SUB-GROUP C(II) (ARTICLES XXVIII AND XVIII A)

Notes on the first four Meetings of the Sub-Group and Further Questions requiring Consideration

The Sub-Group has examined the procedures for renegotiation when authority is granted by the CONTRACTING PARTIES, in exceptional circumstances, for a contracting party to modify certain concessions in its schedule. The discussion has proceeded on the assumption that the firm bindings of the schedules will be for fixed periods, as in the past, and that the procedures for exceptional renegotiations are to be incorporated in Article XXVIII.

The following procedures have been set down tentatively, subject to reconsideration by the members of the Sub-Group and consultation with other interested delegations:

1. A request for authority to renegotiate with a view to modifying of bound rate of duty should be examined by the CONTRACTING PARTIES if they are in session, or by the Intersessional Committee if the CONTRACTING PARTIES are not in session and a decision should be given within thirty days of receipt of the request by the Executive Secretary. The Sub-Group considers that the period of thirty days cannot be reduced.

2. Such authority to renegotiate should be granted only in exceptional circumstances, and on the understanding that the negotiations will be conducted with a view to maintaining the level of concessions. The Sub-Group considers that this phrase "exceptional circumstances" should be made neither broader nor narrower and that the freedom of judgement of the CONTRACTING PARTIES and of the Intersessional Committee should not be limited by a definition.

3. (a) Negotiations

(i) The applicant country should be authorized to enter into negotiations with, and should be expected to offer compensation to, the contracting parties to whom the concession had been initially granted by negotiation, and, if so requested, the CONTRACTING PARTIES should establish a time schedule for negotiations.

(ii) When agreement is reached with the contracting parties to whom the concession had been initially granted, the applicant country should be free to modify the concession at the same time as it makes the compensation effective.

(iii) If no agreement is reached within sixty days, or at such earlier time as may be agreed upon with the contracting parties to whom the concession had been initially granted, the applicant country may refer the matter to the CONTRACTING PARTIES.
If the CONTRACTING PARTIES (or the Intersessional Committee) determine that the compensation offered is adequate the applicant country will be free to modify the concession at the same time as it makes the compensation effective.

(b) Consultations

(i) The CONTRACTING PARTIES (or the Intersessional Committee) should determine the contracting parties which have a substantial interest in the concession on the basis of current trade. During the negotiations the applicant country should consult with such contracting parties and should endeavour to see that the compensation offered includes adequate compensation for them.

(ii) If agreement is reached in the negotiations and the applicant country modifies the concession, a substantially interested contracting party which considers it has not been adequately compensated may refer the matter to the CONTRACTING PARTIES. If the CONTRACTING PARTIES (or the Intersessional Committee) determine that such contracting party has not been adequately compensated:

   a. They shall recommend that the applicant country offer additional compensation. If adequate additional compensation is not offered, the CONTRACTING PARTIES may release the contracting party from the application of specified concessions to that contracting party. (See Article XII:4(a))

   b. It may suspend the application to the trade of the applicant country of substantially equivalent concessions provided that it has consulted the CONTRACTING PARTIES before taking such action and the CONTRACTING PARTIES do not disapprove. (See Article XVIII:4(c))

   c. It shall then be free, not later than ninety days after the concession concerned has been modified, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the CONTRACTING PARTIES, the application to the trade of the applicant country of such substantially equivalent concessions the suspension of which the CONTRACTING PARTIES do not disapprove. (See Article XIX:3(a))

   d. It should be free, not later than six months after the concession has been modified by the applicant country, 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 granted in negotiation to the applicant country. (See Article XXVIII:2(b))
Further Questions on the Procedures

1. The present procedures provide that the negotiations will be conducted at a place agreed upon by the governments concerned. In order to avoid delays that might arise from lack of agreement on this point, it might be provided that negotiations will be conducted in Geneva except when the contracting parties agree upon some other place.

2. Should there be a time-limit for the CONTRACTING PARTIES to give a decision on the adequacy of compensation? If a time-limit is fixed and no decision is given within the time-limit, should the applicant country have the right to modify the concession in question? Or, should the substantially interested contracting party have the right to withdraw concessions initially granted to the applicant country?

3. Is it possible to lay down any criteria by which the CONTRACTING PARTIES should measure the adequacy of compensation? (See the proposals by Brazil - W.9/39, and comment by Turkey - L/282) Or should this be determined by the CONTRACTING PARTIES when examining each case on its merits?

4. Should provision be made, as proposed by Australia in W.9/21, for emergency action in cases where delay would cause damage to domestic industry which it would be difficult to repair?

5. The present procedures require that the results of a renegotiation shall be reported to all contracting parties and that any contracting party has the right to lodge objections within a period of thirty days. It seems to be agreed that contracting parties which have not participated in the negotiations and have not been recognized as substantially interested should not have the right to object to the results.

6. The results of negotiations should be reported to the Executive Secretary over the signatures of the participating governments. The Executive Secretary should then inform all contracting parties.

7. An applicant country should be free to modify the concession at the same time as it makes the compensation effective, provided this is not less than thirty days after the date on which the Executive Secretary has been notified by all the governments which participated in the negotiation.

8. The applicant country should notify the Executive Secretary immediately the resulting changes in its tariff are made effective, and the Executive Secretary should inform all contracting parties. The schedule of the applicant country should be modified subsequently in accordance with procedures established by the CONTRACTING PARTIES for the modification of schedules.

9. Should these procedures be incorporated in Article XXVIII or should the Article contain only the basic provisions while the procedures are placed in an annex.
Other Questions affecting Article XXVIII

1. Should the procedures for renegotiation in paragraph 1 be amended? (See proposal by Cuba - W.9/49 and by Greece - L/277 page 8)

2. Should these procedures be available at all times by the removal of the date in the first line? (See United States - L/246 and New Zealand - L/270)

or,

Should the Agreement provide for periods of firm binding?

3. If there are periods of firm binding should the periods be determined in advance by amending the first line of paragraph 1 to read for example: "On 1 January 1958 and each three years thereafter, any contracting party ...."?

or,

Should the first line be amended to read: "Except during such periods of firm binding as may be determined by the CONTRACTING PARTIES, any contracting party may ...."?

4. If there are periods of firm binding, should the Agreement provide explicitly that contracting parties are to have opportunities for recourse to the renegotiation procedures of paragraph 1(s) at the end of each period and/or at the time of any general round of tariff negotiations.

5. Should the provisions in paragraph 2 for unilateral action in the event of no agreement be retained? If so, should provision be made for points of disagreement to be referred to the CONTRACTING PARTIES before action can be taken either by the contracting party proposing to modify a concession or by those to which it was granted or which have a substantial interest? (See proposals by Cuba - W.9/49, by Greece - L/277, page 8 and Turkey - L/282)

Proposals affecting Article XVIII A

(Executive Secretary's draft - W.9/17)

1. The proposal of Cuba (W.9/49) and Greece (W.9/37) to include in paragraph 2 "maintenance, development and reconstruction" of industries in addition to "establishment".

1The views of the International Chamber of Commerce have been distributed to delegations (ICC Document 100/59).
2. The proposal of Greece (W.9/37) to replace "in the early stage of development" in paragraphs 2 and 3 by "during the period of economic development".

3. The proposal of Cuba (W.9/49) that a contracting party proposing to modify a bound rate should be required only to consult with contracting parties determined to have a substantial interest.

4. The proposal of Cuba (W.9/49) to fix a time-limit of thirty days for a decision by the CONTRACTING PARTIES on failure to reach agreement.

5. The proposals of Greece (W.9/37) and Brazil (W.9/39) to amend the passages relating to compensatory concessions.

6. The proposal of Chile (W.9/35) to add paragraph 4(a) of the present Agreement which provides for emergency action in the event of increased imports during a negotiation.

7. The procedures for negotiations in paragraph 4 should be examined in the light of the more detailed procedures for renegotiation proposed for Article XXVIII.