

CONTRACTING PARTIES

THIRD SESSION

WORKING PARTY I ON ACCESSION

REVISED REPORT

1. Introduction

The Working Party first discussed whether it should proceed on the basis of the drafts presented by the Secretariat, namely GATT/CP.3/W.1 and GATT/CP.3/W.1/Add.1, which consisted of a draft decision by the Contracting Parties and a draft protocol embodying the terms of accession in the form of a collateral contract to the General Agreement on Tariffs and Trade. An alternative form suggested by the representative of the United States was a decision of the Contracting Parties and a protocol embodying the terms of accession including consequential modifications to the text of the General Agreement.

The Working Party also examined the statement by the United Kingdom delegation on the necessary steps for accession to the General Agreement as set out in GATT/CP.3/WP.1/4.

As the United States proposal raised doubts in the minds of some members of the Working Party on legal issues arising out of the relationship between Article XXX, concerning amendments to the Agreement, and Article XXXIII, relating to accession and, in particular as to the validity of the procedure of modifying the text of the General Agreement by means of terms of accession agreed by a two-thirds majority under Article XXXIII, it was decided, without prejudice to these legal issues, to proceed on the basis of the

Secretariat drafts.

At the same time the Working Party expressed its indebtedness to the representative of the United States who, in the course of the presentation of his proposals, made a number of important suggestions which have been incorporated in the text submitted.

2. Explanatory Notes on the Draft Protocol annexed to this Report which also constitutes the proposed decisions under Article XXXIII.

(a) Proposed Decisions

The Working Party has considerably modified the draft submitted by the Secretariat (GATT/CP.3/W.1/Add.1). It is now proposed that a separate Decision be taken in respect of each of the eleven acceding governments. Each Decision would be taken after an interval designed to allow all Contracting Parties to make a judgment whether to subscribe to the Decision as to the accession of each individual Government in the light of the results of the tariff negotiations with that acceding Government, account being taken of the value placed upon the indirect tariff concessions resulting from the Geneva and Annecy negotiations.

Instead of preparing eleven separate protocols, it is proposed to attach to a single protocol eleven sheets for signature. The Decision in respect of each acceding government will be taken in accordance with Article XXXIII when signatures of two-thirds of the Contracting Parties have been affixed on the signature sheet relating to that acceding government. Paragraph 12 provides that upon such signature the Protocol shall constitute the Decision for that acceding government. It is also proposed that October 31, 1949 should be the latest date for reaching such Decisions.

When such a Decision is taken, by October 31, 1949, with respect to an acceding government it will, by the terms of the protocol, apply both to provisional application and to accession.

by that acceding government, pursuant to para. 8 (a) of the Protocol, to the General Agreement after it has entered into force pursuant to Article XXVI.

It was agreed that the two-thirds majority required by Article XXXIII referred to such a majority of the number of contracting parties at the time at which the Decision was taken and not of the number of contracting parties at any later time at which an acceding government accedes in consequence of the Decision.

(b) Draft Protocol of Terms of Accession.
Title.

The Working Party has recommended that the Protocol be known as the "Annecy Protocol of Terms of Accession to the General Agreement on Tariffs and Trade".

General

An important consideration in the present tariff negotiations is the indirect benefits of the concessions exchanged at Geneva between the present Contracting Parties. It has been assumed, therefore, that the tariff concessions offered at Annecy by an acceding government will be made in a large measure in consideration for the Geneva concessions. Correspondingly it is assumed that all the governments concerned will take into consideration the indirect benefits which they will receive from the negotiations between the acceding governments themselves and between them and the other present Contracting Parties.

The Protocol has been drafted with the object of enabling an acceding government to be in substantially the same position as a present Contracting Party. When the Decision applying to an acceding government has been taken, by signature by two-thirds of the present Contracting Parties, and that acceding government has appended its own signature to the Protocol it will become a Contracting Party either on 1 December, 1949, or 30 days after it has itself signed, whichever is the later. It will then enjoy all the benefits

of the General Agreement. It will also be required at that time to apply the General Agreement provisionally on terms similar to those on which the present Contracting Parties are applying the Agreement under the Protocol of Provisional Application.

In the draft protocol submitted by the Secretariat there was a qualification in paragraph 2, that the benefit of concessions in the schedule of a present Contracting Party to the General Agreement need not be extended to an acceding government unless and until the Contracting Party concerned had signed the Protocol.

It was, however, the opinion of the Working Party that the circumstances in which a present Contracting Party would wish not to extend to an acceding government the benefits of the Geneva concessions had been discussed at the first session when the amendment to Article XXXIII of the Agreement was approved and that it had then been decided that such cases should be governed by the provisions of Article XXXV and paragraph 5(b) of Article XXV. The Working Party took note of the discussion in the Tariff Negotiations Working Party (GATT/TN.1/4/4), the Tariff Negotiations Committee (GATT/TN.1/H.Del/1, GATT/TN.1/18, GATT/TN.1/SR.4, A/W/7), and the CONTRACTING PARTIES (GATT/CP.3/SR.18 and 19) on the definition of the phrase "entered into negotiations" for the purpose of Article XXXV.

Provision is also made for the acceding government to enjoy (paragraph 3 of the Protocol) and to grant (paragraph 2(i)) the concessions negotiated at Annecy and which are annexed to the Protocol.

Upon the entry into force of the General Agreement under Article XXVI an acceding government will be entitled to accede definitively to the Agreement in much the same way as a present Contracting Party can accept it definitively under that Article.

Entry into Force

It is proposed that the Protocol be opened for signature at Annecy and that subsequently, it should be open for signature at

the Headquarters of the United Nations by the present Contracting Parties until October 31, 1949.

It was recognised that after a Decision had been taken, it was in principle desirable that an acceding government should receive automatically, upon becoming a Contracting Party, that is by its signature of the Annecy Protocol and the lapse of the period provided for in paragraph 12 of the Protocol, all the existing benefits under the General Agreement.

The entry into force of the concessions negotiated at Annecy by present Contracting Parties is provided for by paragraph 3 of the Protocol. It was recognised that legislative procedures in different countries may require a period of time before which the concessions could not be made effective, but that, before the expiration of this time it may be possible 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. So that the taking of the decisions under Article XXXVIII need not be unnecessarily delayed by the processes required in particular cases for implementing the Annecy concessions of present Contracting Parties it is provided that whilst signatures to the Protocol may be appended until October 31, 1949, a notification may be given to the Secretary-General of the United Nations at any time up to 30 April, 1950 for the purpose of bringing into force those Annecy concessions.

When a Decision has been taken and the acceding government itself signs the Protocol it becomes obligated to apply the Agreement provisionally in a manner similar to that in which the present Contracting Parties apply it under the Protocol of Provisional Application, with an analogous exception relating to legislation existing at the date of the Protocol of Accession. It was considered that although there were arguments for applying the same limitation to the exception for existing legislation, namely, that existing at the date of the Protocol

of Provisional Application, this might in fact be a considerable obstacle to accession. It might require an acceding government to amend legislation enacted prior to the formal completion of the negotiations, which had not been the case for the present Contracting Parties at Geneva.

The acceding government is also under an obligation to apply the concessions negotiated at Annecy, subject however, to the provisions contained in paragraph 4 for withholding or withdrawing concessions initially negotiated with a present Contracting Party or acceding government which has not given a notification of entry into force of the annecy concessions or has not signed the Protocol, respectively. This withholding provision is similar to Article XXVII of the General Agreement except that provision is made for notification of the withholding or withdrawal within thirty days.

A present Contracting Party is also given rights of withholding or withdrawal under paragraph 4 of the Protocol. The reference to Article XXXV in the second proviso to that paragraph in no way affects the position of a present Contracting Party which has not accepted that Article.

In connection with paragraph 3, the representative of Cuba proposed an amendment to the last sentence of the paragraph, the effect of which would have been to make the Schedule contained in Annex B an integral part of Part I of the General Agreement, as provided in Article II, paragraph 7 for the Geneva Schedules. He explained that, in his opinion, under the provisions of Article XXVIII there could be no modification of any kind, even by way of reduction, of any rates included in the Schedules to the Agreement before January 1, 1951, except by amendment under Article XXX requiring the unanimous consent of all contracting parties.

The other members of the Working Party, however, considered that

paragraph 3 of the Draft Protocol did not constitute such an amendment of the existing Schedules to the General Agreement and that, in any case, the Agreement could not be construed to prevent a reduction in duties below the levels fixed in the Schedules to the Agreement. In particular, the wording of Article II made it clear beyond doubt that the rates of duty contained in the Schedules were only maximum, and not also minimum, rates of duty.

It was also pointed out that the circumstances adduced by the representative of Cuba in support of his argument might provide the basis for a claim under Article XXIII on the ground that a concession or benefit had been nullified or impaired.

In order to enable the Chairman to take the sense of the meeting, certain questions were drafted and put to the Working Party. The first question was as follows:

Question A - Does a reduction in a rate of duty set forth in Part I of any Schedule to the General Agreement constitute an amendment of Part I of the General Agreement?

The representative of Cuba voted "Yes" to this question. Upon statements being made by other delegates that the question could not be answered "Yes" or "No", after some discussion two other texts were prepared and put to the Working Party, as follows:

Question B - Does the inclusion of a rate of duty in Part I of any schedule to the General Agreement legally prevent the reduction of that rate otherwise than by an amendment under Article XXX?

The representative of Cuba voted "Yes" to this question, with the qualification that unanimous assent could in practice be inferred from the absence of objection and need not be embodied in a formal instrument; the representatives of Australia, Belgium, France, the United Kingdom and the United States voted "No"; the representative of Pakistan abstained on the grounds that the question was not clear.

Question C - Does a reduction in the level of a duty on a product of a contracting party set forth in Part I of a Schedule to the General Agreement, or in the margin of preference thereon, negotiated in favour of a country not a contracting party to the General Agreement call, in order that it may be made effective in favour of that country, for an amendment of Part I of the General Agreement?

The representatives of Cuba and Pakistan voted "Yes" to this question and the representatives of Australia, Belgium, France, the United Kingdom and the United States voted "No". These representatives were in agreement with the French delegate's interpretation, i.e. that nothing in the Havana Charter or the General Agreement would prevent any country from negotiating tariff reductions with a country not a party to the General Agreement, provided the benefits resulting therefrom were extended to contracting parties to the General Agreement under the most-favoured-nation clause.

The representatives of Australia and the United Kingdom commented that in their opinion Question C did not arise in the present circumstances.

The representative of Cuba submitted to the members of the Working Party a detailed statement of his views and reserved the right to raise the matter again in the Contracting Parties.

Dates in the General Agreement applicable to acceding governments.

Paragraph 5 of the Protocol 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 present contracting parties were at Geneva, e.g., in Article II, paragraphs 1(b) and (c) and 6(a), and Article XVIII, paragraph 11.

Form of Agreement to be applied.

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 6 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 Annex Protocol by that acceding government. To prevent the accession of new governments from delaying the entry into effect of amendments 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.

Withdrawal of Provisional Application.

Paragraph 7 of the Protocol provides for withdrawal of provisional application by an acceding government. It is in substance identical with the provision contained in paragraph 5 of the Protocol of Provisional Application.

Definitive Accession

Paragraph 8(a) of the Protocol provides for accession to the Agreement when it enters into force pursuant to Article XXVI or thereafter. By the deposit of an instrument of accession the acceding governments may accede, upon the terms of the Protocol, to the Agreement in the form in which it enters into force pursuant to Article XXVI. This may or may not be identical with that provisionally applied by acceding governments under paragraph 1 of the Protocol.

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 present contracting parties. 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 XXIII of the General Agreement, provision has been made in paragraph 8(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.

Territorial Application

The Working Party had some difficulty in deciding upon a formula for territorial application. It was considered unreasonable to ask acceding governments to accept a formula for territorial application during provisional application more rigid than that contained in the Protocol of Provisional Application. This would have been the effect if Article XXVI of the Agreement had been applied both to provisional application and to definitive accession. The Working Party considered that the discussion of territorial application in Havana had resulted in the more satisfactory formula embodied in Article 104 of the Havana Charter which approximates closely to that in the Protocol of Provisional Application. They have therefore recommended that an adaptation of Article 104 should be inserted in the Protocol to govern both provisional application and accession. The Working Party considered that if this solution is approved by the Contracting Parties there would be a strong case for an amendment of Article XXVI of the General Agreement on these lines. As was pointed out in the discussion, the present form of Article XXVI might frustrate the entry into force of the Agreement. It might in practice enable a territory, which is a separate customs territory not possessing full autonomy in the conduct of its external commercial relations, to delay indefinitely by withholding its consent, an acceptance by the country which has international responsibility for it.

A provision has been included analogous to the second proviso in Article XXVI, paragraph 4, regarding dependent customs territories which become autonomous in their external commercial relations.

Signature

The Working Party considered the period during which the Protocol should remain open for signature.

It was considered that it should be signed by the present Contracting Parties not later than October 31, 1949, which would provide sufficient time for governments to consider the results of the Annecy negotiations and thus enable them to take the necessary Decisions under Article XXVIII.

For the application of Annecy concessions by present Contracting Parties it was recognised that it may be necessary for a longer period to be provided and, moreover, some acceding governments have indicated that they might not be in a position to sign the protocol for some time to come.

In view of the fact that the date of January 1, 1951, in Article XXVIII, will be applied to the Annecy concessions it was considered that the insertion of a date as late as the middle of 1950 as the date until which the Protocol would remain open for signature by acceding governments, might be undesirable as a matter of presentation. The date of April 30, 1950 has therefore been selected with the understanding that, in case of necessity, it might subsequently be extended by the CONTRACTING PARTIES.

Members of the Working Party stressed the necessity of early notification by the Secretary-General of the United Nations to Governments of signatures to the Protocol and of any notifications given to the Secretary-General pursuant to the Protocol. It was thought that this information should be forwarded by the Secretary-General as soon as possible after the action had been taken.

Authentication of Text.

It is suggested that the text of the Protocol should be authenticated at the conclusion of the Annecy negotiations by the signature of the Chairman of the CONTRACTING PARTIES.

Annexes A and B to the Protocol

It is proposed that the concessions negotiated at Annecy should be scheduled in the same manner as was done at Geneva in 1947 and that these schedules should be contained in Annexes A and B to the Protocol. Annex A would contain concessions made by the acceding governments and Annex B concessions made by the present contracting parties.

Preferences

In connection with the existing annexes to the General Agreement referred to in Article I and relating to existing preferential arrangements, it was noted that the Havana Charter included in Annexes H and I lists of territories covered by preferential arrangements in which certain acceding governments were included.

The Working Party did not know whether these governments wished to have these annexes also apply as exceptions to the General Agreement, but considered that provision should be made for their inclusion in the Protocol in the event of request for that being made by those governments.

If these governments seek to select dates earlier than April 10, 1947, for the establishment of maximum margins of preferences referred to in paragraph 3 of Article I, it may also be necessary to consider making appropriate provision in the Annecy Protocol.

DRAFT ANNEXY PROTOCOL OF TERMS OF ACCESSION
TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The Governments of 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 (hereinafter called "the acceding governments"),

HAVING regard to the results of the negotiations directed towards the accession of the acceding governments to the General Agreement,

In accordance with the provisions of Article XXXIII of the General Agreement:-

HEREBY AGREE upon the terms on which the acceding governments may so accede, which terms are embodied in this Protocol,

AND the present Contracting Parties 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.

1. ✓(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.

- ✓ (c) For the purposes of the General Agreement, the Schedules contained in Annex A to this Protocol shall be regarded as Schedules to the General Agreement relating to acceding governments.
- ✓ 2. 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.
3. Notwithstanding the provisions of paragraph 11, the concessions provided for in the Schedule appropriate to each present Contracting Party and contained in Annex B to this Protocol shall not enter into force for that Contracting Party unless notification of the application of those concessions has first been received by the Secretary General of the United Nations from that Contracting Party. Such concessions shall thereafter enter into force for that Contracting Party either on the date on which this Protocol enters into force with respect to any acceding government or on the thirtieth day following the date upon which such notification is received by the Secretary-General, whichever is the later. Such notification shall only be effective if received by the Secretary-General not later than April 30, 1950. Upon the entry into force of these concessions the appropriate Schedule shall be regarded as a Schedule to the General Agreement relating to that contracting party.
4. Any acceding government which signs this Protocol or any present contracting party which has given the notifications referred to in paragraph 3, shall be free to withhold or to withdraw in whole or in part any concession, provided for in the appropriate Schedule contained in Annex A or B to this Protocol, in respect of which such government or contracting party determines that it was initially negotiated with a present contracting party which has not

given such notification or an acceding government which has not signed this Protocol; Provided that the acceding government or present contracting party 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 date upon which the acceding government or present contracting party with which it was initially negotiated, respectively, signs this Protocol or gives the notification referred to in paragraph 3.

- 5.(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, of sub-paragraph 4 (d) of Article VII and sub-paragraph 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 May 14, 1949 and June 15, 1949, respectively.
6. 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 such rectification, amendment, or other modification which has been drawn up and formalized but which has not become effective by the date of signature of this Protocol by that acceding government.

7. 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.
8. (a) Any acceding government which has signed this Protocol and has not given notice of withdrawal under paragraph 7, 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 date on which the General Agreement enters into force pursuant to Article XXVI, or on the thirtieth day following the deposit of the instrument of accession, whichever shall be the later.
- (b) At any time after the entry into force of the General Agreement pursuant to Article XXVI thereof, those contracting parties which have accepted the General Agreement pursuant to paragraph 3 of that Article or deposited an instrument of accession may decide that any acceding government which has not deposited such instrument shall cease to be a contracting party.

9. (a) Each acceding government signing this Protocol or depositing an instrument of accession under paragraph 8 (a), and each present contracting party giving the notification referred to in paragraph 3. does so in respect of its metropolitan territory and of the other territories for which it has international responsibility, except such separate customs territories as it shall notify to the Secretary-General of the United Nations at the time of such signature, deposit, or notification under paragraph 3.
- (b) Any acceding government or present contracting party which has notified the Secretary-General under the exception in subparagraph (a) of this paragraph, may at any time give notice to the Secretary-General that such signature, accession, or notification under paragraph 3, shall be effective in respect of any separate customs territory or territories so excepted and such notice shall take effect on the thirtieth day following the date on which it is received by the Secretary-General.
- (c) If any of the customs territories, in respect of which an acceding government has made the General Agreement effective, possesses or acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in the General Agreement, such territory shall, upon sponsorship through a declaration by the responsible acceding government establishing the above-mentioned fact, be deemed to be a contracting party.
10. (a) This Protocol shall be open for signature at Annecy until _____ . The original text of this Protocol shall thereafter be deposited with the Secretary-General of the United Nations and shall remain open for signature at the Headquarters of the United Nations by present

Contracting Parties until October 31, 1949 and by acceding governments until April 30, 1940.

(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 8 (a), and of each notification or notice under paragraphs 3, 7, 9 (a), 9 (b) or 10 (a), 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 3, this Protocol shall, for each acceding government in respect of which it has been signed by October 31, 1949 by two-thirds of the present Contracting Parties, enter into force;

(a) If it has been signed by that acceding government by October 31, 1949, on December 1, 1949, or

(b) If it has not been signed by that acceding government by October 31, 1949, on the thirtieth day following the date upon which it shall have been signed by such acceding government.

DONE at Annecy, in a single copy, in the English and French languages, both texts authentic except as otherwise specified with respect to Schedules annexed hereto, this day of, one thousand nine hundred and forty-nine.

ANNEXES

(to be inserted)

CERTIFICATION BY THE CHAIRMAN OF THE CONTRACTING PARTIES

AUTHENTICATING THE TEXT OF THIS PROTOCOL:

I, L. Dana Wilgress, Chairman of the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade, being duly authorised thereto by the CONTRACTING PARTIES, hereby certify as authentic the text of this Protocol.

(date)

Chairman

Specimen Signature Page

Signatures in respect of the government of

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|-------------|--|-------------|---|
| For _____) |) Here would) be listed) the present | For _____) |) Here would) be named) the |
| _____) | | _____) | |
| For _____) |) Contracting) Parties. | |) government |
| _____) | | |) referred) to in the) heading. |

