CONTRACTING PARTIES
Ninth Session

Review Working Party.IV on
Organizational and Functional Questions

DRAFT INTERIM REPORT BY SUB-GROUP C ON MISCELLANEOUS QUESTIONS

The Norwegian delegation withdrew its proposals for a new first Article relating to purposes and objectives and a new second Article relating to general obligations (L/276) on the understanding that the Agreement of Organizational Provisions would contain provisions based on the same principles as the Norwegian proposals.

The sub-group recommends that the following paragraph be included in the report of the Working Party to deal with an interpretative note to Article XXIII proposed by Denmark, Norway and Sweden (L/273, L/276 and L/275).

The Working Party discussed proposals by the Governments of Denmark, Norway and Sweden to add an interpretative note to paragraph 2 of Article XXIII. The representative of the Scandinavian countries, when introducing the proposals, stressed that action by the CONTRACTING PARTIES under Article XXIII should be directed towards the maintenance of a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in the original situation; it was, therefore, he stressed, desirable that resort should be had to retaliatory action only when all other possibilities had been explored.

The proposal was withdrawn in the light of the agreement by the Working Party that, subject to the qualifications explained in the following paragraph of this Report, the principle set out in the proposed interpretative note conformed with both the intention of the Article and the practices the CONTRACTING PARTIES had hitherto followed in applying its provisions. The Working Party considered that the requirement in paragraph 2 of the Article that the circumstances must be "serious enough" limits the possibility of authorizing a contracting party or parties to take appropriate retaliatory action to cases where endeavours to solve the problem through the withdrawal of the measures causing the damage, the substitution of other concessions, or some other appropriate action have not proved to be possible, and where there is considered to be a substantial justification for retaliatory action, as in cases in which such authorization appears to be the only means either of preventing serious economic consequences to the country for which a benefit has been nullified or impaired, or the only means of restoring the original situation.

Spec/61/55
Furthermore, the Working Party felt that any implication (such as had existed in the Scandinavian proposal) that the provision of appropriate compensation, on the one hand, and the removal of a measure inconsistent with the Agreement, on the other hand, are fully equivalent and satisfactory alternatives would not accord with the intent and spirit of the Article. In their view, the first objective if the CONTRACTING PARTIES decided, in the event of a complaint under Article XXIII, that certain measures were inconsistent with provisions of the Agreement, should be to secure the withdrawal of the measures. In such a case, the alternative of providing compensation for damage suffered should be resorted to only if the immediate withdrawal of the measures was impracticable and only as a temporary measure pending the withdrawal of the measures which were inconsistent with the Agreement.