Summary Record of the Sixth Meeting of the Tariff Negotiations Committee

held at the Marine Spa on Friday, 8 December 1950, at 10.30 a.m.

Chairman: Mr. C. C. Gisle (Sweden)

Subject discussed: Report of Legal Working Party (continued)
(GATT/TN.2/30, GATT/TN.2/29, GATT/TN.2/B/5)

The discussion was resumed on the Czechoslovak proposal to have separate protocols for the negotiations of the contracting parties among themselves and for the negotiations for accession.

Mr. Bystricky (Czechoslovakia) said their intention was that the contracting parties should retain the principle established by the Annecy Protocol.

The Chairman pointed out that at Annecy there had been one only negotiation between contracting parties, but that the results thereof had been included in the Protocol of Accession.

Mr. Bystricky (Czechoslovakia) noted with regret that there was no support for his proposal.

The text of the Final Act was approved.

The preamble and section 1. of the Report were approved.

On the text of Annex 1 (Decisions Agreeing to Accession), Mr. Imhoff (Germany) drew the attention of the Committee to certain problems connected with the accession of his government on which he was awaiting instructions. He, therefore, asked for a postponement.

The Committee agreed to a postponement of their approval of the text of the decision relating to the accession of Germany.

Mr. Bystricky (Czechoslovakia) proposed the insertion, for reasons of accuracy, at the end of paragraph 3 of the decisions, of the words: "and which, by the signature of this decision have given their vote in accordance with Article XXXIII"; after a discussion it was noted that a reference to Article XXXIII had been made in the preamble to the decision.

The Committee approved the text of the Draft Decisions for acceding countries excepting Germany.

Section 2 of the Report was approved.
Mr. Bystricky (Czechoslovakia) drew attention to the omission of China from the list of contracting parties in the preamble to the Torquay Protocol. He proposed the inclusion of the note which appeared on page 4 of the United Kingdom official publication of the text of the General Agreement; viz. "The Nationalist Government of the Republic of China has notified its withdrawal from the General Agreement with effect from May 5, 1950; the Central People's Government of China has not yet defined its position with regard to the General Agreement".

With respect to acceding governments he said that the Czechoslovak Delegation had protested against the admission of Western Germany and Southern Korea, as in their opinion these governments had no legal capacity to join the agreement; he objected to their inclusion in the Torquay Protocol or in any other protocol or annex; and declared that the inclusion of these countries in the Protocol could not be interpreted as a recognition, explicit or implicit by the Government of Czechoslovakia of these two governments.

The Chairman did not think it would be possible to include the note in the Protocol but suggested inserting the Czechoslovak declaration in full in the Report.

This proposal was not accepted by Mr. Bystricky (Czechoslovakia), who pointed out that the preamble named countries which were not present at this session of the Contracting Parties, and said that termination of an agreement was just as significant a form of legal action as entering into it. It was consequently necessary to ascertain whether such action was taken by the competent authority. The person who had notified the withdrawal of China did not represent his country. There were represented at this conference governments which had diplomatic relations with the Central People's Government of China and he felt sure that businessmen all over the world were not opposed to trading with China. The duty of the Contracting Parties was therefore to address an enquiry to Peking on their attitude towards the Agreement. Quoting the British Prime Minister, he felt the Contracting Parties could not cut themselves off from one-sixth of the world and that there was no possibility of evading the issue. He felt he was being very moderate in requesting the insertion of the note, but would be satisfied if the Central People's Government of China were named in brackets.

With regard to Germany and Korea he was prepared to accept a footnote.

Mr. Lecuyer (France) said they were confronted with a procedural point and, while he understood the point raised by the representative of Czechoslovakia, he felt the matter was not within the competence of the Tariff Negotiations Committee but should be dealt with by the Contracting Parties.

The Chairman agreed and proposed that a note be inserted in the Report to the effect that the matter was being left to the Contracting Parties to decide and that the statement of the Representative of Czechoslovakia be recorded in full in the minutes.

Mr. Bystricky (Czechoslovakia) did not agree that they were concerned with a procedural point. It was a matter of common sense. They could not ignore one-sixth of the world's population whether they liked or not. He would prefer the insertion of a note, such as had appeared in an official publication of the British Government, and he felt that the same could be done with respect to Germany and Korea.
The CHAIRMAN considered that such a note could not be put in the Protocol and pointed out that the note in question was appended to an edition of the General Agreement published by the United Kingdom authorities which was not an official text for the Contracting Parties.

Dr. BOTHA (Union of South Africa) said a note was appropriate in the British publications as China was there mentioned; no note was required in the Protocol as there was no mention of China.

Mr. TONKIN (Australia) referred to the words in the draft Protocol: ".......... which are the present contracting parties ..............."
He suggested that China was not at present a contracting party.

Mr. BYSTRIKY (Czechoslovakia) disagreed: as far as he knew no decision had been taken to the effect that China was not a contracting party. He asked for nothing more than to say that China had not defined her position towards the agreement. They were not entitled to exclude that country until they had enquired about its intentions, but he would not even insist on the enquiry being made; he would only say that China had been a contracting party and that at present they did not know whether it was or not.

Mr. HERRERA ARANGO (Cuba) referring to paragraph 5 of the Protocol of Provisional Application: "Any government applying this Protocol shall be free to withdraw such application ........etc.", said that the government which had signed that Protocol had withdrawn.

The CHAIRMAN said a point of order had been raised by the representative of France and that before a vote was taken two representatives would be allowed to speak against it and one in favour.

Mr. COUILLARD (Canada) supported the French proposal.

The French proposal that the matter was within the competence of the Contracting Parties was carried by 17 votes in favour with none against.

The representative of Czechoslovakia abstained in protest, as, in his opinion this was not a matter on which to take a vote, but rather a question of common sense.

Paragraph 1 of the draft protocol and the corresponding paragraph in the Report were then approved.

Paragraphs 2-5 of the draft protocol and the corresponding paragraphs in the Report were approved.

Paragraph 6 of the draft protocol was approved, and the corresponding paragraph of the Report was approved subject to a further examination of the reservations of Australia and Pakistan by the Tariff Negotiations Working Party.

Paragraphs 7-12 of the draft protocol and the corresponding paragraphs of the Report were approved.

With reference to the paragraph on page 5 relating to the Torquay Schedules, Mr. LECKIE (United Kingdom) pointed out that in view of the structure of their tariff it would not be possible for them to follow strictly the recommendations contained therein, and the Committee took note.
With reference to the paragraph on the application of the Agreement to dependent territories, on page 6 of the report, Mr. LECUYER (France) suggested an amendment which was approved.

The text of the Declaration on page 20 was approved.

Mr. SVEINBJÖRNSSON (Denmark) wished to place on record that an undertaking by his Government not to invoke the provisions of Article XXVIII before the final decision on the rebinding of its Annecy Schedule had been taken by the Danish Government, would be based on the assumption that reciprocity treatment would be granted.

Mr. DI NOLA (Italy) proposed the re-examination of Section 4 of the Report by the Legal Working Party. Certain delegations might in fact have to sign with a reservation in respect of their Parliaments' approval. Those governments would then not be entitled to reciprocity treatment and might, over a period of 6 months, have to apply their concessions even if other contracting parties did not apply theirs. This procedure was not equitable, and might induce governments to refrain from signing.

Mr. HERRERA ARANGO (Cuba) said the question had been examined by the Working Party and their view has been that governments would not make reservations to their signature; they would either sign or not sign.

Mr. DI NOLA (Italy) repeated that this might make governments hesitate to sign.

Mr. ROYER (Deputy Executive Secretary) felt there was some misunderstanding on this point because the Report made it clear that a government which did not sign the Declaration could not invoke the reciprocity clause contained therein but if it gave an undertaking to observe the provisions of the Declaration to the fullest extent of its executive authority, pending action by its legislature then during that period, another contracting party would, de facto grant reciprocity treatment.

Mr. DI NOLA (Italy) said they would then have on the one side a legal obligation to consolidate the concessions and on the other side a "de facto" obligation. This was an unbalanced state of affairs and its possible consequences induced him to insist on a re-examination by the Legal Working Party.

Mr. GARCÍA OLDINI (Chile) supported the Italian proposal.

Mr. COUILLARD (Canada) agreed with the representative of Italy and suggested some drafting changes which he felt would cover the point raised.

Mr. DI NOLA (Italy) expressed his interest in the suggested changes but felt he must reserve his position because legal points were involved.

Mr. GARCÍA OLDINI (Chile) and Mr. CORSE (United States of America) supported the Italian proposal, which was approved.

Sections 5 and 6 of the Report were approved.

A proposal by Mr. GARCÍA OLDINI (Chile) that mention should be made in the Report of the fact that the Working Party had elected Mr. HERRERA ARANGO (Cuba) as its Chairman was approved.
The CHAIRMAN said that the amendments to Section 4 of the Report would be circulated and if no objection were made they would be deemed approved. If agreement would not be reached they would be re-examined by the Tariff Negotiations Committee.

The Report as a whole, with the reservations made - including the Czechoslovak reservation - was approved.

The Chairman informed the Committee that, once the proposed changes had been approved, the Report would be forwarded to the Contracting Parties for their consideration and approval.

The meeting adjourned at 12.55 p.m.