Points discussed by the Sub-group

Article XXVIII

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 during such fixed periods 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 bound rates 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, i.e., the adjustment should be made by compensation in the Schedule of the contracting party requesting renegotiation rather than by the withdrawal of concessions from other schedules. The Sub-Group (with a reservation by the United Kingdom that reference should be made to special urgency) considers that the phrase "exceptional circumstances" should be made neither broader nor narrower, and that the freedom of judgment 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 provide compensation for, the contracting parties to whom the concessions had been granted by negotiation.

(ii) When agreement is reached with the contracting parties to whom the concession had been 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 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 reasonable, 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. During the negotiations the applicant country should consult with such contracting parties and should endeavour to see that the compensation offered includes compensation for them.

(ii) If agreement is reached in the negotiations and the applicant country modifies the concessions, a substantially interested contracting party which considers it has not been compensated may refer the matter to the CONTRACTING PARTIES. If the CONTRACTING PARTIES (or the Intersessional Committee) determine that the compensation is not reasonable, the CONTRACTING PARTIES should submit their views as to the additional compensation that should be granted. If the applicant country does not grant this additional compensation within thirty days, the substantially interested contracting party should be free, not later than ninety days 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 and the withdrawal of which the CONTRACTING PARTIES do not disapprove.
(c) Emergency Action

(i) First alternative

In circumstances where delay in affording additional tariff protection would cause damage to a domestic industry which it would be difficult to repair, a contracting party wishing to modify a bound rate of duty, when submitting its request to the CONTRACTING PARTIES under paragraph 1 may request the right to proceed with the modification prior to the conclusion of the negotiations.

(ii) If the CONTRACTING PARTIES agree that the circumstances justified the taking of emergency action and would warrant the grant of authority to renegotiate, the applicant country should be authorized to proceed with negotiations and consultations as provided under sections (a) (i) and (b) (i). It would be understood that if the CONTRACTING PARTIES do not agree that the circumstances justified the emergency action or warranted the grant of authority to negotiate, and if no satisfactory solution can be found on the basis of agreement between the contracting parties interested in the concession, recourse may be had to Article XLI.

(iii) If in the negotiations 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 was granted, the country which modified the duty shall refer the matter to the CONTRACTING PARTIES, and shall grant the compensation which the CONTRACTING PARTIES determine to be reasonable, or restore the concession which it had modified. A contracting party which has been determined by the CONTRACTING PARTIES as having a substantial interest in the concession and which considers that it has not been compensated may refer the matter to the CONTRACTING PARTIES, and the provisions of paragraph (b) (ii) shall apply.
4. A decision of the CONTRACTING PARTIES under 3(a)(iii), b(ii) or c(ii) should be given within thirty days unless otherwise agreed with the contracting party which has referred the matter to the CONTRACTING PARTIES.

5. The negotiations should be conducted in Geneva unless the participating contracting parties agree upon some other place.

6. The results of negotiations should be reported to the Executive Secretary over the signature of the participating governments and the Executive Secretary should immediately inform all the contracting parties. The schedule of the applicant country should be modified in accordance with the formal procedures established by the CONTRACTING PARTIES for the modification of schedules.

7. 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 the contracting parties.

8. The procedures should include a paragraph in which the CONTRACTING PARTIES would recognize that premature disclosure of the proposed modification of a rate of duty would tend to defeat the object of the negotiations and that, therefore, the CONTRACTING PARTIES should make some provision for the observance of the utmost secrecy in the conduct of any negotiation.

Criteria

The Sub-Group considered the proposals put forward by Brazil, Turkey and Haiti that criteria should be laid down by which the CONTRACTING PARTIES would measure the adequacy of compensation and the equivalence of concessions. The Working Party, however, was unanimously of the opinion that it would not be practicable to lay down such criteria in advance and that each case should be determined by the CONTRACTING PARTIES on its merits.

Reservations by Members of the Sub-Group

The foregoing draft of paragraph 3 has been tentatively accepted by the representatives of Cuba, Germany, Greece, India and The Netherlands, except that Germany and The Netherlands reserve their position on section (c).

The representative of Australia considers that the procedures for negotiation of Article XXVIII should be available at all times and that there should be no periods of fixed binding during which contracting parties would have to obtain the authority of the CONTRACTING PARTIES to negotiate modifications in their schedules. In any procedures of the type set out in paragraph 3 he would provide for unilateral withdrawal of equivalent concessions if renewed negotiations after the arbitration of the CONTRACTING PARTIES also fail. The inclusion of section (c) in a satisfactory form may enable his request for an interpretative note to Article XIX to be withdrawn.
The representative of Greece could accept most of the draft of paragraph 3 but wishes to reserve his position until the revision of Article XVIII A has been discussed.

The United Kingdom representative, while stressing the importance of compensation being provided by means of compensatory concessions, and of avoiding unilateral withdrawal of concessions, reserves his position on the draft.

The United States representative does not accept the basic assumption on which the foregoing draft has been prepared, namely, that there should be a fixed period of firm binding. He agrees that "sympathetic consideration" procedures should be included in Article XXVIII, but he would include in the negotiations those substantially interested on the basis of current trade. He considers that there should be no unilateral action and that therefore paragraph (b) (ii) should be deleted. He sees no need to make provision for action prior to approval by the CONTRACTING PARTIES and, therefore, would delete the whole of section (c).