

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

W.9/176

4 February 1955

Special Distribution

CONTRACTING PARTIES
Ninth Session

Original: English

Review Working Party II on
Tariffs, Schedules and
Customs Administration

DRAFT ARTICLE XXVIII

Modification of Schedules

Text proposed by the United Kingdom Delegation

As the United Kingdom delegate explained in the Working Party discussion of W.9/166 today, his Government, while in general agreement with these proposals, see great difficulty over advertising the existence of an "open season" for the renegotiation of bound items every three years. They consider that this involved real danger of giving artificial stimulus to industry and agriculture in all countries to make applications, in anticipation of each advertised open season, for the withdrawal or modification of bindings which governments would find it difficult politically to resist.

The United Kingdom delegate emphasized that he did not wish to upset the substance of the proposed "package" but that he was concerned to find a way of preserving the substance of the points W.9/166 was designed to provide for, while avoiding the important difficulties to which he referred. He outlined at the meeting certain proposals which he believed were in line with the principles on which the proposals in W.9/166 were based, and would thus not involve upsetting the balance of the package in substance. These proposals are embodied in the following revision of the draft Article and Regulations circulated in W.9/166.

1. As from 1 January 1958 a contracting party may modify or cease to apply a tariff concession included in a Schedule annexed to this Agreement in accordance with the provisions of paragraphs 2 - 8 of this Article.
2. The Organization may, at any time, in special circumstances, authorize a contracting party, 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, to modify or cease to apply a tariff concession included in a Schedule annexed to this Agreement.

3. 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.

4. If agreement between the contracting parties primarily concerned is reached but any other contracting party determined under paragraph 2 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.

5. (a) 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.

(b) 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 paragraph 2 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.

6. (a) If the Organization refuses its authority for negotiations under paragraph 2, or determines under paragraph 5(b), that the applicant contracting party has unreasonably failed to offer adequate compensation, the applicant contracting party shall, after a period of not less than two years from the time of its request for authority under paragraph 2, be free nevertheless to proceed with negotiations in accordance with the provisions of paragraphs 2 and 3 of this Article.

(b) If in negotiations under sub-paragraph (a) above agreement between the contracting parties primarily concerned is reached but any other contracting party determined under paragraph 2 of this Article to have a substantial interest is not satisfied, the provisions of paragraph 4 of this Article shall apply.

(c) If, in negotiations under sub-paragraph (a) above, 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 2 of this Article to have a principal supplying interest and the contracting parties determined under paragraph 2 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.

7. Before 1 January 1958 or before the end of each successive period of three years starting from that date, a contracting party may elect, by notifying the Organization, to reserve the right for the duration of the subsequent period, to modify or withdraw a concession in accordance with the provisions of paragraph 6 of this Article, 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 same provisions.

8. The Organization may temporarily suspend the provisions 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. 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.

2. 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.

3. 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.

4. 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.

5. A decision on any request for authorization to enter into negotiations under paragraph 2 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.

6. It is recognized that certain contracting parties depend in large measure on a relatively small number of primary commodities and rely on the tariff as an important aid for furthering diversification of their economies or as an important source of revenue. The Organization shall authorize such contracting parties, under paragraph 2 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.

7. In determining under paragraph 5(b) 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.

8. The determination referred to in paragraph 5(b) 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.

9. It is expected that negotiations authorized under paragraph 2 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.