PROPOSALS AFFECTING ARTICLE XXVIII

Note by the Executive Secretary

In Spec/99/55 delegations were invited to submit the drafting changes they wished to propose to the draft of Article XXVIII in W.9/166, to the draft of Article XVIIIA in W.9/154 and to the draft declaration on the continued application of schedules. The proposals received are recorded in this paper.

A meeting of the Sub-Group will be convened for Thursday afternoon, 17 February, to consider these and any other proposals so that drafts can be submitted to Working Party II for consideration before the end of the week.

DRAFT ARTICLE XXVIII

Modification of Schedules

1. On 1 January 1958 and on the first day of each three year period thereafter (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 determines to have a substantial interest in such concession, modify or cease to apply a tariff 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. Delete "not less...Agreement". (Greek)

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.

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(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/equitable concessions (Greece) 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 its 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. Delete (Greece). If such action is taken, the contracting party or parties primarily concerned, and the other contracting parties determined by the CONTRACTING PARTIES under sub-paragraph 4(a) of this Article 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 it and substitute such procedures for negotiations as it 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 that period, to modify or withdraw concessions contained in the appropriate schedule in accordance with the procedures of paragraph 1, and other contracting parties shall then be free, during the same period, to modify or withdraw concessions initially negotiated with that contracting party in accordance with the procedures of paragraph 1.

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 unreasonably impede access to the provisions of Article XXVIII/ make negotiations and agreement under Article XXVIII unduly difficult (India)/ 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 paragraph 1 above, 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 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 this paragraph. 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, it shall include in the arrangements for such negotiations suitable procedures for carrying out the negotiations referred to in this paragraph.

7. A decision on any request for authorization to enter into negotiations under paragraph 4 of Article XXVIII shall be made within thirty days of the submission of the request. Such request shall be accompanied by all relevant statistical and other data.

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 XVI to enter into negotiations unless it considers 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. [Delete this paragraph. (Greece)]
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 XXVIII shall be made by the CONTRACTING PARTIES within thirty days of the submission of the matter to it, 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. It is recognized that premature disclosure of the prospective modification or withdrawal, under Article XXVIII, of a tariff concession included in a schedule annexed to the Agreement might stimulate speculative trade which would tend to defeat the purposes of that Article. Accordingly the CONTRACTING PARTIES and the individual contracting parties concerned shall make provision for the observance of the utmost secrecy in the conduct of the negotiations and consultations provided for therein. (Australia)
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 and the expansion of an existing industry (Greece) with a view to raising the general standard of living of its population, to modify a rate of duty which has been bound under Article II of this Agreement, to modify or cease to apply a tariff concession included in a schedule to this Agreement (India), it shall notify the CONTRACTING PARTIES to this effect and enter into negotiation with any other contracting party with which such rate of duty was initially negotiated, and with any other contracting parties which the CONTRACTING PARTIES determines to have a substantial interest in the proposed action such concession (India). 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 is not reached within a period of sixty days after notification of the proposed action has been received by the CONTRACTING PARTIES, it shall promptly consider the matter and, if it finds that the contracting party which proposes to modify the rate or cease to apply the concession has made every effort to reach an agreement and that the compensatory adjustment offered is adequate equitable (Greece), that contracting party shall be free to modify the rate at the same time as it introduces the compensatory adjustment.

[India proposes that suitable provision should be made to enable the CONTRACTING PARTIES to grant releases in cases where the applicant contracting party is unable, for good reasons, to provide adequate compensation.]
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.
1. On 1 January 1958 and on the first day of each third year thereafter (or on the first day of any other year that may be specified by the CONTRACTING PARTIES for this purpose) any contracting party may, following 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 tariff concession included in a Schedule annexed to this Agreement, its desire to modify or cease to apply which has been notified to the CONTRACTING PARTIES.

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