

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

W.8/14/Rev.1
10 October 1953

Special Distribution

Working Party I on Article XXVIII

DRAFT REPORT TO THE CONTRACTING PARTIES

(Revised)

1. The Working Party has considered the best means of giving effect to the desire of the majority of the contracting parties to prolong the assured life of their schedules beyond 31 December 1953 and recommends that this be done by a declaration to be signed by as many contracting parties as possible at the close of the Eighth Session. Other contracting parties would be able to add their signatures at any time up to 31 December 1953. The proposed text of the declaration is annexed to this report.
2. Two features of the text of the draft declaration require comment:
 - (i) The Working Party proposes that the prolongation of the assured life of the schedules should be for eighteen months. By signing the declaration contracting parties would accept a commitment not to invoke the provisions of Article XXVIII:1 prior to 1 July 1955.
 - (ii) The majority of the delegations made it clear that their governments could agree to the prolongation of their schedules only on a basis of reciprocity, i.e. in respect of contracting parties which sign the declaration, and they indicated that they would not recognize for this purpose a signature which was made subject to a reservation. Therefore, the draft declaration contains a reciprocity clause whereunder a signatory would retain its liberty to invoke the provisions of Article XXVIII:1 to modify or withdraw concessions initially negotiated with a contracting party which does not sign the declaration. Thus, as between a contracting party which signs the declaration and one which does not, each government would retain the right to have recourse to the provisions of Article XXVIII in respect of the concessions which it had initially negotiated with the other.
3. Despite the disadvantages which would follow from the operation of the reciprocity clause, some delegations have thought that their governments would have to make reservations because of special difficulties which might arise during the proposed period of prolongation. The majority of the Working Party, on the other hand, were of the opinion that if reservations were

attached to signatures the objectives of the CONTRACTING PARTIES in extending the assured life of the schedules would not be fully realised since the scope of the extension would be considerably restricted. Therefore, the Working Party considered whether there were possibilities of dealing with these special difficulties in the practices already established by the CONTRACTING PARTIES.

4. A contracting party which wishes to renegotiate an item in its schedule in order to afford protection for developmental purposes can have recourse to Article XVIII. In appropriate circumstances, contracting parties can also have recourse to the provisions of Article XIX. Apart from these, the provisions of the Agreement for the modification or withdrawal of tariff rates which are bound in the schedules would not operate, if the assured life of the schedules is extended as proposed, until 1 July 1955. The Working Party noted, however, that during the first and second periods of assured validity of the schedules, some contracting parties had felt the need, in exceptional circumstances, to modify certain bound rates of duty and have sought authority from the CONTRACTING PARTIES to enter into negotiations to this end. All such requests have been examined with sympathy and understanding and the CONTRACTING PARTIES have authorised the renegotiations. For example, in 1948/49 the Governments of Pakistan and Brazil requested authority to enter into negotiations to modify the concessions they had granted on certain items in their schedules; the governments with which these concessions had been initially negotiated were willing to enter into a renegotiation and the CONTRACTING PARTIES agreed that this should take place. The negotiations were carried out with mutually satisfactory results. Also, there can be mentioned the authority granted to the United Kingdom Government at the present Session to renegotiate an item with the Government of France.

5. There is no reason to believe that contracting parties will be less ready in the future than they have been in the past to consider requests of this kind and to join in granting authority for the necessary negotiations, and the approval of this report would in itself be confirmation that the CONTRACTING PARTIES would give sympathetic consideration to such requests. It appears, therefore, that there is sufficient flexibility in the practices of the CONTRACTING PARTIES to deal with this sort of problem, and that there is no need for contracting parties to attach reservations to their acceptance of the declaration which would have the unfortunate consequences referred to above.

6. In view of delays which might occur when the CONTRACTING PARTIES are not in session in securing consideration of requests for authority to renegotiate, the Working Party recommends that the CONTRACTING PARTIES should make suitable arrangements to deal promptly with such requests by modifying the intersessional procedures. The Intersessional Committee should be given authority to examine such requests and to take decisions, and should be required to give its decision within thirty days of receipt of any request by the Executive Secretary. It is important, also, that provision be made whereby any interested contracting party would have full opportunity to express its views by being invited to attend any meeting at which such an application is to be considered and by

participating fully in the decision. The results of a renegotiation authorised by the CONTRACTING PARTIES or by the Intersessional Committee should be reported to the contracting parties through the secretariat in order to ensure that all interested contracting parties had been consulted; if no objection is lodged, the results could be made effective after thirty days.

7. The representative of Brazil stated that his Government would be able to sign the declaration only on condition that the period of extension would be used for a revision of the principles of the General Agreement so as to enable the contracting parties to carry out new tariff negotiations the results of which would supersede the existing tariff commitments. The Working Party considered that this matter went beyond its terms of reference and should be considered by the CONTRACTING PARTIES in connection with the proposed review of the Agreement which, it was understood, would be discussed later in the Session.

8. A member of the Working Party suggested that the declaration should provide that where a contracting party wished to take action under Article XXVIII to withdraw or modify any concessions on or shortly after 1 July 1955 arrangements should be made for the necessary negotiations to take place in advance of that date. The Working Party considered that it was unnecessary for the CONTRACTING PARTIES to make any specific provision for such negotiations since it is clearly implied in Article XXVIII that negotiations for the modification or withdrawal of concessions which a contracting party wishes to put into effect immediately upon expiry of the period of firm validity, would have to be carried out prior to the expiry of the period. It would only be necessary for a contracting party to give notice of its desire to enter into negotiations with the contracting parties with which the concessions had been initially negotiated and with any other contracting parties substantially interested in the items in question.

A N N E X

DRAFT DECLARATION ON THE CONTINUED APPLICATION OF
SCHEDULES TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Declaration of - October 1953

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

CONSIDERING that, under the provisions of Article XXVIII (as amended), the assured life of the concessions embodied in the schedules annexed to the General Agreement will expire on 31 December 1953, in the sense that thereafter it will become possible for a contracting party by negotiation with other contracting parties to modify or cease to apply the treatment which it has agreed to accord under Article II to any products described in its schedule,

CONSIDERING that, although by the terms of the Agreement the schedules will retain their full validity notwithstanding the expiry of their assured life, in present circumstances, the possibility of invocation by contracting parties of the procedure of Article XXVIII for modification of specific concessions would impair the stability of tariff rates which has been one of the principal achievements of the General Agreement, and

CONSIDERING FURTHER that it would be particularly undesirable to arrive at such a result at a time when a number of contracting parties are studying ways and means of making further progress in the reduction of tariffs and other barriers to trade and towards the achievement of the other objectives of the General Agreement,

HEREBY DECLARE that they will not invoke prior to 1 July 1955 the provisions of Article XXVIII paragraph 1 of the General Agreement to modify or cease to apply the treatment which they have agreed to accord under Article II of the General Agreement to any product described in the appropriate schedule annexed to the General Agreement.

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.

The Declaration shall be open for signature at Geneva until 30 October 1953, 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 31 December 1953.

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 October, one thousand nine hundred and fifty-three.