

GENERAL AGREEMENT ON TARIFFS AND TRADE

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APPLICATION OF ARTICLE XXVIII TO NEW PRODUCTS

Communication from Japan

The following communication, dated 22 September 1983, has been received from the Permanent Mission of Japan, with the request that it be circulated to contracting parties.

Japan - Request for the Establishment of a Working Party on Application of Article XXVIII to New Products

1. On 11 July, the position paper of Japan (L/5522) was circulated. The Council discussed this subject at its meeting on 12 July and agreed to revert to it at its next meeting.
2. As stated in the position paper mentioned above, the Government of Japan is of the view that the pre-emptive raising of tariff rate on DAD (or Compact Disc Player) by invoking Article XXVIII poses problems in the light of the basic objective of the GATT, which is to develop the world economy through expansion of trade. It also raises wide-ranging fundamental problems described below from the viewpoint of the application and interpretation of the General Agreement. The Government of Japan therefore believes it necessary for the CONTRACTING PARTIES as a whole to establish a clear interpretation and, as necessary, guidelines on this matter.
 - (a) Would it be allowed to invoke Article XXVIII with respect to a new product at the stage where there is no actual trade or where, shortly after the inception of trade, there is as yet no sizeable actual trade? Even if it were to be allowed, would it not be appropriate to refrain from invoking Article XXVIII with respect to new products at the stage where there is no sizeable actual trade, in view of the provisions of paragraph 1 of Article XXVIII and its interpretative note which presuppose the existence of sizeable actual trade?
 - (b) How would the following points be determined in the course of actual negotiations, if invocation of Article XXVIII were to be allowed?

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- (i) With respect to the provisions of paragraph 1 of Article XXVIII concerning consultations among the "contracting parties primarily concerned", how would the "contracting parties primarily concerned" be specified in cases where there is no sizeable actual trade? (In particular, in view of the fact that the decision on floating INR (L/4906) is applicable today to almost all concessions, it would not be possible to specify I, P and S status in the absence of sizeable actual trade.)
- (ii) What would be the formula for calculating compensation in a case where there is no sizeable actual trade?
- (c) Should it be the case that invocation of Article XXVIII is allowed in case (b)(i) above, would it not become possible to withdraw a concession without any consultation with the "contracting parties primarily concerned" and without offering any compensation, thus depriving the "contracting parties primarily concerned" of the benefits of concessions?
- (d) Would the invocation of Article XXVIII by the European Community not be tantamount, in its effects, to a "pre-emptive safeguard without injury requirement"? Although injury requirement is not a necessary condition with respect to Article XXVIII, would it not be correct to argue that the necessity of offering compensation, which presupposes the existence of actual trade over adequate periods of time, secures the stability of concessions?

3. In light of the above, it is proposed that the Council agree as follows:

- A. A working party will be established under the Council, composed of contracting parties which wish to participate, with a view to conducting an objective examination by the CONTRACTING PARTIES on the general question of application of Article XXVIII to new products such as DAD (or Compact Disc Player).
- B. The Working Party will carry out its examination from a wide-ranging perspective including the aspects of safeguards and high technology on the applicability or non-applicability of Article XXVIII to new products at the stage where there is no sizeable actual trade, and formulate, as necessary, guidelines on the subject.
- C. The Working Party will submit its conclusion as a recommendation to the Council as soon as possible.