Subject discussed: Article XXVIII

Article XXVIII (L/93 and L/108)

Mr. SIEDEN (Denmark) stated that the Danish Government considered a rebinding, for 18 months should take place, and would support a decision to that effect.

This decision was reached by his Government only after considerable difficulty. Those delegates who took part in the Fourth and Fifth Sessions would recall that it had always been the view of the Danish Government that the steps taken during the Annecy and Torquay negotiations towards the attainment of one of the principal objectives of the General Agreement on Tariffs and Trade - the substantial reduction of tariffs and other barriers to trade - were not satisfactory, especially with regard to the small countries and low-tariff countries. The former were hampered, during the tariff negotiations by the "principal supplier" principle, and the latter found that insufficient recognition was given to the role of the negotiation procedure according to which "the binding against increase of low duties or of duty-free treatment should, in principle, be recognized as a concession equivalent in value to the substantial reduction of high duties". The results so far had been that a small, low tariff country had a very weak bargaining position under the present tariff reductions procedure, and it must be admitted that the results in general up until then were very far from the general levelling off of tariffs, which was the first condition for a sound international division of labour and a rational pattern of production.
Accordingly, the Danish Government had, with considerable disappointment, to maintain that the rebinding of the present schedules only meant the continuation of an unsatisfactory, unbalanced system. It would be remembered that quite a few delegations were of the same opinion during the discussions on rebinding in 1951, and that the Danish Government only at the last moment, and very reluctantly, had agreed to the rebinding. If, however, they did reach that decision, it was with the hope that the discussions started at that time, with the establishment of a special working party to study new ways for attaining their goal, would produce results in the not too distant future.

Contracting parties would recall how the situation actually developed. The discussions in the working parties produced results only in a limited and technical sense. It was to be feared that the forthcoming discussions to take place shortly on the Pflimlin Plan and the Low Tariff Club would show only too clearly that there was still a long way to go. At the same time, with increasing liberalization of trade, the tariff policies were of growing importance, and the differences between low and high tariff levels were creating difficulties to an increasing degree.

It was a fact that all circles in Denmark firmly believed in the idea of international equalization of tariffs on a low level, even at the cost of difficulties for their exports in the transitional period. It was, however, undeniable that sectors of the population, industrial workers or leaders of the export trade, felt that Denmark could not wait any longer, and requested that the equalization of tariff levels be attained through an increase in Danish duties. Those sectors were constantly increasing and in making their voice heard, were exercising considerable political pressure.

It was because the Danish Government were afraid that a new tariff war might be started on 1 January 1954, and that one of the main results of GATT - be it ever so unsatisfactory for certain countries - would be nullified and disintegrated in a very short period, that they felt rebinding was necessary. In so doing, they were showing the same hopefulness as on the earlier occasions when this question had been up for decision. Admittedly, such hopefulness, having no foundation in earlier experiences, could rightly be called over-optimism verging on national irresponsibility. The Danish delegation would therefore urge the CONTRACTING PARTIES to work for a satisfactory solution during the time which a rebinding of the schedules for 18 months would afford.

Mr. SUETENS (Belgium) said the Belgian Government were in favour of an extension of the binding period for one year or eighteen months. They had reached that decision in agreement with the Netherlands and Luxembourg, bearing in mind the interests of international economic co-operation. They were, however, not entirely satisfied with that decision and felt the same hesitation as expressed by the delegate for Denmark. They therefore reserved the right
to pursue any action they deemed appropriate with a view to the lowering of customs tariffs. They were, however, cases for which a reservation would have to be made and here he was speaking also on behalf of the Belgian Congo. There might be need for the revision of concessions too hastily granted and account would have to be taken of the needs of underdeveloped areas. He wished to emphasize that these cases would be few.

Mr. WAUGH (United States) stated that the Government of the United States had considered carefully the question of extending for a further period beyond 1 January 1954, the assured life of the tariff concessions under the General Agreement. His Government was engaged in a review of their foreign economic policy. A commission had been appointed to study the whole problem and its report would not be presented before 1 March 1954. In the interest of tariff stability he felt that an extension of the assured life of the concessions was essential. It might be suggested that no action was necessary since governments, although legally free to raise their tariffs after the end of 1953, would refrain from so doing except in a limited number of cases. He questioned the wisdom of their view since, in the absence of the restraints which had hitherto operated, governments would be subjected to very strong pressures with the consequent danger of a substantial movement towards higher tariffs generally throughout the free world. The United States delegation, therefore, strongly supported the proposal to extend Article XXVIII.

Regarding the period for which the Article should be extended, a practical problem was raised by the meeting of Congress, which usually took place in the first six months of the calendar year. There was also a possibility that the Commission on Foreign Economic Policy might not have concluded its report by 1 March 1954. Therefore, he suggested a period of 18 months, until 30 June 1955, during which the General Agreement and related economic policies might be under review in the various countries.

The United States were not in favour of exceptions; adequate safeguards and procedures existed under the General Agreement to meet the cases which might arise. Exceptional facilities granted to one country might have to be granted to others with great risks to tariff stability. Genuine cases of difficulty which confronted individual domestic industries might be met by the contracting parties, as in the past, to permit the re-negotiation of individual rates of duty, provided the countries having a substantial interest in the matter could come to an agreement. It was therefore the hope of the United States that individual commodity exceptions would not be attached to the extension of Article XXVIII.

Mr. HAGEMANN (German Federal Republic) said that the tariff concessions negotiated at Geneva, Annecy and Torquay, constituted, in conjunction with the general and unconditional most-favoured-nation clause, the essence of the General Agreement. The concessions were the result of efforts by the contracting parties to reduce and to stabilise customs tariffs. Through the
long-term binding of duties, international commercial relations were placed on a sound basis and traders possessed an element of security on which to base their calculations. This state of affairs should be maintained as far as possible. It was obvious that the States concerned would, in due course, have to be allowed to proceed to certain modifications of their tariff concessions. But the present moment did not seem opportune for such measures, since all States were not prepared for, or in a position to enter into, tariff negotiations. It was at all events indispensable that the example of perhaps a few governments which felt they had to use the facilities provided by Article XXVIII, should not be followed by others, thus starting a chain of reactions which might bring about the collapse of the whole structure of concessions.

The German delegation considered that any exception to the re-binding of the schedules should be made only in cases of absolute necessity and that the present arrangement should be maintained until a further round of negotiations be initiated in the course of the forthcoming year.

The German delegation were in favour of extending the assured life of the concessions in their present form, for 12 months to the end of 1954. During that period efforts towards a general lowering of tariffs should be continued. He felt that any plan for tariff reduction which resulted from such efforts might even serve as a basis for tariff negotiations. If required, the Ninth Session of the CONTRACTING PARTIES might offer an opportunity for deciding a further extension of several months.

M. DONNE (France) recalled that, in his remarks at a previous meeting, the leader of the French delegation, M. Lafay, had stated the position of the French Government with regard to the expiry on 1 January 1954 of the time limit, dating from which contracting parties were authorised to modify or to cease to apply the treatment they had granted under Article II of the GATT. M. Lafay had recalled that the plan for a general lowering of customs tariffs submitted by France to the Sixth Session of the CONTRACTING PARTIES was designed to impart to the General Agreement a new impetus in the matter of reduction of customs barriers, by substituting for negotiations based on the principle of reciprocity and of balanced concessions, a plan for automatic reduction of tariffs. The plan had regard for both the situation of low tariff countries which, according to present procedure, had practically no hope of obtaining substantial concessions from high tariff countries, and the situation of countries in process of industrial development. M. Lafay had indicated that for the immediate future, and with a view to making a substantial contribution to world trade, the French Government were prepared to undertake not to increase the level of their bound rates for a period of one year or eighteen months.

M. Donne insisted that the French Government were mainly concerned with the future of the General Agreement itself, and they had, to that effect, dismissed requests for an increase in duties made by certain sectors, and,
notably, had taken no account of their legitimate preoccupations with regard to the tariffs of certain of their overseas territories. The French Government had considered that by opening the door to the unbinding of concessions as facilitated by the application of Article XXVIII, there was danger that the foundations of multilateral tariff concessions might be undermined and that, as a result, the edifice might collapse, causing grave injury to world trade. They had considered that the proposed extension would enable the Government of the United States, whose responsibility in the field of world trade had been pointed out by the Ministers of Canada and of the United Kingdom, to gain sufficient time to define their trade policy and to obtain from the United States Congress the means of implementing that policy. Furthermore, it would enable the CONTRACTING PARTIES to initiate new negotiation procedures which would be profitable for all and would contribute towards carrying out the objectives of the General Agreement.

That decision by the French Government had anticipated the recommendations of the Chairman who, in his opening speech, referring to an efficient allocation of the world's resources, mentioned that governments would have to be prepared to show a certain amount of political courage in adopting policies which, in the short run, were most likely to be unpopular. The stabilisation of customs tariffs at levels negotiated during the conferences of the GATT, and future reductions in those tariffs were, in the mind of the French Government, appropriate means for facilitating a judicious distribution and movement of world resources. Consequently, on condition that the proposed declaration be signed by all major trading countries, the French delegation were disposed to sign a declaration along the lines suggested in document L/108, undertaking not to invoke the provisions of Article XXVIII: 1 before the date fixed by the CONTRACTING PARTIES.

Mr. VALLADAO (Brazil) declared that his country was in favour of prolonging the provisions of Article XXVIII relating to concessions concluded at Geneva, Annecy and Torquay. As had been emphasized by his own and other delegations, this period should be used to set up procedures for promoting trade in both the highly industrialised countries and those which were in process of industrialisation. He wished to stress the desire of his Government to collaborate with other countries within the scope of the General Agreement, but some formula should be found to meet the needs of under-developed countries.

Mr. ISIK (Turkey) considered it a general principle of the Agreement that the right of countries to modify their tariffs from time to time should not be impaired. Customs tariffs should be a reflection of the economic conditions of a country, which were in constant evolution. For that reason the assured life of the concessions was guaranteed only for certain periods. If contracting parties did not have the certainty that a review would be possible at certain intervals, they were likely to show excessive caution in granting concessions at future tariff negotiations. The present discussion on Article XXVIII therefore seemed opportune. The situation of Turkey in this
matter was a peculiar one: they realized that to grant freedom to all might be more inconvenient than to rebind the schedules and they would concur with a decision by the CONTRACTING PARTIES in favour of an extension. As an individual contracting party, however, they would have to make some reservations. In the first place his Government had decided to modify their customs tariff and to adopt the Brussels nomenclature and ad valorem rates. A Bill to that effect had been tabled before the Parliament and the Government could not take action which might hamper Parliament. Furthermore, the Turkish Government intended to achieve equilibrium in the balance of payments, not by restricting imports but by increasing exports. However, partly because of the policies followed by certain countries the increase in exports had not been sufficient to cover imports. Emergency measures had therefore been adopted to meet that situation and it was hoped that the remedy would be sufficient, and that no further measures would be required.

The Turkish Government, therefore, although they could not agree to an unconditional re-binding of their schedule, wished to give assurances that they did not intend to modify any items bound in their schedule unless it were strictly necessary. They were not in a position to specify any items on which they might want to take action and could only accept the proposal as set out in document 1/108 if their broad reservation were accepted. He wished to renew his Government's assurances that they would make as little use as possible of any liberty thus granted to them.

Dr. HEIMI (Indonesia) declared that he was in agreement with the proposed extension for eighteen months. That period would provide the CONTRACTING PARTIES with sufficient time to study future procedures. He hoped it would not be necessary to prolong the assured life of the schedules beyond 1955. Despite the fact that Indonesia was a new country, in full process of development, with tariffs which were not high, they were willing to make that contribution to economic cooperation.

Mr. SINGH (India) said that the Government of India had carefully considered the Chairman's proposal and expressed their preference for extension by means of a declaration. He fully appreciated the arguments according to which the binding of schedules had given security to the trading community whereas their un-binding might lead to an unravelling of the structure of the present schedules. India had, however, special problems in connection with the proposed extension. In the first place, when the assured life of the schedules was extended three years previously, the position of industry in India was not the same as at present, when industrialisation was proceeding at a rapid pace. Certain applications had been received from industries for the establishment of protective tariffs. A Tariff Commission, which was a statutory body, had meanwhile been set up to receive applications from producers, in pursuance of which the Commission made recommendations to the Government. It was therefore impossible at the present moment to indicate precisely in respect to what commodities India would seek release from the concessions, although they were not large in number. Moreover, customs provided a large proportion of Indian revenue, which had suffered from the reduction in export duties. It might therefore be found necessary to increase import duties through considerations of revenue and although the number of the bound items affected would be small, the Government of India felt it must
have freedom of action to negotiate for the withdrawal of concessions. Therefore, his Government would have to enter a reservation that they might have to invoke Article XXVIII.

Mr. PRESS (New Zealand) stated that when New Zealand became a contracting party to GATT she did so with a customs tariff which had not been subject to any major changes as regards protective duties, since 1934 and, as regards its basic structure, since the early 1920's. New Zealand was therefore under some initial disadvantage. They shared with a number of other contracting parties the weak negotiating position of having a limited range of exports - mainly raw materials and foodstuffs - and an almost infinite range of imports. This situation was fully appreciated by New Zealand in becoming a contracting party and it was realized that by the sole criterion of tariff concessions given and received the objective of mutual advantage might not be attained as far as they were concerned. As a country which had always been vitally concerned with international trade and whose per capita volume of such trade was one of the highest in the world, the New Zealand Government had regarded it as highly important that some such stabilising influence as the General Agreement should exist - so long as it was serving the purposes for which it was designed.

Of the limited range and magnitude of the tariff concessions obtained by New Zealand, some were considered to be of very great potential importance, as also were benefits other than actual tariff concessions which some exports would enjoy. In particular New Zealand had looked forward to enjoying expanded trade with the United States which was promised by these concessions and benefits. Unfortunately as the contracting parties knew only too well, that promise had not been fulfilled. Nullification and impairment of most of the important concessions and benefits which were to help trade with that country had even further upset the visible balance of the agreement in New Zealand eyes - and some of the few remaining benefits were even now in peril. It was against this general background that New Zealand considered the proposals contained in document L/93 and the draft declaration in L/108.

It was the view of the New Zealand Government that, with the expiry on 31 December of the so-called "assured life" of the schedules, no action should be taken to extend that "assured life", and the provisions of Article XXVIII should be allowed to operate until such time as the CONTRACTING PARTIES were able to arrange the negotiations which would normally have been expected to precede the revalidation of the schedules. Some discussion of this course of action appeared to be based on the assumption that contracting parties would be left free to do as they pleased with their schedules, and that bound rates could, and would, be raised indiscriminately. But this was by no means the case, for the provisions of Article XXVIII would still apply. These provided for a procedure of negotiation, agreement and compensation, and contracting parties would surely not embark lightly and unnecessarily upon the very complicated, and probably prolonged negotiations which would be required. It was therefore their view that the dangers of leaving the schedules to the operation of Article XXVIII for a defined period had been over-emphasised and that this was the course which should be adopted.
Nevertheless his delegation had been impressed by the firmness with which it was apparent that some delegations held the contrary view, and by the belief of the Chairman that extensive "unravelling" of the schedules and consequent loss of the stability they imparted to world tariffs, might follow. While, as indicated, he did not necessarily share the belief that such a result would follow, he certainly did believe that if it did it would be a most undesirable result. If the CONTRACTING PARTIES decided to adopt the form of declaration proposed there would be certain prerequisites to its acceptance by New Zealand. A review was only now being conducted by the New Zealand Board of Trade, associated with the extensive programme of liberalisation of trade from import controls which had been carried out by the same body. It seemed likely that in certain cases the implementation of recommendations by the Board regarding the essential levels of protective duties on some commodities would be prevented by the binding of the items in their GATT schedule. Until then the New Zealand Government had accepted this limitation on their freedom of action, as they recognised the sanctity of the schedules until 31 December this year, but they could not contemplate an extension of this kind which did not provide some opportunity to make adjustments which the obsolescence of the tariff, the removal of quantitative restrictions and the greatly changed economic circumstances of the country necessitated. It was most improbable that any very large number of items would be dealt with by the Board of Trade within a period of a year or 18 months, and still less probable that in every such case a GATT binding would be involved - let alone that it would be desired to take action affecting it. But some such cases would no doubt occur. As a matter of interest, he might say that at Torquay, New Zealand withdrew a number of bindings, but in the three years which had elapsed the rates had not in fact been increased on any of these items.

It was the policy of the New Zealand Government that in general the incidental protection which resulted from quantitative restrictions should be abolished in favour of tariff protection, and this had already happened in respect of the great bulk of New Zealand import trade. But there remained some items on which the existing tariff protection was quite inadequate and in respect of which the abandonment of quantitative restrictions was delayed because of that inadequacy.

For these reasons, before New Zealand could accept an extension of the assured life of her GATT schedule, there must be some adequate provision enabling them, subject always to negotiation and agreement of the kind prescribed in Article XXVIII, to give effect to any Government decisions, on the recommendation of the Board of Trade, which might affect bound rates. It did not seem necessary or appropriate at that time to discuss in detail what form such a provision might take, but his delegation would be willing to do so at the earliest possible date. As special circumstances had led the CONTRACTING PARTIES to consider the proposed departure from the procedure which would normally have accompanied the revalidation of the schedules, it became all the more necessary that the rights of individual contracting parties affected by this special procedure should be safeguarded.
Mr. PAPATSONIS (Greece) asked the contracting parties not to consider the Greek statement contained in L/117 as expressing their final attitude in this matter. He believed that the system of rebinding existing concessions was an empirical solution which might have disadvantages. In the opinion of his Government, it was not desirable to allow a crystallization of tariffs over a long period. This would be contrary to the interests of countries engaged in a long-term policy of reconstruction. They were however compelled to admit that for the time being, an extension of the assured life of the schedules was the only course open to the Contracting Parties. This period should not be longer than 12 months. For reasons which had been set out by the Minister of Finance of Greece in a previous meeting, certain revisions would however be necessary, but the means thereto lay in Article XVIII and XIX of the Agreement and not, for the present, in Article XXVIII.

Mr. CLARK (Australia) stated that in common with other countries, his Government had no desire to see the main body of concessions impaired and they were in favour of extension. At the same time they could not accept without reservation a commitment to extend in full the assured life of concessions which were already in their schedule. For the reasons already expressed by the delegate of New Zealand, he felt it was possible to exaggerate the fears which might arise as a result of maintaining the existing date 1 January 1954 under Article XXVIII: according to their experience of tariff negotiation, the time-consuming procedure neutralised any benefit accruing therefrom.

As they had explained at Torquay, owing to legislative procedures which have been in force in Australia for 40 years, it was not possible for the Australian Government to divest itself of the right to implement recommendations of the Customs Tariff Board. At Torquay the difficulty of the Australian Government had been solved by receiving an assurance from the CONTRACTING PARTIES that they would consider sympathetically any case put forward by Australia for a revision of some 30 items. In only three of the cases dealt with by the Tariff Board did it recommend an increase in the duties. In many cases the duties were reduced. Similarly the Australian Government would now ask the right to modify bound concessions. It was possible and not inconsistent with an extension of the assured life of Article XXVIII that a solution could be found that would secure the rights of the Australian Government in that respect. The Australian Government would agree to the extension of the period of validity of concessions under Art. XXVIII except to the extent that the Tariff Board might require the Government to make an alteration.

Mr. SAHLIN (Sweden) observed that the Swedish Government had always taken a positive attitude towards the General Agreement, and had looked upon it as an imperfect but useful instrument for furthering international trade.

One of the pillars of the Agreement was the principle of lowering tariff barriers between countries, and although all hopes had not been realised, considerable progress had been made. The firm bindings had been of the greatest value to international trade, despite the fact that they had been detrimental to certain Swedish industries, owing to the extremely low level of Swedish tariffs.
The value of bindings under the General Agreement seemed to stand out even more conspicuously when contrasted with the increase of tariff levels which was apparent in most countries. Revision of the General Agreement would appear reasonable since it had been intended only as a temporary measure, but pending that revision, the assured life of the schedules should be extended for a further relatively short period, to avoid instability in the interval. Sweden was in the same position as some other countries, and was reviewing her whole tariff system. The prospect of a general review of the Agreement recurred to him to add strength to the arguments favouring a re-binding of the schedules which he wished strongly to support. His Government was therefore prepared to abstain from modifications, provided other countries did likewise. He supported the views of the delegate for Denmark in saying that the intermediate period should be used for levelling and for further reducing tariff barriers. Extension by declaration would prove most appropriate, as a formal modification of the General Agreement would involve, for most countries, constitutional difficulties. In his view a period of eighteen months would be suitable.

Dr. BOTHA (South Africa) said that the Government of the Union of South Africa had given careful consideration to this question which they regarded as of very great importance. They were aware of the opinion held by some contracting parties that Article XXVIII contained its own safeguards against abuse, but he was not fully satisfied that the safeguards inherent in Article XXVIII were adequate. As the Chairman had stated in document L/93, there could be a large number of modifications and withdrawals which, combined with consequential and compensatory modifications and withdrawals, might well threaten to un-hinge the whole structure of the present tariff schedules. This was, he felt, a very real risk and one which the contracting parties should do well not to court at that critical juncture in international economic conditions, when it was their duty to prevent as far as possible a weakening of export markets which would inevitably follow upon a possible spate of tariff increases in the major trading countries of the world.

For these reasons, the South African Government had decided to support the suggestion of the Chairman that the contracting parties should agree to a procedure similar to that adopted at Torquay.

As regards the length of the period for which the firm validity of the existing tariff schedules should be extended, it should be borne in mind that too short a period of re-validation, such as six months or even a year, would nullify much of the benefit likely to accrue therefrom to international trade. A period of eighteen months would be the most appropriate in the present circumstances. The South African delegation gave their support to the proposed adoption of a declaration on the lines of the draft submitted in document L/108 and, although they sincerely sympathised with countries who were confronted with special difficulties, as South Africa itself had difficulties, they hoped that all contracting parties would be able to accept such a declaration at the conclusion of the present Session.
Mr. HUSAIN (Pakistan) supported the proposal. He was in favour of a minimum period of extension. Twelve months would have appeared sufficient to him but in view of the weighty considerations put forward by the Delegate of the United States, he would agree to an extension of the period to eighteen months. He very much hoped that the power to modify existing tariff concessions reserved by certain delegations would not be necessary. If however the majority of the contracting parties should so desire, Pakistan would fall into line and would not oppose the decision. He would like to draw attention to the remarks made by the delegate for India reserving powers for the protection of indigenous industry. The same remarks applied to his country where the Tariff Board system was identical. However the Government of Pakistan considered that, if necessary, recourse could be had to Article XVIII of the Agreement. He recalled that at the Torquay Conference, Australia and Pakistan had made reservations in respect of changes which might become necessary in their schedules as a result of recommendations made by their respective Tariff Boards. That had been noted by the CONTRACTING PARTIES, and the Pakistan Government expected that the position would be unchanged in this respect.

Mr. ENDERL (Austria) said that his Government, bearing in mind the present situation and possible future developments, were in favour of prolonging the existing concessions for one year or eighteen months, as thought appropriate. Certain difficulties for Austrian foreign trade might ensue if concessions affecting Austria were withdrawn or modified. His Government therefore accepted the proposal while reserving the right to take appropriate measures should Austria be gravely affected by the withdrawal of concessions.

Mr. NOTARANGELI (Italy) stated that the Italian Government was prepared to prolong the assured life of the schedules for eighteen months. Despite the difficulties involved for Italy, he trusted, that, in the interest of all, the proposed extension would precede a general revision of the principles of the Agreement.

Mr. BENTINCK (Netherlands) said that after careful consideration of the proposal his Government took the view that it would be undesirable to invoke the provisions of Article XXVIII and were in agreement with the suggestion that the assured life of the schedules be prolonged for a period of 18 months. This decision was taken on the understanding that a sufficient number of countries would be prepared to follow the same policy. He stated that if any contracting party were not in a position to sign the declaration, that should not be a sufficient reason for any signatories to initiate against that contracting party the procedure under Article XXVIII. This was not provided for in the draft and an amendment in that sense would have to be introduced.

He wished to state further that the preparedness of the Netherlands Government to maintain the status quo until 1955 related not only to the Netherlands and their Benelux partners, but also to the Overseas Territories of the Kingdom of the Netherlands, except to the Netherland Antilles. That Government was willing to maintain the status quo until 30 June 1954 only.
After that date they would have to reserve their freedom to modify certain concessions. Their present tariff was obsolete, dating with hardly any revision from 1908, and should therefore be considered as an extremely low one. For budgetary reasons, a revision was absolutely necessary and a new tariff would be published shortly, which even after revision would remain moderate. It was considered that an eighteen-month period would involve too great a financial sacrifice for the Government of the Antilles.

The meeting rose at 1 p.m.