ARTICLE XXVIII

Propositions under examination in Sub-Group A of Review Working Party II

The following explanatory statement relates to the third proposition on Article XXVIII annexed to MGT/66/54 distributed to delegations by Sub-Group A of Review Working Party II:

The formula for indefinite rebinding of the Schedules with the procedure for renegotiation continuously available to contracting parties would strengthen the stability of existing schedules by eliminating the periodic uncertainty which the contracting parties have since 1950 faced over the question of whether the firm life of the schedules would in fact be extended when it expired. Further, it would eliminate the risk that negotiations incident to such periodic extensions would spread widely, because of the need to take precautionary action before rebinding the schedules, and preclude the possibility that unilateral withdrawals under XXVIII-2 would lead to retaliatory withdrawals by affected countries, thereby rapidly unravelling the benefits now assured by the Agreement.

At the same time, the formula recognizes the need for more flexibility than has existed in the past to renegotiate bound rates. It does this (1) by making the procedure for making such modifications continuously available as need arises, and (2) by eliminating the requirement for unanimous agreement by all contracting parties to the results of such renegotiation.

The contracting parties will recall the uncertainty regarding the future of the schedules which has arisen on each previous occasion when a fixed date for the expiration of their firm validity drew near. This uncertainty gave rise to time-consuming discussion over the question of whether such a date would be extended at all, and if so, for how long a period. Uncertainty of this type destroys the stability which is a main virtue of the tariff schedules. Exporters are unable to plan confidently, and their uncertainty impedes the achievement of that healthy expansion in the production and exchange of goods which is a basic objective of the Agreement.

At the same time, experience has clearly demonstrated that Article XXVIII afforded insufficient flexibility, during the period of binding, for individual nations to meet the real and urgent needs for modification of bound rates which arise. These urgent needs led the contracting parties informally to devise the so-called "sympathetic consideration" procedure. This informal device to meet the needs of contracting parties which were unable to commit themselves to rigid rebinding has proved highly successful in avoiding extensive and precautionary negotiations.

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A problem remains, however, in the recurring necessity for extending the date itself and the uncertain possibility of unilateral withdrawals. Given the other escapes which are available under the Agreement, it may be questioned whether there is a real necessity to retain the unilateral procedures now provided in Article XXVIII-2. If these problems could be solved by deleting the date from XXVIII-1 and eliminating unilateral withdrawals provided in XXVIII-2, a modified paragraph 1 would be available on a continuous basis with no unilateral withdrawal procedure overhanging the stability of the schedules.

This continuing procedure would be available to countries desiring to reorganize their tariffs and make necessary modifications in this connection and as well as for countries desiring to renegotiate individual items. Several countries have already made extensive revisions in their schedules under this procedure. There has been no case so far renegotiated under the sympathetic consideration procedure in which the substantially interested parties failed to reach agreement. The proposed procedure would provide even more assurance against difficulty in securing agreement since agreement would be required only among the substantially interested countries rather than by all contracting parties.

This formula is therefore put forward as one which, on the basis of experience, will accommodate the genuine need for greater flexibility which has been demonstrated under the present Article. At the same time it would avoid the periodic uncertainty and the danger of unravelling the Schedules through an ever-widening circle of renegotiation and withdrawal.

It is put forward in the view that the reduction in general tariff levels bound in the tariff schedules represents the single most important achievement of the Agreement. Alternative proposals to rebind the schedules for a fixed period of two or three years, together with simplified procedures for renegotiation during short fixed periods, amply fulfil the important objective of providing greater flexibility. Some question may be raised, however, as to whether they do so in a fashion which does at the same time meet the basic needs for stability in international tariff relationships.

Because such stability is also vitally important the proposal to rebind the schedules indefinitely, with a procedure for renegotiation continuously available, has the advantage of providing flexibility without endangering the progress made since 1947.