

RESTRICTED

# GENERAL AGREEMENT ON TARIFFS AND TRADE

W.9/166  
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Special Distribution

## CONTRACTING PARTIES

Ninth Session

Review Working Party II on Tariffs,  
Schedules and Customs Administration

## PROPOSALS AFFECTING ARTICLE XXVIII

### Note by the Chairman

It will be recalled that, when Review Working Party II met after the Christmas recess, I indicated my intention of submitting to the Working Party as the basis for further consideration of the proposals affecting Article XXVIII (W.9/19) drafts based upon the discussions in the Working Party, in Sub-Group II-A and informally. Accordingly. I am circulating herewith (a) a draft of a revised Article XXVIII including regulations relating to its application, and (b) a draft declaration providing for the extension of the present bound period until 31 December 1957. The draft declaration proceeds on the assumptions that (i) contracting parties which have items which they wish to modify or withdraw under Article XXVIII should either enter into and carry out the necessary negotiations before 30 June 1955 or begin the negotiations before that date and agree to complete them by 30 September 1955, and (ii) in respect to any other problems which may arise regarding bound items, these be dealt with under the sympathetic consideration procedures or under the procedures suggested in paragraph 4(d) of the revised Article XXVIII.

The other remaining question is Section A of Article XVIII and here my suggestion is that it should be part of the overall settlement of these questions that Section A of Article XVIII be accepted substantially in the form in which it was submitted.

DRAFT ARTICLE XXVIII

Modification of Schedules

1. On 1 January 1958 and on the first day of each three year period thereafter (or on the first day of any other period that may be specified by the Organization for this purpose) any contracting party may, by negotiation and agreement with the contracting party or parties with which such concession was initially negotiated and with any other contracting party determined by the Organization to have a principal supplying interest (which, together with the applicant contracting party, are hereinafter referred to as the contracting parties primarily concerned), and subject to consultation with such other contracting parties as the Organization determines to have a substantial interest in such concession, modify or cease to apply a tariff concession included in a Schedule annexed to this Agreement.

2. In such negotiations and agreement, which may include provision for compensatory adjustment with respect to other products, the contracting parties concerned shall endeavour to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in the present Agreement.

3. (a) If agreement between the contracting parties primarily concerned cannot be reached, the contracting party which proposes to modify or cease to apply the concession shall, nevertheless, be free to do so and if such action is taken the contracting party with which such concession was initially negotiated, any contracting party determined under paragraph 1 of this Article to have a principal supplying interest and the contracting parties determined under paragraph 1 of this Article to have a substantial interest shall then be free not later than six months after such action is taken, to withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the Organization, substantially equivalent concessions initially negotiated with the contracting party taking such action.

(b) If agreement between the contracting parties primarily concerned is reached but any other contracting party determined under paragraph 1 of this Article to have a substantial interest is not satisfied, such other contracting party shall be free, not later than six months after action under such agreement is taken, to withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the Organization, substantially equivalent concessions initially negotiated with a contracting party taking action under such agreement.

4. The Organization may, at any time, in special circumstances, authorize a contracting party to enter into negotiations for modification or withdrawal of a concession included in a schedule to this Agreement subject to the following procedures and conditions:-

(a) Such negotiations shall be conducted in accordance with the provisions of paragraphs 1 and 2 of this Article.

- (b) If agreement between the contracting parties primarily concerned is reached in the negotiations, the provisions of paragraph 3(b) of this Article shall apply.
- (c) If agreement between the contracting parties primarily concerned is not reached within a period of sixty days after negotiations have been authorized, or within such longer period as the Organization may have prescribed, the contracting party which proposed to modify or cease to apply such treatment may refer the matter to the Organization.
- (d) Upon such reference, the Organization shall promptly examine the matter and submit its views to the contracting parties primarily concerned with the aim of achieving a settlement. If no settlement is reached between the contracting parties primarily concerned, the applicant contracting party shall be free to modify or withdraw the concession, unless the Organization determines that the applicant contracting party has unreasonably failed to offer adequate compensation. If such action is taken, the contracting party or parties primarily concerned, and the other contracting parties determined by the Organization under sub-paragraph 4(a) of this Article to have a substantial interest, shall be free, not later than six months after such action is taken, to modify or withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the Organization, substantially equivalent concessions initially negotiated with the applicant contracting party.

5. The Organization may temporarily suspend the provisions of paragraph 4 of this Article at the time of multilateral tariff negotiations sponsored by it and substitute such procedures for negotiations as it may determine.

REGULATIONS RELATING TO THE APPLICATION OF  
ARTICLE XXVIII

- 1. Before 1 January 1958 and before the end of any period envisaged in paragraph 1 a contracting party may elect by notifying the Organization to reserve the right, for the duration of that period, to modify or withdraw a concession contained in the appropriate schedule in accordance with the procedures of paragraph 1, and other contracting parties shall then be free, during the same period, to modify or withdraw concessions initially negotiated with that contracting party in accordance with the procedures of paragraph 1.
- 2. The object of providing for the participation in the negotiations of contracting parties with a principal supplying interest in addition to the contracting party with which the concession was originally negotiated is to ensure that a contracting party with a major interest in the trade in the

product affected by the concession in question shall have an effective opportunity to protect the contractual right which it enjoys under the Agreement. On the other hand, it is not intended that the scope of the negotiations should be such as to unreasonably impede access to the provisions of Article XXVIII nor to create complications in the application of the Article in the future to concessions which result from Article XXVIII negotiations. Accordingly, the Organization should only determine that a contracting party has a principal supplying interest if that contracting party has at the time of the negotiation a major share in the market of the applicant contracting party or would, in the judgment of the Organization, have had such a share in the absence of discriminatory quantitative restrictions maintained by the applicant contracting party. It would therefore not be appropriate for the Organization to determine that a number of contracting parties had a principal supplying interest if the trade is divided between a number of contracting parties so that no individual share amounts to a major participation in the market.

3. Notwithstanding paragraph 1 above, the Organization may exceptionally determine that a contracting party has a principal supplying interest if the concession in question affects trade which constitutes a major part of that contracting party's total exports.

4. It is not intended that provision for participation in the negotiations of any contracting party with a principal supplying interest, and for consultation with other contracting parties having a substantial interest in the concession which it has sought to modify or withdraw, shall have the effect that the contracting party seeking such modification or withdrawal shall have to pay compensation or suffer retaliation greater than the withdrawal or modification sought, judged in the light of the conditions of trade at the time of the proposed withdrawal or modification, making allowance for any quantitative restrictions maintained by the applicant contracting party.

5. The expression "substantial interest" is not capable of a precise definition and accordingly may present difficulties for the Organization in the application of this paragraph. It is, however, intended to be construed to cover only those contracting parties which have, or in the absence of discriminatory quantitative restrictions affecting their exports could reasonably be expected to have, a significant share in the market of the contracting party seeking to modify or withdraw the concession.

6. At any time not earlier than six months, or later than three months prior to 1 January 1958, or to the termination date of any subsequent bound period, any contracting party wishing to modify or withdraw any concession embodied in its schedule, may notify the Organization to this effect. The Organization shall then determine the contracting party or contracting parties with which the negotiations and consultations referred to in paragraph 1 of Article XXVIII shall take place. The contracting party or contracting parties so determined shall participate in such negotiations or consultations with

the applicant contracting party with the aim of reaching agreement before the end of the bound period. Any further binding of schedules thereafter shall relate to the concessions as modified by such negotiations including any withdrawals pursuant to paragraph 3(b) of Article XXVIII, or, in the absence of agreement, by the modifications or withdrawals made pursuant to paragraph 3(a) of Article XXVIII. If, however, the Organization is arranging for multilateral tariff negotiations to take place within the period of six months before the termination of any bound period, it shall include in the arrangements for such negotiations suitable procedures for carrying out the negotiations referred to in this paragraph.

7. A decision on any request for authorization to enter into negotiations under paragraph 4 of Article XXVIII shall be made within thirty days of the submission of the request. Such request shall be accompanied by all relevant statistical and other data.

8. It is recognized that to permit certain contracting parties depending in large measure on a relatively small number of primary commodities and relying on the tariff as an important aid for furthering diversification of their economies or as an important source of revenue, normally to negotiate for the modification or withdrawal of concessions only under paragraph 1 of Article XXVIII, might cause them at such a time to make modifications or withdrawals which in the long run would prove unnecessary. To avoid such a situation the Organization shall authorize such contracting parties, under paragraph 4 of Article XXVIII, to enter into negotiations unless it considers this would result in, or contribute substantially towards, such an increase in tariff levels as to threaten the stability of the schedules to the General Agreement or lead to undue disturbance of international trade.

9. In determining under paragraph 4(d) whether an applicant contracting party has unreasonably failed to offer adequate compensation, it is understood that the Organization will take due account of the special position of contracting parties which have bound a high proportion of their tariff at very low rates of duty and to this extent have less scope than other contracting parties to make compensatory adjustments.

10. The determination referred to in paragraph 4(d) of Article XXVIII shall be made by the Organization within thirty days of the submission of the matter to it, unless the contracting party proposing to modify or withdraw the concessions agrees to a longer period.

11. It is expected that negotiations authorized under paragraph 4 for modification or withdrawal of a single item or a very small group of items, could normally be brought to a conclusion in sixty days. It is recognized, however, that sixty days will be inadequate for cases involving negotiations for the modification or withdrawal of a larger number of items and in such cases, therefore, it would be appropriate for the Organization to prescribe a longer period.

DRAFT DECLARATION ON THE CONTINUED APPLICATION  
OF SCHEDULES TO THE GENERAL AGREEMENT

(Declaration of February 1955)

The contracting parties to the General Agreement on Tariffs and Trade (hereinafter referred to as "the General Agreement")

CONSIDERING that, pursuant to the Declaration of 24 October 1953, the assured life of the concessions provided for in the Schedules to the General Agreement will expire on 30 June 1955,

DESIRING to continue the application of the Schedules to the General Agreement until 1 January 1958,

HEREBY DECLARE that they will not invoke after 1 July 1955 and prior to 1 January 1958 the provisions of Article XXVIII, paragraph 1, of the General Agreement to modify or cease to apply the treatment which they are required to accord under Article II of the General Agreement to any product described in the appropriate Schedule annexed to the General Agreement, provided that, with respect to products for which negotiations pursuant to the provisions of Article XXVIII, paragraph 1, have been undertaken but not completed by 30 June 1955, this Declaration shall become effective as from the date on which the results of such negotiations shall have been notified to the CONTRACTING PARTIES or 30 September 1955, whichever is the earlier.

The provisions of this Declaration shall not apply to concessions initially negotiated with a government with respect to which this Declaration is not in effect.

This Declaration shall be open for signature at Geneva until March 1955. It shall thereafter be deposited with the Secretary-General of the United Nations, who is authorized to register this Declaration in accordance with Article 102 of the Charter of the United Nations, and shall be open for signature at the Headquarters of the United Nations until 30 June 1955.

The Secretary-General of the United Nations shall promptly furnish a certified copy of this Declaration to each Member of the United Nations, to each other government which participated in the United Nations Conference on Trade and Employment, and to any other interested government,

IN WITNESS WHEREOF the respective representatives, duly authorized, have signed the present Declaration.

DONE at Geneva, in a single copy, in the English and French languages, both texts authentic, this day of February, one thousand nine hundred and fifty five.

