

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Review Working Party II on

Tariffs, Schedules and

Customs Administration

SUB-GROUP A ON MODIFICATION OF SCHEDULES

Statement by the Chairman to Review Working Party II

on the work of the Sub-Group up to 15 December 1954.

1. The Sub-Group has so far been able to discuss Article XXVIII only. This Article was taken up first only for convenience of discussion and not because Article XVIII A, which has also been referred to the Sub-Group, was considered less important. In fact Articles XXVIII and XVIII A are closely interrelated and the Sub-Group proposes to review the two articles together after it has completed its examination of each of them separately.
2. In its examination of the various proposals affecting Article XXVIII, the Sub-Group has had in view the basic objective of ensuring maximum stability of the tariff schedules while taking account of the special difficulties of individual contracting parties. It was generally agreed in principle that, in order to lend some flexibility to the tariff bindings, the procedure for modification of concessions in exceptional circumstances should be made more expeditious. It was also agreed that a revised procedure should be laid down in the Agreement, either in the text of Article XXVIII or in an Annex which would be an integral part of the Agreement.
3. The problems arising under Article XXVIII were too many and too complex to permit complete reconciliation of the divergent points of view within a short time. The Working Party, therefore, will understand why no agreed draft is ready to be put before them at this stage. The labours of the Sub-Group during the last three weeks, however, have not been in vain. Significant progress has been made. In the first place, the Sub-Group has divided this complex problem into specific issues and in doing so, it has given careful consideration to the views expressed and the amendments proposed by the interested delegations. When these views and amendments are put together, however, we get so many versions of Article XXVIII, each differing from the other in some feature of special importance to one delegation or group of

delegations that the problem of choice becomes exceedingly difficult. The Sub-Group, therefore, has tried to find the highest common measure of agreement within each group of amendments.

4. Four distinct propositions have been circulated in Document MGT/66/54 and Corrigendum 1 of 13 December. The Sub-Group finds some advantage in this approach, as it helps to reduce the problem to manageable proportions, and it may make it easier for delegations to obtain fresh instructions from their governments. A list of the various issues arising under Article XXVIII may appear somewhat formidable at first sight, but delegations may find the problem less intractable if they study these issues along with the four propositions which have been circulated.

5. There is still divergence of views on certain aspects of the procedures for modification of tariff concessions. It is not agreed whether the procedure should be available at any time (the schedules being bound for an indefinite period) or only during fixed periods of binding - a different procedure being applicable on the expiry of the period. Divergent views have been expressed on the following aspects of the procedures:

- (i) whether a contracting party wishing to enter into negotiations for modification of a concession in exceptional circumstances should be required to seek the authority of the CONTRACTING PARTIES to do so;
- (ii) whether particular circumstances should be recognised in advance as exceptional or as not exceptional;
- (iii) whether the applicant contracting party should be required to negotiate with all substantially interested contracting parties, or to negotiate only with those to whom the concession was granted by negotiation (including in that category contracting parties to whom it was granted by negotiation in the same or a subsequent round of negotiations), and to consult with other substantially interested contracting parties;
- (iv) whether the applicant contracting party should be free to modify the concession when agreement is reached with the contracting parties to whom the concession was granted by negotiation, or not until agreement is reached with all substantially interested contracting parties; in the former case, what mode of redress should be provided to any substantially interested contracting party which considers that it has not been compensated?

- (v) whether provision should be made for emergency action in circumstances where delay in affording additional tariff protection would cause damage to a domestic industry which it would be difficult to repair; whether such action should be permitted only if the CONTRACTING PARTIES, upon request by the contracting party concerned, recognise that the circumstances justify the taking of such action; what the obligations of a contracting party taking such action should be; and whether adequate remedies are available against an unjustified use of this provision.

6. There is a fair measure of agreement on the following principles: that the authority to enter into negotiations should be granted only in "exceptional circumstances"; that the negotiations should be conducted with a view to maintaining the level of concessions (i.e. the adjustment should be made by compensation in the schedule of the applicant contracting party rather than by withdrawal of concessions from other schedules); and that, if no agreement is reached within a prescribed time limit, there should be a determination by the CONTRACTING PARTIES upon reference by the applicant contracting party as to whether the compensation offered by it is reasonable. There is also a fair measure of agreement on the desirability of prescribing time limits for the various stages of the procedure. It has been suggested that some criteria should be laid down for judging the adequacy of compensation or "equivalence of concessions", but the consensus of opinion in the Sub-Group is that it would not be practicable to lay down such criteria in the Agreement and that each case should be determined by the CONTRACTING PARTIES on its merits, though the main considerations to be taken into account may be referred to in the Report of the Sub-Group.

7. The Sub-Group has also examined the alternative proposals that the Schedules should be bound for an indefinite period or for fixed periods. The former involves (i) deletion of the date in paragraph 1 of Article XXVIII, (ii) availability on a continuing basis of a procedure for modification of concessions, and (iii) deletion of paragraph 2 of Article XXVIII, thereby eliminating the right of unilateral action¹. Judging from the views expressed in the Working Party and in the Sub-Group, many delegations are in favour of binding the schedules for fixed periods only. Another suggestion on which there is no agreement is that, even if the schedules are bound for fixed periods, paragraph 2 of Article XXVIII should be replaced by a paragraph providing for arbitration by the CONTRACTING PARTIES in the event of no agreement being reached in negotiations. There is general agreement, however, on the desirability of including a provision in Article XXVIII (in the event of the schedules being bound for fixed periods) requiring a contracting party wishing to modify its schedule on the expiry of the period to give six months' notice of the list of items it wishes to negotiate, without prejudice to its right to amend the list in the course of negotiations.

1. A statement in support of this proposition was distributed in MGT/66/5A/
Add. 1.

8. The four propositions distributed in MGT/66 provide varying answers to these issues. Certain other issues may have to be taken up later. Whichever proposition is eventually found to be generally acceptable may, therefore, need some amendment or amplification. On the issues referred to in this statement the Sub-Group has consulted with the delegations of Austria, Brazil, Ceylon, Dominican Republic, New Zealand, Pakistan, South Africa and Turkey. It is hoped that other delegations will also study the material supplied to them and extend their co-operation to the Sub-Group in evolving a solution for this problem which will be satisfactory to all.