WORKING PARTY 2 ON ARTICLE XVIII

Note by Pakistan Delegation on Article XVIII

At the preliminary meeting of the CONTRACTING PARTIES on 14 April 1949, our Delegation raised the question of the status of Article XVIII particularly section C of that Article in respect of a country which had become a Contracting Party by signing the Protocol of Provisional Application and was thus not committed to apply those provisions of Part II of the General Agreement which were inconsistent with the legislation of the Contracting Party which existed on the date of the signature of the Protocol of Provisional Application (Document GATT/CP.3/SR.4).

As the Working Party on Article XVIII is at present engaged in the general review of procedures for new measures which CONTRACTING PARTIES may wish to adopt in relation to the provisions of Article XVIII, our Delegation take this opportunity to place before the members of the Working Party our understanding of some of the provisions of Article XVIII which are of vital importance to the economically undeveloped countries. Pakistan Delegation would be grateful for the elucidation of the underlying principles of these provisions in the light of their interpretation.

2. Paragraph 6 of Article XVIII speaks of a protective measure which may be in conflict with the provisions of the General Agreement, provided such measure is in respect of products which are not bound in the GATT Schedule (Article II) of the Contracting Party considering the adoption of such a measure. The "provisions" of the Agreement mentioned in this paragraph are apparently those occurring in Part II of the GATT, as Part III mostly deals with procedural and organisational matters.
Now, if paragraph 6 is read with paragraph 7(a) of Article XVIII we find that provision has been made in these paragraphs for the action to be taken by the Contracting Party adopting such protective measure and the CONTRACTING PARTIES (acting jointly) as follows:

i) The Contracting Party adopting a protective measure has to notify the CONTRACTING PARTIES and transmit a written statement of the consideration in respect of the adoption of the proposed measure [Paragraph 6]

ii) If the proposed measure is in respect of such industries as are mentioned in paragraph 7(a)(i),(ii) and (iii) the CONTRACTING PARTIES are required to consider the application of the Contracting Party concerned and thereupon concur in the adoption of that measure, thus ensuring "automatic" approval of the CONTRACTING PARTIES.

In considering the application of a Contracting Party, the CONTRACTING PARTIES have to follow a time schedule mentioned in paragraph 10 of Article XVIII, provided the proposed protective measure happens to be in conflict with the provisions of Part II of the Agreement. If, on the other hand, the proposed measure (in respect of a product which is not bound in the GATT Schedule) is in accordance with the legislation of the applicant Contracting Party as it existed on the date of the signature or the Protocol of Provisional Application but is in conflict with the provisions of Part II of the Agreement, it seems to us that there is no obligation from which the applicant Contracting Party would have to seek release within the time schedule provided in paragraph 10 of Article XVIII. In the case of such a measure adopted for the protection of industries described in paragraph 7(a)(i),(ii) and (iii) the only action required of the applicant Contracting Party is, therefore, to notify the CONTRACTING PARTIES and transmit a written statement to them for information. The CONTRACTING PARTIES thereupon have only to observe a formality and give their "automatic" concurrence. In such a case, as
the CONTRACTING PARTIES will not be required to follow any time schedule for the consideration of the application, it goes without saying that the applicant Contracting Party can enforce the proposed measure at the time of notifying the CONTRACTING PARTIES assuming their "automatic" approval.

3. In short we feel that a Contracting Party is required to notify and submit a written statement to the CONTRACTING PARTIES and is entitled to presume "automatic" approval of the CONTRACTING PARTIES at the time of adopting a protective measure provided it

a) is in accordance with its existing legislation though in conflict with the provisions of Part II of the Agreement;

b) is in respect of an industry mentioned in paragraph 7(a) (i), (ii) and (iii) of Article XVIII;

and c) is in respect of a product not bound in the GATT Schedule (Article II).