Summary Record of the Fifth Meeting of the
Tariff Negotiations Committee

held at the Marine Spa on Thursday, 7 December 1950, at 10.30 a.m.

Chairman: Mr. C.O. GISLE (Sweden)


Mr. HERRERA ARAN30 (Cuba), Chairman of the Legal Working Party, introducing the Report, said that they had worked on the basis of a draft submitted by the Secretariat (Documents to embody the Results of the Torquay Negotiations; document GATT/TN.2/12/Rev.1). It had been their task to give shape to documents designed to cover the following matters:

1. The results of negotiations between contracting parties and acceding governments for accession.
2. The results of negotiations under Article XXVIII.
3. The results of negotiations between present contracting parties.
4. The amendment to Article XXVIII for the re-binding of existing Schedules.

After a full examination of the problems involved, they had come to the conclusion that their aims would be best achieved by covering all these matters by means of a single document.

Mr. DI NOLÂ (Italy) said that wherever one instrument was capable of covering the whole range of an international agreement, there would be no case for two instruments unless the latter alternative facilitated its acceptance. The reasons why the Italian Delegation favoured a separate protocol for the amendment to Article XXVIII of the agreement had been set forth in document GATT/TN.2/B/5 and he would not repeat them.

In view of the reservations made by certain delegations with regard to the amendment to Article XXVIII, he felt that, by demanding acceptance of the whole, they imperilled the acceptance even of the part — a fundamental part — relating to the Torquay negotiations.

There was no need for a single instrument; the multilateral negotiations were based on bilateral agreements and could be put into force by a contracting party thirty days after the signature of the Protocol, whereas the amendment to Article XXVIII required the acceptance of two-thirds of the contracting parties. And while a six-month period was allowed for the
acceptance of the Torquay Protocol, several governments would have to go through a parliamentary procedure which might take longer. The Italian proposal would avoid any such complications, and the principal aim of the present conference would have better chances of being achieved within the desired limits of time.

It was clear that the Legal Working Party had cognizance of these difficulties, but had in his opinion been attracted by the prospect never before achieved - of giving stability to such a vast mass of tariff agreements if all countries signed the Protocol.

It was however known that such an exceptional result could not be achieved and even the draft Protocol itself provided for the case of entry into force before the entry into force of the Torquay Protocol, of the negotiations under Article XXVIII. These results would - of course - be covered by Article XXVIII as drafted at present. They would not be valid to 31 December 1953 until the government concerned signed the Protocol. Even a portion - a much greater portion than had at first been realized - of the Torquay negotiations might thus escape binding. But even if the Protocol entered into force, the reciprocity clause of paragraph 6 (d) of the draft provided that concessions made by a contracting party which signed the Protocol would not be applicable to a contracting party which did not. There would thus remain contracting parties which could at any time - even after 1 January 1951 - resort to Article XXVIII with the result that a certain number of concessions would remain fluid.

What guarantees of stability could they offer acceding governments to induce them to grant the largest volume of concessions? He wished at this point to stress the fact that the direct concessions were more important than the indirect concessions. In fact, these tariff items which were of particular interest to acceding governments had been reserved at Geneva and Annecy for the principal suppliers and were now the object of direct concessions. Such concessions - as all those incorporated in the annexes to the protocol - would be valid till 31 December 1953. This applied to contracting parties and acceding governments and ensured complete equality between them, both as regards direct concessions and also, of course, indirect Torquay concessions.

As for the Geneva and Annecy concessions, no full guarantee of stability could be given even if they adopted the Working Party's proposal, because they would still have out (a) all the concessions negotiated under Article XXVIII, and put into force before applying the Protocol, and (b) all the concessions made by the Governments which would not sign the protocol. This could only be avoided by providing for the entry into force of the protocol when all parties had accepted the amendment to Article XXVIII, thereby however preventing the entry into force of the protocol.

The stability of the Geneva and Annecy concessions was also unavoidably impaired by the reciprocity clause. If a contracting party which had signed the protocol, withdrew a concession from another contracting party which had not, an acceding government might lose an indirect concession on which it had counted. He did not feel however that any inequality was thereby created, inasmuch as the acceding government could, on the strength of Article XXVIII, prove a substantial interest in the concession withdrawn and demand compensation.

On the other hand, they had no reason to suppose that a contracting party after resorting to Article XXVIII at Torquay for the withdrawal of certain items, would start soon after with other items.

In conclusion: his delegation felt that the Torquay Protocol endeavoured in vain to give acceding governments a full guarantee for the stability of the Geneva and Annecy concessions, which was not - and could not - be given. In any case the acceding governments found themselves in the same position as the contracting parties with respect to the Torquay negotiations and in an almost identical relationship with respect to the Geneva and Annecy concessions. This was the case even if the contracting parties did not commit themselves.
to the amendment of Article XXVIII when they put into force the results of the Torquay negotiations.

The Italian delegation hoped that the serious difficulties caused by a single instrument, which they had pointed out in their communication to the Executive Secretary, and further elucidated at the present meeting, would persuade the Committee to adopt a protocol for the entry into force of the Torquay negotiations and a separate protocol for the amendment to Article XXVIII.

He wished to state that his remarks did not spring from any particular requirement of his Government but that they were prompted solely by their interest and concern for the successful operation of the Agreement.

Mr. SVEINBJÖRNSSON (Denmark) complimented the Working Party and its Chairman for their work and expressed his gratitude for the last paragraph of page 6 of the Report which met the difficulties confronting his Government. For constitutional reasons his delegation would not be able to sign the Declaration because the decision rested with their Parliament and could not be taken until after the end of the conference. He wanted however to make it clear that an undertaking by his Government not to invoke Article XXVIII before the final decision by Parliament, would assure reciprocity.

Their difficulties induced them to favour separate protocols for the Torquay negotiations and for the rebinding of the schedules. He gathered the problem had been discussed and that this object could be achieved without undue difficulty. In view of the fact that their difficulties could not be met except by separate protocols he saw no advantage in postponing the decision to a later date in the conference and proposed that the Committee decide upon the separation at once.

He wished to add that he was making this proposal without prejudice to his Government's decision on the question of rebinding their Annecy Schedule.

Mr. BÝSTRICKÝ (Czechoslovakia) said that they agreed with the Italian representative that the concentration of many provisions in one Protocol might cause embarrassment. Although they had come to different conclusions from those put forward by the delegate of Italy they felt that two protocols were needed in order to distinguish between the negotiations of contracting parties amongst themselves and negotiations relating to accession of new governments. His reason was that the Annecy procedure had proven itself quite adequate and should not be changed. Consequently, he considered that the Protocol relating to the present contracting parties could and should enter into force much more easily in view of the much greater experience and knowledge of the General Agreement than was possessed by the acceding governments, who would have to submit the General Agreement to more careful and prolonged study. He suggested that in order to present the acceding governments with a situation of a certain stability, the Committee should address its attention first to the Declaration; the signature of the Protocol amending Article XXVIII would be the second step which could be delayed. If his suggestion that the Contracting Parties close their session at the end of the Torquay tariff negotiations were accepted many countries would be able to sign at that time the Protocol amending Article XXVIII.

The problems arising out of the splitting of the present protocol into a Torquay Protocol and a Protocol of accession would be an easy matter. As regards the latter Protocol, he suggested the Annecy text.

The CHAIRMAN said they now had before them two proposals:

1) The Italian proposal, supported by the representatives of Czechoslovakia and Denmark, in favour of a separate protocol for the amendment of Article XXVIII;
2) The Czechoslovak proposal for a separate protocol to embody the results of negotiations amongst contracting parties.

Mr. Hartler (Sweden) said that his delegation, subject to the reservation contained on page 4 of the Report, found no difficulty in accepting the Protocol as it was, although they were also prepared, in view of the difficulties of some members of the Committee, to accept separate protocols.

Mr. COUILLARD (Canada) spoke in favour of the maintenance of the Torquay Protocol as proposed. There was, both in theory and in practice, a close relationship between all the factors in a multilateral agreement, and it would be impossible to separate them.

Mr. Van Blankenstein (Netherlands) said that his delegation had always been in favour of two protocols. They had, at the Fourth Session, made a reservation on the rebinding of their schedules, and this reservation would stand until they could examine the results of the present negotiations. They had been present at the discussions of the Working Party on this matter and had been assured by the Chairman that if necessary it would always be possible, as indicated on page 4 of the Report, to have a separate protocol amending Article XXVIII. If this was the case, he saw no reasons why this separation should be made at the present moment. If, however, this was not the case, then it would be more useful to decide then and there in favour of two protocols.

Mr. Corse (United States) felt that the protocol at present before them provided equality for all governments concerned and a balance in all its elements. If they were to separate the amendment to Article XXVIII they would find that other difficulties would arise to which very careful consideration would have to be given. He thought the previous speakers had mainly dwelt upon possible theoretical difficulties and that representatives should point out real difficulties if any to which the Committee could address itself.

Mr. Leckie (United Kingdom) supported the remarks of the representative of Canada in favour of having one consolidated unit. They also agreed with the Working Party that the present structure would expedite acceptance and asked that representatives point out in detail any real difficulties which they foresaw; otherwise it would not be possible to suggest alternatives.

Mr. LeCuyer (France) found no difficulties in the solution providing for two protocols but preferred one document to cover all matters because it provided a better chance of rapid acceptance. He wished to ask further how a separate protocol amending Article XXVIII could be made acceptable to acceding governments in view of the fact that it would enter into force only after the Torquay Protocol thus giving the acceding governments no guarantee.

Mr. Herrera Arango (Cuba) said that all the points raised had been carefully considered. Representatives opposed to the Working Party's proposal had only expressed fears but had stated no specific objections. He suggested that if no representative said that he could sign one protocol and not the other, the case for a single document would be strengthened.

Mr. Treu (Austria) considered it would be very difficult to overcome the difficulties, which would arise from the splitting up of the present document, in particular with respect to the rebinding of schedules which was in their mind a very important matter of principle.

Mr. Svenbjornsson (Denmark) referred to the agreement reached in Geneva that there should be two protocols. They had then made a reservation on the reduction of overall tariff levels and thought they would be able to accept the results of the Torquay negotiations even without rebinding their existing schedules. Now they no longer had this alternative. Their difficulty lay in the fact that they could not agree to the rebinding until their Parliament had seen the results of the Torquay negotiations and taken a decision. The only
possibility he could see was that their Parliament be asked to allow the Danish Government to take a decision on this matter. He wished to stress however that the present position constituted a change of the decision taken in Geneva.

Mr. Van BLANKENSTEIN (Netherlands) was surprised that he should be asked what his difficulties were. His delegation had instructions to try to obtain better equilibrium in European tariffs and at the Fourth Session they had reserved their position with respect to rebinding of their schedules if this result were not achieved. This reservation they still maintained and could not be eliminated by drafting devices. If there was only one protocol they would either have to be allowed to make a reservation or they would not be in a position to sign. The basic fact was that they could not agree to the rebinding of their schedules unless the results of the Torquay negotiations gave them satisfaction.

In the present circumstances it appeared that they would either have to have two protocols or their decision would have to be taken only when they had had the opportunity of examining the outcome of the Torquay negotiations.

Mr. BORRESEN (Norway) said he had no definite instructions with respect to the choice before them but thought they had no difficulties of a constitutional character with either solution. He would however agree with the representative of the Netherlands and suggested a postponement of the discussion.

Mr. HERRERA ARANGO (Cuba) in reply to the representative of the Netherlands pointed out that his request related to any significant constitutional difficulties which representatives might bring up and did not refer to the reservation of the Government of the Netherlands.

Mr. DE NOLA (Italy) said that his Government certainly wished to see the results of the Torquay negotiations enter into force as soon as possible; his Government also wished to ensure the entry into force of the amendment to Article XXVIII. The situation from the point of view of the Italian constitution was not however the same with respect to the two alternatives. On the contrary, the Italian Government would in any case have to submit the amendment to Article XXVIII to their Parliament whereas their powers were to a certain extent broader with respect to the entry into force of the Torquay concessions. Moreover, with respect to the Declaration, even if the Italian Government decided to sign it, they would have to enter a reservation referring to the approval by their Parliament.

Mr. TUCKIN (Australia) said his delegation could accept either of the two alternatives. He thought the debate had shown that there was full agreement on the essence of the report and on the terms of the draft Protocol submitted. There appeared however to be a difference of views on its structure and he suggested that the Committee examine the report and the draft and transmit it to the Contracting Parties for their approval. The Committee should ask the Contracting Parties for authority to take the relevant decision in the matter of a single protocol or of two protocols at some later date before the end of the Torquay negotiations.

Mr. DMDOFF (Germany) expressed his agreement with the representative of France in favour of one Protocol.

Mr. Van BLANKENSTEIN (Netherlands) supported the Australian proposal.

Mr. LEHTINEN (Finland) pointed out that they had no difficulties with either of the two alternatives but thought they might have difficulties of an internal character which might result in a delay to their acceptance.
Mr. SVIENBJÖRNSSON (Denmark) supported the Australian proposal but wished to stress the fact that his difficulties could not be resolved by consideration of the problem at a later stage in the tariff negotiations because action by his Government was dependent on a decision of Parliament which could only be taken after the Torquay results were known. He would discuss the matter with his government in order to find a solution, but his difficulties were not of a constitutional character and when Parliament took a decision it would be too late to make any drafting changes which might be necessary.

Mr. CORSE (United States) spoke in favour of the proposal. He wished to point out to the representative of Denmark that an independent Protocol was drawn up in Geneva because they had only concerned themselves there with the amendment of Article XXVIII. It had however been felt at Torquay that the Geneva and Annecy schedules should be made as firm as possible and he considered that the single protocol was more suitable.

The proposal of the representative of Australia to ask the Contracting Parties for authority to take the relevant decisions with respect to one or two protocols was approved, and the Committee agreed to proceed with its examination of the report and annexed documents at the next meeting.

The meeting adjourned at 1.10 p.m.