

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES
Ninth Session

Review Working Party II on
Tariffs, Schedules and
Customs Administration

ARTICLES XXVIII AND XVIII A

AND

CONTINUED APPLICATION OF THE SCHEDULES

Report by the Chairman of Sub-Group II-A

1. The Sub-Group has examined the proposals for the amendment of Article XXVIII and of Section A of Article XVIII. The latest discussions of Article XXVIII and of the continued application of the Schedules have been based on the drafts presented by the Chairman of Working Party II in W.9/166, and the discussion of Article XVIII A has been based on the draft contained in the report submitted to Working Party I (W.9/154).
2. At its last meeting, on 17 February, the Sub-Group endeavoured to improve the drafting of these texts for submission to the Working Party, it being understood that some delegations had reservations on certain important points of substance which they thought could be discussed more advantageously in the Working Party than in the Sub-Group. These reservations and proposals for substantive amendments, in so far as they were known to the Sub-Group, will be mentioned in the following paragraphs. The texts as they now stand are reproduced in the Annex to this report. The drafting of the text has been improved, but in addition a few changes of some substance are proposed and these are indicated by square brackets and underlinings.

Comments on Article XXVIII

3. The Sub-Group has examined the proposals submitted by delegations for the amendment of the provisions relating to the modification of schedules. Three principal suggestions were considered:

- (i) That the firm validity of the schedules should be extended indefinitely; that the CONTRACTING PARTIES should be authorized, in exceptional circumstances, to grant to a contracting party authority to re-negotiate particular concessions; and that the right of unilateral action should be removed by the deletion of paragraph 2.
- (ii) That the firm validity of the schedules be extended from time to time by decision of the CONTRACTING PARTIES; that provision be made for the CONTRACTING PARTIES to authorize renegotiation in cases of special urgency or other exceptional circumstances; and that paragraph 2 be replaced by a provision for arbitration by the CONTRACTING PARTIES in the event of no agreement being reached in negotiations.
- (iii) That the Article should provide for the extension of the firm validity of the schedules by three-year periods, but with greater flexibility in the right to renegotiate and in the procedures for negotiation, both during the periods of firm validity and at the end of each period.

4. The majority of the Sub-Group favoured the third proposal, and it was understood that the majority of the Working Party shares this view.

5. The first paragraph of Article XXVIII provides for the renewal of the firm validity of the schedules for successive periods of three years, and provision is made in paragraph 6 of the Regulations for contracting parties to enter into negotiations to modify or withdraw concessions during the last six months of each period.

6. The first line of the paragraph formerly read "On 1 January 1958 and on the first day of each three-year period thereafter". The new wording is considered an improvement in drafting. But the following phrase, "(or on the first day of any other period that may be agreed upon by the contracting parties for this purpose)" gave rise to some difficulty. Several alternatives were proposed, but some of these involved points of substance. In particular it was suggested that the words "agreed upon by the contracting parties" should be replaced by "specified by the CONTRACTING PARTIES".

7. In such negotiations the contracting party is required to negotiate with contracting parties which have a principal supplying interest, in addition to the contracting parties with which the concessions were initially negotiated. In determining the contracting parties with a "principal supplying interest" the CONTRACTING PARTIES would be guided by the principles set out in paragraphs 2 to 5 of the Regulations. On this point there was a division of opinion in the Working Party. The delegations which favoured this amendment considered that the

changing channels of trade should be taken into account and that, therefore, a contracting party which had become a principal supplier since the initial negotiations should be given the right to participate; further, they felt that a country whose trade had been hampered by discriminatory quantitative restrictions, and which, in the opinion of the CONTRACTING PARTIES would have had a principal supplying interest if it had not been for the existence of the restrictions, should be enabled to participate in the renegotiation of items subject to such restrictions. The delegations which opposed the amendment were of the opinion that the right to participate in negotiations should be limited to the contracting parties which had initially negotiated the items and which had paid for the concessions by concessions in their own schedules; they maintained that contracting parties with a principal supplying interest, other than the initial negotiators, having made no payment for the concessions, should enjoy only the right of being consulted, as provided in the present text. It is expected that proposals will be made in the Working Party for the amendment of this provision, or of the regulations relating to it.

8. Paragraph 2 of the revised text is the same as the last sentence of the present paragraph 1. The representative of Greece has reserved his position on this paragraph. Paragraph 3, except for consequential amendments, is the same as paragraph 2 of the present text. The representative of Greece has also entered a reservation on the words "substantially equivalent concessions in 3(b).

9. Paragraph 4 is a new provision intended to bring into the Agreement a provision for renegotiations under authority obtained from the CONTRACTING PARTIES in special circumstances, on the lines of the sympathetic consideration procedures adopted at the Eighth Session, but providing in certain circumstances for modification or withdrawal even if the negotiations are not successful. The representative of Greece proposes to delete the last phrase of the second sentence "unless compensation".

10. In the latest discussions in the Sub-Group the provisions of paragraph 5 also led to lengthy discussion. It provides that paragraph 4 of the Article may be suspended during multilateral tariff negotiations sponsored by the CONTRACTING PARTIES. The United States would prefer to provide that the CONTRACTING PARTIES could make the provisions of paragraphs 1, 2 and 3 available during any period of multilateral tariff negotiations. The following text was proposed by the United States representative:

"5. The CONTRACTING PARTIES may, during any period of multilateral tariff negotiations sponsored by them permit the modification or withdrawal of concessions pursuant to paragraphs 1, 2 and 3 of this Article, subject to such procedures as they may establish consistent with the procedures of the multilateral negotiations."

This alternative was supported by several delegations, but there was less agreement on the last phrase "subject to negotiations". The United Kingdom representative proposed a third alternative:

"5. The Organization may temporarily suspend, wholly or in part, the provisions of this Article at the time of multilateral tariff negotiations sponsored by it and provide for the modification or withdrawal of concessions in a manner consistent with the procedures of the multilateral negotiations."

11. The United Kingdom has reserved its position on Regulations 1 and 6, preferring that provisions for reserving the right to modify or withdraw concessions during a period of binding and the provisions for renegotiation during the last six months of a bound period should be in the Working Party's report.

12. The representative of Australia has suggested the addition of Regulation 12 concerning the preservation of secrecy.

13. It appeared to some representatives that the first words in paragraph 1 of the Article "on the first day of each three-year period" might mean that the modifications could be made effective only on that day. To meet this point, and also to cover several other points of procedure, the secretariat has suggested that the following paragraph be included in the Regulations:

"The provision that on 1 January 1958 etc. a contracting party 'may modify or cease to apply a concession' means that on that date its legal obligation under Article II is altered; it does not mean that the changes in its customs tariff must be made effective on that date. If the tariff change is delayed the entry into force of any compensatory concessions may be similarly delayed. In all cases the right to modify or cease to apply a concession is conditional upon the compensation being made effective at the same time. The CONTRACTING PARTIES are to be informed immediately of all changes in national tariffs resulting from recourse to the procedures of this Article."

Comments on Article XVIII A

14. Having decided upon its recommendations on Article XXVIII, the Sub-Group turned its attention to Section A of Article XVIII. The draft submitted by the secretariat provided the basis for its consideration of this question. Several drafting changes have been made to render the terminology more consistent with that used in Article XXVIII, but the Sub-Group was not able to complete a thorough examination of these provisions.

15. This text permits a contracting party, which comes within the definition in paragraph 4 of the revised Article recommended by Working Party I, to enter into negotiations for the modification of a concession in order to promote the establishment of an industry, with the countries with which they were initially negotiated and with other substantially interested countries. If agreement is

not reached within sixty days the matter may be referred to the CONTRACTING PARTIES. If the CONTRACTING PARTIES find that the contracting party which initiated the negotiation had made every effort to reach an agreement and had offered an adequate compensatory adjustment they could allow the contracting party to modify or withdraw the concession.

16. Some delegations wish to enlarge the scope of Section A in order that it shall be applicable to the expansion of an existing industry as well as to the establishment of a new industry, but the Sub-Group agrees that Section A must be consistent in this respect with other Sections of Article XVIII.

17. The text in the Annex shows an amendment proposed by the Sub-Group in the second sentence. If this amendment is adopted the agreement reached between two contracting parties in a renegotiation may provide for changes in the schedules of each contracting party, as provided for in the present text of Article XVIII A, instead of only in the schedule of the contracting party which initiated the negotiation. A consequential amendment follows in the third sentence.

18. The representative of India proposes the insertion of an interpretative note to Section A to provide that the CONTRACTING PARTIES might grant releases in cases where the applicant contracting party is unable, for good reasons, to provide adequate compensation; the provision should correspond to that of Article XXVIII:4(d) including the right of other contracting parties to modify or withdraw substantially equivalent concessions initially negotiated with that contracting party.

Immediate Application of Renegotiation Procedures

19. To provide for renegotiations in exceptional circumstances, under authority granted by the CONTRACTING PARTIES during the period until the revised Article XXVIII enters into force, the Working Party recommends that paragraph 4 should become operative forthwith. If this recommendation is approved the Executive Secretary might be instructed to submit an appropriate draft decision for approval by the CONTRACTING PARTIES before the close of the Session.

20. The representative of India has proposed that the provisions of Article XVIII A should also be brought into operation without delay. If this recommendation is approved a draft decision for the approval of the CONTRACTING PARTIES could be prepared by the Executive Secretary.

Extension of the Period of Firm Validity after 30 June 1955

The Sub-Group recommends that the contracting parties be invited to extend the firm validity of their schedules until 31 December 1957, and notes that arrangements have been made for contracting parties which find it necessary to modify or withdraw some of their concessions prior to accepting this extension to enter into negotiations pursuant to paragraph 1 of Article XXVIII. It is

understood, however, that certain contracting parties which wish to re-negotiate some concessions consider that it will not be possible to complete their negotiations by the end of June, and to meet this eventuality the Sub-Group proposes that such contracting parties should be permitted to continue their negotiations after 30 June provided that they are completed not later than 30 September 1955. The draft declaration on the continued application of schedules is in the Annex.

ANNEXDRAFT ARTICLE XXVIIModification of Schedules

1. ~~/On 1 January 1958, and on the first day of each three-year period thereafter/~~
On the first day of each three-year period, the first period beginning on 1 January 1958, (or on the first day of any other period that may be agreed upon by the contracting parties 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 CONTRACTING PARTIES 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 CONTRACTING PARTIES determine to have a substantial interest in such concession, modify or cease to apply a 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 CONTRACTING PARTIES, 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 CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with a contracting party taking action under such agreement.

4. The CONTRACTING PARTIES 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 CONTRACTING PARTIES may have prescribed, the contracting party which proposed to modify or cease to apply such treatment may refer the matter to the CONTRACTING PARTIES.
- (d) Upon such reference, the CONTRACTING PARTIES shall promptly examine the matter and submit their 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 CONTRACTING PARTIES determine that the applicant contracting party has unreasonably failed to offer adequate compensation. If such action is taken, the contracting party or parties with which the concession was initially negotiated, contracting parties determined under paragraph 4(a) to have a principal supplying interest and contracting parties determined under paragraph 4(a) 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 CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the applicant contracting party.

5. The CONTRACTING PARTIES may temporarily suspend the provisions of paragraph 4 of this Article at the time of multilateral tariff negotiations sponsored by them and substitute such procedures for negotiations as they 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 CONTRACTING PARTIES to reserve the right, for the duration of the subsequent period, to modify or withdraw concessions contained in the appropriate schedule in accordance with the procedures of paragraphs 1 to 3, and if a contracting party so elects other contracting parties shall have the right, during the same period, to modify or withdraw concessions initially negotiated with that contracting party in accordance with the procedures of paragraphs 1 to 3.
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 make negotiations and agreement under Article XXVIII unduly difficult nor to create complications in the application of the Article in the future to concessions which result from Article XXVIII negotiations. Accordingly, the CONTRACTING PARTIES 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 CONTRACTING PARTIES, 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 CONTRACTING PARTIES 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 Regulation 2, the CONTRACTING PARTIES 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, should have the effect that the contracting party seeking such modification or withdrawal should 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 discriminatory 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 CONTRACTING PARTIES in the application of paragraph 1. 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 CONTRACTING PARTIES to this effect. The CONTRACTING PARTIES 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 CONTRACTING PARTIES are arranging for multilateral tariff negotiations to take place within the period of six months before the termination of any bound period, they shall include in the arrangements for such negotiations suitable procedures for carrying out the negotiations referred to in this paragraph.
7. Any request for authorization to enter into negotiations under paragraph 4 of Article XXVIII shall be accompanied by all relevant statistical and other data. A decision on such request shall be made within thirty days of its submission.
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 CONTRACTING PARTIES shall authorize such contracting parties, under paragraph 4 of Article XXVIII to enter into negotiations unless they consider 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 CONTRACTING PARTIES 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 XVIII shall be made by the CONTRACTING PARTIES within thirty days of the submission of the matter to them, 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 CONTRACTING PARTIES to prescribe a longer period.
12. The CONTRACTING PARTIES and the individual contracting parties concerned should arrange to conduct the negotiations and consultations with the greatest possible secrecy in order to avoid premature disclosure of details of prospective tariff changes.]

ARTICLE XVIII

Draft Section A

6. If a contracting party coming within the definition set out in sub-paragraph (a) of paragraph 4 of this Article considers it desirable, in order to promote the establishment of a particular industry with a view to raising the general standard of living of its population, to modify or cease to apply a tariff concession included in a schedule to this Agreement, it shall notify the CONTRACTING PARTIES to this effect and enter into negotiation with any other contracting party with which such concession was initially negotiated, and with any other contracting parties which the CONTRACTING PARTIES determine to have a substantial interest in such concession. If agreement is reached between the contracting parties concerned, the schedule of the contracting party which proposes to change the rate shall be considered as modified the appropriate Schedules to this Agreement shall be amended to give effect to such agreement, including any compensatory concessions involved. If agreement with regard to compensatory concessions is not reached within a period of sixty days, the contracting party which proposes to modify or cease to apply the concession may refer the matter to the CONTRACTING PARTIES. Upon such reference the CONTRACTING PARTIES shall promptly examine the matter and, if they find that the contracting party which proposes to modify or cease to apply the concession has made every effort to reach an agreement and that the compensatory adjustment offered is adequate, that contracting party shall be free to modify the rate at the same time as it introduces the compensatory adjustment.

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

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.