

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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COMMUNICATION FROM THE REPUBLIC OF KOREA

The following communication, dated 18 May 1987, has been received from the delegation of the Republic of Korea with the request that it be circulated to members of the Group.

Proposal of the Republic of Korea on the GATT Article XXVIII

(Interpretation of Negotiating Rights and Interest of Exporting Countries)

1. The GATT Article XXVIII, providing for a procedure for the modification or withdrawal of a tariff concession, defines contracting parties which may have the right (hereinafter referred to as the "negotiating rights") to participate in the negotiations or consultations related thereto. According to the history of the application of Article XXVIII, such negotiating rights are enjoyed by a limited number of contracting parties which are mostly major trading countries. In this regard, the Korean government is convinced that criteria for the determination of contracting parties which may exercise the negotiating rights under Article XXVIII should be supplemented and elaborated in such a manner as to ensure fair and equitable opportunity for all contracting parties.

2(a) The negotiating right granted to any contracting party with a principal supplying interest is based on its share of the import market; the Interpretative Note, Ad Article XXVIII paragraph 1.4 stipulates that one or, in exceptional cases, two leading exporters of the item are entitled to be determined as the "principal suppliers". In addition to that, the Interpretative Note, Ad Article XXVIII, paragraph 1.5 states that 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 the total exports of such contracting party, even though that contracting party is not a leading exporter of that item. The above paragraph 1.5 of the Interpretative Note indicates that a principal supplying interest may be exceptionally established according to the importance of the trade affected in relation to a country's total exports.

2(b) From this point of view, the Korean government would like to propose as a precise reference for the determination of a contracting party with a principal supplying interest envisaged in paragraph 1.5 of Ad. Article XXVIII "the ratio of export value of the item concerned to the country in question to its total export value of all products". This additional criterion would, if accepted, provide all contracting parties, in particular small trading nations, with equitable opportunity to participate in the Article XXVIII negotiations.

(Example)

<u>Country</u>	<u>Total Export Value to the World (T)</u>	<u>Export Value of item X to country Z (E)</u>	<u>E/ΣE (%)</u>	<u>E/T (%)</u>
A	1,000 millions	6 millions	17.6	0.006
B	5,000 "	10 "	29.4	0.002
C	10,000 "	15 "	44.1	0.0015
D	4,000 "	3 "	8.9	0.00075
		ΣE: 34 millions	100.00	

*E/ΣE (%) : share of item X in country Z
(current criterion)

*E/T (%) : ratio of export value of item X to country Z to total export value of all products (additional criterion)

As the export value of item X by country A to country Z invoking Article XXVIII constitutes the largest portion of country A's total export value in comparison with those of the other countries such as countries B, C, and D, country A should also be designated as a principal supplier in addition to country C, the leading exporter of item X to country Z.

3(a) The term, "substantial interest", as it appears in paragraph 1 of the Article XXVIII, is vague and undefined in the GATT, even though the interpretative note suggests a significant share in the market of the contracting party seeking to modify or withdraw the concession (see Ad Article XXVIII paragraph 1.7). As for "a significant market share", a 10 per cent criterion has been customarily referred to by developed countries. This criterion of 10 per cent, however, has not been agreed upon in the GATT.

3(b) Furthermore, this criterion disregards potential interest of the contracting parties. Suppose a situation that the industries in country P have chosen item X as a new export item, put investment in the necessary production facilities and just started to export item X to country Z. In this situation, if country Z preemptively raises its tariff rate on item X

by invoking Article XXVIII, country P will not be treated as a contracting party having a substantial interest because it has no recorded export performance. Consequently, country P cannot seek any remedy even though its substantial interest as an exporting country was seriously prejudiced.

3(c) Believing that a country's export interest depends not only upon its past export volume, but also upon its potential interest in the future, the Korean delegation suggests that potential interest be included in the concept of substantial interest. The concept of potential interest is also envisaged in the GATT Article XXXVII, 1 (b). Accordingly, the Contracting Parties could determine whether a contracting party has a substantial interest or not after fully considering data on such elements as production and export capacity, level of international competitiveness based on quality and price of the product concerned, submitted by the contracting party claiming substantial interest.