

# GENERAL AGREEMENT ON

## TARIFFS AND TRADE

RESTRICTED

L/7096

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Limited Distribution

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### ARTICLE XXVIII:4 NEGOTIATIONS

#### Schedule LXXX - European Communities

The following communication, dated 28 September 1992, has been received from the Commission of the European Communities, with the request that it be circulated to contracting parties.

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In its communication dated 19 August 1992 (cf. doc. SECRET/336/Add.1 of 21 August 1992), the Community, as the applicant contracting party, requested the inclusion of this item in the agenda of this Council of Representatives pursuant to Article XXVIII:4 (c) and (d), first sentence.

In the course of the renegotiations and consultations held by the Community, a number of issues have arisen in connexion with the negotiating method under Article XXVIII:4; these issues must be resolved in order to allow the negotiations and consultations to be pursued and concluded, and in particular the final compensation offer to be formulated.

These issues, which have arisen in the bilateral negotiations with nine contracting parties and consultations with two other contracting parties, require the views of the CONTRACTING PARTIES in accordance with Article XXVIII:4 (d), first sentence, with the aim of achieving a settlement. In the view of the Community, the issues on which differences of opinion, sometimes of a fundamental nature, exist among participants in the negotiations are the following:

1. In accordance with the usual rules and practices for the application of Article XXVIII, should there be a separate renegotiation of each of the tariff concessions whose modification was authorized by the Council of Representatives at its meeting on 19 June 1992, or
2. Should there be, exceptionally, a global renegotiation of the six tariff concessions as a group, with all the ensuing implications as regards:
  - (a) the method of globalization for evaluating the value of the concessions concerned:
    - (i) by adding together the values of the imports concerned,
    - (ii) by adding together the quantities of the imports concerned using a common denominator (coefficient of equivalence to be determined);

- (b) the determination of the market shares of the various contracting parties in the event of a globalization of the six tariff concessions concerned, on which will depend in particular
    - (ii) the determination of the principal supplier,
    - (iii) the determination of the substantial interests;
  - (c) the determination and relative importance of "initial negotiating right" status in the event of globalization?
3. How should the impact be estimated of the impairment of benefits of a tariff concession resulting from the subsequent grant of a subsidy with respect to the initial legitimate expectations of a contracting party that negotiated the concession?
- Should this impact be evaluated on the basis of changes in production, trade, consumption or the competitive relationship between domestic and imported products, or by a combination of all or some of these elements?
  - Can countries that did not initially negotiate the concession be considered as "having a legitimate expectation" with regard to subsidies granted subsequently to the negotiation?
  - What can the "legitimate expectation" with regard to a previously granted subsidy be in the case of a country which only subsequently acquires rights with respect to the concession (for example, in the case of accession to the GATT subsequent to the subsidy)?
  - In the event of globalization of the six concessions, how will it be possible, where appropriate, to break down the impact of the various subsidies granted to each of the products concerned for the six tariff concessions?
4. What are the exceptional conditions whereby the CONTRACTING PARTIES may identify (pursuant to point 5 of the Note to Article XXVIII:1) as principal supplier a contracting party whose trade under the concession in question represents a "major part" of its total exports? What percentage of total exports can be considered as the threshold for there to be a "major part", and, where appropriate, can the total exports of the contracting party under the six concessions in question be grouped together in a single share?
5. What reference period should be used to calculate the market share of each contracting party participating in the negotiations (average of the last three years for which statistics are available)?
6. Is it necessary to compensate, and if so how, countries which initially negotiated the concession but which have no longer exported or exported only extremely little?

In conclusion, and pursuant to Article XXVIII:4 (d), first sentence, the Community refers the above-mentioned issues to the CONTRACTING PARTIES and formally requests them to "promptly examine them and submit their views to the contracting parties primarily concerned with the aim of achieving a settlement".