The following letter, dated 23 November, has been received from the Head of the Italian Delegation:

"I have no objection to raise on grounds of principle to the Draft Protocol and therefore the comments I am going to submit should be considered merely as a contribution to the general discussion. I feel particularly bound to make this contribution as I have not had the opportunity to participate in the work of the Legal Working Party.

I have been wondering whether it is desirable to embody in one single legal document provisions relating to matters which, although logically inter-connected, are not, however, so closely interrelated that they cannot stand independently, and I wonder whether such a close relationship might not result in difficulties that would more than offset the advantages expected.

The provisions included in the Protocol fall within four main categories:

1. The first category includes provisions relating to the new tariff concessions granted by the acceding governments to contracting parties and vice versa, as well as those exchanged between contracting parties. The provisions relating to the requirements to be met by the acceding countries which will become contracting parties to the GATT also fall within this category. This is the essential part of the protocol because it aims at expanding the number and scope of tariff concessions and at increasing the number of contracting parties. Its entry into force should be facilitated to the greatest possible extent.

2. The second category of provisions, which is intimately connected with the first, concerns the withdrawals and reductions of the Geneva and Annecy tariff concessions as well as the entry into force of compensatory adjustments. The connection between the two sets of provisions is very close because the consolidated schedules of concessions relating to each of the present contracting parties will result from the addition of the new Torquay concessions to the former Geneva and Annecy concessions, jointly with the modifications resulting from the Torquay negotiations. Therefore, it is only logical that the second category of provisions should be incorporated in the same legal instrument that embodies the first category of provisions.

3. The third category of provisions includes Article VI which modifies paragraph I of Article XXVIII of the General Agreement and includes the provisions relating to its entry into force and its application.

4. No one could deny that the binding of the Geneva and Annecy schedules, together with the modifications resulting from the Torquay negotiations, is an objective of primary importance. The binding of concessions implies an assured life for a period of three years for the results of the three rounds of negotiations, and, to a certain extent, constitutes the basis for the concessions that the acceding governments will be granting to the present contracting parties.
Now, while taking account of this important objective, one must take care not to hamper or make more difficult the achievement of the two essential objectives which consist in inducing the greatest possible number of parties participating in this conference to sign the protocol with respect to the provisions relating to the additional tariff concessions and in making it possible for those countries which participate for the first time in tariff negotiations to adhere to the GATT.

Such a danger might result from the attempt that is said to have been made to establish a relationship between the first two sets and the third series of provisions. Indeed, under paragraph (d) of Article VI the decisive factor with respect to the revalidation of the Geneva and Annecy Tariff Concessions would be the signature of the protocol by the contracting party with which the concessions were initially negotiated. If such a contracting party is signatory to the protocol, revalidation will be effected, whereas if the contracting party does not sign the protocol its concessions will not be revalidated.

It is obvious, therefore, that a contracting party which is not prepared to revalidate Geneva and Annecy concessions for another three years will have to abstain from signing the protocol, with the result that the additional concessions which it has granted or received in Torquay will not become effective.

Furthermore, it remains to be seen whether such a contracting party which has not signed the protocol will be prepared to sign the decision agreeing to the accession to the General Agreement of the acceding governments with which it has negotiated if, subsequently, the results of those negotiations are not to become effective.

Those are very serious difficulties indeed, which may make it imperative to give close consideration to the question whether it is desirable to embody in one single Protocol the provisions relating to the entry into force of tariff negotiations and those relating to the prolongation of Article XXVIII.

The main advantage resulting from the relationship established between the various sets of provisions is the guarantee given to the acceding governments that they shall receive the benefits of the Geneva and Annecy concessions, which should encourage them to grant adequate concessions in return. But, on the other hand, this procedure offers a very serious drawback - the present contracting parties may find themselves in an unfavourable situation because, should one of them decide not to sign the Protocol, it would thus be deprived of the benefit of all the concessions granted to it by an acceding government in return for the Geneva and Annecy concessions, whereas, under Article II of the General Agreement on Tariffs and Trade, it would still be bound to apply them with respect to that acceding government, subject to provisions of Article XXX b) which it may invoke against the latter. The Contracting Party would still be deprived of concessions to which it would certainly be entitled, whereas it could be affirmed that it intended to withdraw all, or a substantial part of, the Geneva and Annecy concessions, even if it refused to accept to maintain Article XXVIII in force. It is likely that such a contracting party would effect such a withdrawal in specific and exceptional circumstances only, and it would in any case have to submit to the procedure laid down in Article XXVIII and to grant compensatory adjustments or to suffer reprisals.
Furthermore, the fact that some of the present contracting parties would not accept to revalidate the Geneva and Annecy concessions would pave the way for the withdrawal of certain concessions and, should acceding governments be substantially interested in those concessions, they would be deprived of some benefits and therefore of the guarantee which it would have been intended to give them.

The result would be that the difficulty which it would have been intended to avoid in order not to cause prejudice to the new acceding governments would obtain, at least in part; furthermore, this difficulty would not be so serious that it should appear necessary to suffer the much more grave inconveniences which would derive from the concentration of all the provisions in one single Protocol, governing at the same time the entry into force of the additional concessions, the accession to the General Agreement of the acceding governments and the revalidation of the Geneva and Annecy Schedules.

Lastly, there has been included in the draft Torquay Protocol a provision which is certainly an important one, but which could impair the ratification of the Protocol, thereby causing damage that would more than offset the expected benefits.

I refer to the provision included in Article VII b). If some of the present contracting parties have difficulty in ratifying some of the amendments to the General Agreement which have long since been approved by the contracting parties, the insertion of the clause whereby they would be required to accept the same amendments in this Protocol which is so important and which raises already very many difficult problems does not alter in any way the existing situation. At best, the requirement in question would make the situation still worse.

For the foregoing reasons, I fear that the concentration of so many provisions in one single Protocol might prove rather undesirable.

The main point is to ascertain whether the advantages offered by the procedure adopted, which to a certain extent are obvious, are not fewer than those that would result from the establishment of two Protocols: the one relating to the results of the tariff negotiations including Article XXVIII negotiations and the accession to the General Agreement of the new acceding governments; the other relating to the revalidation of the Geneva and Annecy Schedules.

In my opinion, the latter procedure would be preferable.