in accordance with the provisions of Article XXVIII of the General Agreement in certain items of the said Schedules, which modifications are listed in the annex to this Declaration,

HEREBY DECLARE that they will not invoke prior to January 1, 1954, the provisions of paragraph 1 of Article XXVIII of the General Agreement to modify or cease to apply the treatment which they have agreed to accord under Article II of the General Agreement to any product described in the appropriate Schedule annexed to the General Agreement.

The provisions of the preceding paragraph shall not apply to concessions initially negotiated with a contracting party with respect to which neither this Declaration nor the Protocol modifying Article XXVIII of the General Agreement is in effect.

The original of this Declaration shall be deposited with the Secretary-General of the United Nations who is authorised to register this Declaration in accordance with Article 102 of the Charter of the United Nations.

The Secretary-General of the United Nations shall promptly furnish a certified copy of this Declaration to each Member of the United Nations, to each other government which participated in the United Nations Conference on Trade and Employment, and to any other interested government.
IN WITNESS whereof the respective representatives, duly authorized, have signed the present Declaration.

DONE at Torquay, in a single copy, in the English and French languages, both texts authentic, this _______ day of _________ 1951.
ANNEX TO DECLARATION

WHEREAS negotiations have taken place in Torquay for the modification of certain of the Schedules annexed to the General Agreement on Tariffs and Trade

AND WHEREAS agreement has been reached between the contracting parties concerned in accordance with the provisions of Article XXVIII of the said General Agreement,

the appropriate schedules annexed to the said General Agreement are hereby modified as follows:—

Schedule I

Schedule XXXI