MEMORANDUM BY THE EXECUTIVE SECRETARY

I have recently returned from a visit to Washington at the invitation of the United States Government to discuss questions related to the review of the General Agreement, and further action on tariff reduction. I am giving the following notes a restricted circulation with a view to their being of assistance to other governments in considering these problems, and to serve as a basis for such informal consultations as may be considered desirable between myself and representatives of these governments. They should, therefore, be treated as strictly confidential.

I. Timing of the GATT review and a fourth round of tariff negotiations

1) GATT review

It will be recalled that the Randall Commission in commenting on the General Agreement, recommended that the organizational provisions of the GATT should be renegotiated and then submitted to the United States Congress for approval. The President of the United States has accepted this recommendation and indicated his intention of carrying out these negotiations in time to submit proposals to Congress at its next session. In view of the heavy burden of legislation with which the Congress is confronted, it will clearly be necessary to submit legislation for the approval of the GATT organizational provisions at an early date in 1955. The United States Administration attaches great importance to completing the legislative action in the 1955 session, since the following session will be held on the eve of the Presidential election and will, therefore, not be a favourable atmosphere for dealing with legislation of this kind. In these circumstances it seems to the United States Administration essential that the international negotiations which must be carried out before a proposal is made to Congress, be completed not later than mid-February. It is clear that the review of the GATT will be a complicated matter and that if the time-limit which confronts the United States is to be met it would be unsafe to defer the beginning of the review until the New Year. Accordingly, the United States authorities consider that the review should start at the beginning of November to be carried as far as possible before Christmas, and that if necessary it should be resumed and completed at a further meeting after the New Year holiday. In other words, the United States is anxious to stick fairly
closely to the time-table envisaged at the Eighth Session. In view of the importance of securing Congressional approval for United States participation in a GATT organization, I feel there is a great deal to be said in favour of arranging the review time-table in such a way as to meet the legislative requirements of the United States, and I have therefore suggested the following time-table as a basis which I hope will be acceptable to most contracting parties:

The Intersessional Committee should meet towards the middle of July and lay down a fixed time-table for the review. This time-table should envisage the review starting early in November and being terminated by mid-February. I do not think that it will be practicable for the Intersessional Committee to establish any definitive annotated agenda since it is unlikely that governments will by that time be in a position to circulate detailed proposals for discussion. However, I feel that it is important that contracting parties should be represented at the July meeting by high level officials who will be in a position to exchange views informally on the principal questions arising in the review. By that time I consider that a number of governments will be able to give a general indication of the trend of their thinking, even if they are not at that stage prepared officially to make specific proposals. As regards the arrangements for the review, I think the Intersessional Committee should fix a date by which governmental proposals should be submitted and I think they might usefully aim at a target date in September at the latest for this purpose. This would give governments a period of several weeks to consider such proposals before being called upon to discuss them. In addition, I think that it might well be suggested that the Ninth Session of the CONTRACTING PARTIES to deal with regular business should convene in advance of the review session - possibly on 14 October - and during this regular session there would be opportunities for further informal consultation on questions arising from the review. The Intersessional Committee should also consider to what extent it would be useful and practicable to carry out any technical preparatory work in advance of the convening of the review session.

ii) Further tariff negotiations

Governments are presumably aware of the proposals of the Randall Commission about further tariff reduction, and of the action taken by the United States Administration in furtherance of these recommendations. The legislation submitted to the Congress is in such terms that if the authority to make an initial 5% per cent reduction in United States tariff levels is not utilised within the first year of the Act, the authority lapses and cannot be carried over to a later year. In these circumstances if the authority is to be utilised the necessary negotiations must be carried out and completed in time for the reductions in United States tariffs to be proclaimed not later than 30 June 1955. In other words, all the preliminary negotiations
must have been completed at the very latest by about the middle of May. Such a programme clearly presents serious difficulties, not only to the United States Administration, but also to other governments. On the other hand, it would seem that every effort should be made to avoid the lapsing of the authority to effect reductions in United States tariffs.

Much turns of course upon the nature of the tariff negotiations. It is my view that there is little prospect of arranging for negotiations of the Torquay type to be completed within such a time-table, even if such negotiations were likely to be feasible and fruitful. I therefore feel that a tariff exercise on the lines of the French plan would be preferable, and although the United States authorities concerned have not come to a final conclusion on this point I think it is likely that they will come to a similar conclusion. It is clear of course that the results which can be achieved will be of a very limited nature. It has been calculated that if the 5 per cent authority is given to the Administration, it is probable that, taking into account all the provisions of the proposed legislation, the United States could not hope to achieve anything more than something in the order of a 3 per cent reduction. Nevertheless, even though this would be a very modest beginning, there would seem to be strong arguments for making it. It was agreed in our discussions in Washington that as soon as the United States Administration was in a position to come to a decision on this matter, it would communicate that decision to the other contracting parties and that an effort should be made at the July meeting to reach a preliminary agreement on the holding of a tariff exercise, subject of course to confirmation by the CONTRACTING PARTIES. What I have in mind is that if there is a substantial measure of agreement on the desirability of a tariff exercise, the Intersessional Committee should convene the Working Party on Tariff Levels and instruct it to work out rules for a tariff exercise to be submitted to the Ninth Session of the CONTRACTING PARTIES for approval. These proposals should include the rules for the exercise and a detailed time-table for carrying out the exercise.

II. GATT organization

There has been much speculation about the meaning of the report of the Randall Commission on the so-called organizational provisions of the GATT. The background of the recommendation is as follows:

Some of the influential members of the Commission, and notably Senator Millikin who is the Chairman of the Senate Finance Committee which will be responsible for considering any legislation on this subject, are dissatisfied with the powers which appear to be confided to the CONTRACTING PARTIES involving the right to determine and modify by a majority vote the rights and obligations of individual contracting parties. These members felt that this involved an encroachment on the sovereignty of the United States, and that in any revision of the so-called organizational provisions
the powers of the CONTRACTING PARTIES to make interpretations, decisions, and waivers, should be limited to a recommendatory character.
The State Department is therefore now engaged on an examination of the provisions of the General Agreement which involve joint action by the contracting parties, with a view to seeing how far these objections could be met without impairing the multilateral character of the General Agreement.

The State Department is approaching this problem by endeavouring to extract these provisions from the substantive part of the General Agreement, and incorporate them in a separate Protocol of organizational provisions. In this Protocol an attempt would be made to define the effect of decisions of the organization which involved a release from obligations under the Agreement in such a way as to permit a country which was denied a release to terminate its obligations under the Agreement with respect to one or more contracting parties which did not approve the release, and on the other hand in a case where a release was granted, to permit a country objecting to the release to terminate its obligations under the Agreement with respect to the contracting party acting in accordance with the release. What is contemplated is the possibility of a termination of the obligations of the Agreement on a bilateral basis without involving withdrawal from the Agreement as a whole. In other words, what the State Department is considering is the application of an Article XXXV procedure as between contracting parties. I should add that the United States authorities are very conscious of the need for retaining the multilateral character of the Agreement. They feel that in practice an arrangement on these lines could be worked out which would not in practice make very much difference. The decisions of the CONTRACTING PARTIES would continue to have great moral weight and the process of multilateral consultation which is one of the most valuable features of the Agreement would be retained. Moreover, the practice of the CONTRACTING PARTIES is in most cases to try to arrive at decisions which are acceptable to the contracting parties principally concerned. The working out of these proposals is still in an early stage and I hope it will be possible at a later date to have some clearer indications of what is involved.

Another factor which was worrying Senator Millikin and his colleagues relates to an important constitutional issue which has been under active discussion for some time in connection with the so-called Bricker amendment to the constitution. There has been feeling in some Congressional circles that the Executive has entered into international agreements which go beyond the powers which have been delegated by legislature to the Executive. The GATT has often been cited in this context.
In order to meet this criticism the United States Administration has inserted in the Bill for the extension of the Reciprocal Trade Agreements Act, a clause authorising the Executive "to enter into foreign trade agreements with foreign governments containing provisions with respect to international trade, including provisions relating to tariffs, to most-favoured-nation and other standards of non-discriminatory treatment affecting such trade, to quantitative import and export restrictions, to customs formalities, and to other matters relating to such trade designed to promote the purpose of this Act similar to any of the foregoing, provided that such provisions are not inconsistent with existing legislation of the United States". It should be noted here that in this legislation it is also proposed to extend the purpose of the Tariff Act of 1930 to include "promoting a sound and balanced system of multilateral trade and payments". If this legislation is adopted by the Congress it will undoubtedly strengthen the General Agreement by removing any doubts as to the binding character of the obligations assumed by the United States under it. The wording of the proposed authority would be sufficient to cover the general provisions of the Agreement as at present drafted (see, however, below, the question of import restrictions on agricultural products).

I discussed with the United States authorities the terms of reference which should be given to the Organization, and suggested that these should be wide enough to include dealing with such matters which may be referred to it by the members which, while not specifically covered by the General Agreement, are closely related to its objectives. The terms of reference should be wide enough to enable the organization to sponsor agreements for submission to governments for acceptance and to administer such agreements. By this device it would be possible for the organization to deal with such matters as restrictive business practices, commodity questions etc., which are closely connected with commercial policy and should properly be dealt with by a body dealing with international trade. This idea appears acceptable to the State Department. It would clearly be extremely difficult to secure American agreement to the incorporation in the General Agreement of additional provisions from the Havana Charter, but there is no reason why these matters should not, under the proposed terms of reference, be submitted to and discussed by the organization, and form the subject of collateral or subsidiary agreements.

III. The GATT rules

The United States authorities are in general opposed to any substantial modification of the existing GATT provisions. Our discussions centred principally on the balance of payments provisions and quantitative restrictions on agricultural products.
i) Balance of Payments provisions

American thinking on balance of payments provisions is not yet crystalized beyond the point of their wishing to see a simplification of the existing rules. One possibility that might be envisaged would be to exclude balance of payments restrictions from the operation of the Agreement on the ground that those are, in fact, exchange restrictions, and should therefore be dealt with by the International Monetary Fund. It might, therefore, be desirable to redraft Article XI so as to make it clear that it does not apply to restrictions maintained for balance of payments reasons.

The Agreement might, however, in that case, contain provisions for consultations about the commercial effects of import restrictions maintained for this purpose, and contracting parties suffering damage would, in appropriate cases, have recourse to the nullification and impairment provisions of Article XXIII. The organization would thus confine its concern with this type of import restriction to the purely commercial aspects. The justification for the use of quantitative restrictions for balance of payments reasons would be exclusively the province of the Fund. One of the difficulties of this type of solution is that so long as most contracting parties are covered by Article XIV of the Fund Articles of Agreement, the effect would be to give them a completely free hand on import restriction without any of the safeguards which are written into the GATT Articles. This difficulty would largely disappear if either Article XIV were no longer to be available, or the greater number of contracting parties were to come under Article VIII of the Fund Agreement. A middle course, therefore, would be to retain rules in the GATT so long as Article XIV of the Fund is applied, but that these rules should be applicable only to contracting parties having recourse to Article XIV. A third course might be to condense the present Articles XII-XIV into a single Article which would consist only of paragraphs 1 and 2 of the present Article XII, a paragraph permitting discrimination to the extent that balance of payments considerations render this necessary, and finally a paragraph providing for consultation on commercial damage resulting from the application of restrictions. In this approach too the justification of the resort to quantitative restrictions would rest upon the determination of the International Monetary Fund.

There are of course complications in reviewing the quantitative restriction rules at so early a date as that proposed in the time-table outlined above. It is known that the countries of the British Commonwealth are studying plans for the restoration of the convertibility of sterling, and that these plans include the revision of the GATT trade rules. This revision would be in the direction of strengthening them in order to operate effectively in conditions of convertibility. Other countries which are also considering restoring the convertibility of their currencies will no doubt wish to consider the revision of the quantitative restrictions rules from this point of view. The question is, therefore, whether governments will be ready by the winter of this year to undertake a final revision of the GATT quantitative restrictions rules. If this should not be the case it might
perhaps be necessary to arrive at a provisional solution and instruct
the new organization as its first task to undertake, in consultation with
the International Monetary Fund, a basic revision of the quantitative
restrictions rules for application in conditions of wider convertibility
of currencies. In that case the revision of the present rules at the
end of the year could be limited to streamlining and clarification without
going into the fundamentals. This is clearly not an entirely satisfactory
solution and it is to be hoped that governments will in fact be in a
position to come to a more final arrangement.

ii) Agricultural quantitative restrictions

The United States Administration is in something of a dilemma
regarding import restrictions on agricultural products. In prescribed
circumstances the President is obliged by Section 22 of the Agricultural
Adjustments Act to impose quotas on agricultural products which are
being imported into the United States in such quantities or under such
conditions as to interfere with domestic support price programmes. It is
clear that the criteria of the Agricultural Adjustments Act do not fall
within the criteria of Article XI of the General Agreement. As I have
pointed out above, under the authority which the President has requested
in the new legislation submitted to Congress, his powers to enter into
general commitments would be subject to existing legislation, and it would
therefore follow that the United States would have to seek an exception
which would give them freedom to take the action required by the Agricultural
Adjustments Act. It will clearly be difficult to envisage an exception of
this kind which would be applicable only to the United States. On the
other hand, there are manifest dangers in admitting a general exception to
the prohibition of quantitative restrictions in the case of agricultural
products. Quite apart from the inconsistency of such an exception with the
principles of the General Agreement, the agricultural producing countries
would clearly have difficulty in accepting a ban on the use of quotas which
applied fully to industrial products but not to agricultural products. To
this difficult question there is no easy answer but it might be possible by
a re-examination of the criteria in Article XI to arrive at some acceptable
arrangement which would limit the use of quotas on agricultural products to
specifically defined circumstances, and also afford some guarantees for the
interests of agricultural exporters.

IV. General

It is not possible at the present time to forecast with any
confidence what will be the outcome of the discussions in Congress of the
new tariff legislation submitted by the President. A number of competent
observers consider that in the present temper of Congress it is unlikely
that even the modest proposals put forward by the Administration can be
adopted. These observers consider that the most that can be expected is a
renewal of the existing Reciprocal Trade Agreements Act for a period of one or two years, plus, possibly, further legislative action on valuation and simplification of customs formalities. On the other hand, the Administration has shown considerable determination in following out the proposals of the Randall Commission, and if full use is made of the President's powers, it is possible that the new tariff legislation might be passed. Mr. Randall, with whom I have discussed this question, is determined to press the proposals with vigor, and appears confident that results can be obtained. It is to be expected that any advance in United States commercial policy must in present circumstances be limited in scope. It appears to me, however, that the basic objective for the time being is to maintain and strengthen the liberal tendencies which have inspired United States commercial policy since the War. These tendencies continue to inspire the Administration as has been evidenced by the actions of the Executive in the specific case with which it has been called upon to deal. My own feeling is that if the present line can be held and the relatively liberal policy which has hitherto been associated with the Democratic Party could be adopted and maintained by the Republican Administration and Congress, this in itself would be no small achievement. It is in this context that I feel the review of the General Agreement should be approached. There is an opportunity to consolidate and perhaps strengthen the General Agreement, provided that governments are prepared at the forthcoming review to stand squarely behind it. If, on the other hand, the review is approached in a negative spirit, I fear that this would be seized upon by many elements in the United States which dislike the GATT as being the embodiment of a United States commitment to follow a liberal trading policy.