ARTICLE XXVIII

MODIFICATION OF SCHEDULES

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I. TEXT OF ARTICLE XXVIII AND INTERPRETATIVE NOTE AD ARTICLE XXVIII

Article XXVIII*

Modification of Schedules

1. On the first day of each three-year period, the first period beginning on 1 January 1958 (or on the first day of any other period* that may be specified by the CONTRACTING PARTIES by two-thirds of the votes cast) a contracting party (hereafter in this Article referred to as the "applicant contracting party") may, by negotiation and agreement with any contracting party with which such concession was initially negotiated and with any other contracting party determined by the CONTRACTING PARTIES to have a principal supplying interest* (which two preceding categories of contracting parties, together with the applicant contracting party, are in this Article hereinafter referred to as the "contracting parties primarily concerned"), and subject to consultation with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest* in such concession, modify or withdraw a concession* included in the appropriate Schedule annexed to this Agreement.

2. In such negotiations and agreement, which may include provision for compensatory adjustment with respect to other products, the contracting parties concerned shall endeavour to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this Agreement prior to such negotiations.

3. (*a*) If agreement between the contracting parties primarily concerned cannot be reached before 1 January 1958 or before the expiration of a period envisaged in paragraph 1 of this Article, the contracting party which proposes to modify or withdraw the concession shall, nevertheless, be free to do so and if such action is taken any contracting party with which such concession was initially negotiated, any contracting party determined under paragraph 1 to have a principal supplying interest and any contracting party determined under paragraph 1 to have a substantial interest shall then be free not later than six months after such action is taken, to withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the applicant contracting party.

(*b*) If agreement between the contracting parties primarily concerned is reached but any other contracting party determined under paragraph 1 of this Article to have a substantial interest is not satisfied, such other contracting party shall be free, not later than six months after action under such agreement is taken, to withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the applicant contracting party.

4. The CONTRACTING PARTIES may, at any time, in special circumstances, authorize* a contracting party to enter into negotiations for modification or withdrawal of a concession included in the appropriate Schedule annexed to this Agreement subject to the following procedures and conditions:

(*a*) Such negotiations* and any related consultations shall be conducted in accordance with the provisions of paragraphs 1 and 2 of this Article.

(*b*) If agreement between the contracting parties primarily concerned is reached in the negotiations, the provisions of paragraph 3 (*b*) of this Article shall apply.

(*c*) If agreement between the contracting parties primarily concerned is not reached within a period of sixty days* after negotiations have been authorized, or within such longer period as the CONTRACTING PARTIES may have prescribed, the applicant contracting party may refer the matter to the CONTRACTING PARTIES.

(*d*) Upon such reference, the CONTRACTING PARTIES shall promptly examine the matter and submit their views to the contracting parties primarily concerned with the aim of achieving a settlement. If a settlement is reached, the provisions of paragraph 3 (*b*) shall apply as if agreement between the contracting parties primarily concerned had been reached. If no settlement is reached between the contracting parties primarily concerned, the applicant contracting party shall be free to modify or withdraw the concession, unless the CONTRACTING PARTIES determine that the applicant contracting party has unreasonably failed to offer adequate compensation.* If such action is taken, any contracting party with which the concession was initially negotiated, any contracting party determined under paragraph 4 (*a*) to have a principal supplying interest and any contracting party determined under paragraph 4 (*a*) to have a substantial interest, shall be free, not later than six months after such action is taken, to modify or withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the applicant contracting party.

5. Before 1 January 1958 and before the end of any period envisaged in paragraph 1 a contracting party may elect by notifying the CONTRACTING PARTIES to reserve the right, for the duration of the next period, to modify the appropriate Schedule in accordance with the procedures of paragraph 1 to 3. If a contracting party so elects, other contracting parties shall have the right, during the same period, to modify or withdraw, in accordance with the same procedures, concessions initially negotiated with that contracting party.

Interpretative Note *Ad* Article XXVIII from Annex I

The CONTRACTING PARTIES and each contracting party concerned should arrange to conduct the negotiations and consultations with the greatest possible secrecy in order to avoid premature disclosure of details of prospective tariff changes. The CONTRACTING PARTIES shall be informed immediately of all changes in national tariffs resulting from recourse to this Article.

Paragraph 1

1. If the CONTRACTING PARTIES specify a period other than a three-year period, a contracting party may act pursuant to paragraph 1 or paragraph 3 of Article XXVIII on the first day following the expiration of such other period and, unless the CONTRACTING PARTIES have again specified another period, subsequent periods will be three-year periods following the expiration of such specified period.

2. The provision that on 1 January 1958, and on other days determined pursuant to paragraph 1, a contracting party "may ... modify or withdraw a concession" means that on such day, and on the first day after the end of each period, the legal obligation of such contracting party under Article II is altered; it does not mean that the changes in its customs tariff should necessarily be made effective on that day. If a tariff change resulting from negotiations undertaken pursuant to this Article is delayed, the entry into force of any compensatory concessions may be similarly delayed.

3. Not earlier than six months, nor later than three months, prior to 1 January 1958, or to the termination date of any subsequent period, a contracting party wishing to modify or withdraw any concession embodied in the appropriate Schedule, should notify the CONTRACTING PARTIES to this effect. The CONTRACTING PARTIES shall then determine the contracting party or contracting parties with which the negotiations or consultations referred to in paragraph 1 shall take place. Any contracting party so determined shall participate in such negotiations or consultations with the applicant contracting party with the aim of reaching agreement before the end of the period. Any extension of the assured life of the Schedules shall relate to the Schedules as modified after such negotiations, in accordance with paragraphs 1, 2, and 3 of Article XXVIII. If the CONTRACTING PARTIES are arranging for multilateral tariff negotiations to take place within the period of six months before 1 January 1958, or before any other day determined pursuant to paragraph 1, they shall include in the arrangements for such negotiations suitable procedures for carrying out the negotiations referred to in this paragraph.

4. The object of providing for the participation in the negotiation of any contracting party with a principal supplying interest, in addition to any contracting party with which the concession was originally negotiated, is to ensure that a contracting party with a larger share in the trade affected by the concession than a contracting party with which the concession was originally negotiated shall have an effective opportunity to protect the contractual right which it enjoys under this Agreement. On the other hand, it is not intended that the scope of the negotiations should be such as to make negotiations and agreement under Article XXVIII unduly difficult nor to create complications in the application of this Article in the future to concessions which result from negotiations thereunder. Accordingly, the CONTRACTING PARTIES should only determine that a contracting party has a principal supplying interest if that contracting party has had, over a reasonable period of time prior to the negotiations, a larger share in the market of the applicant contracting party than a contracting party with which the concession was initially negotiated or would, in the judgment of the CONTRACTING PARTIES, have had such a share in the absence of discriminatory quantitative restrictions maintained by the applicant contracting party. It would therefore not be appropriate for the CONTRACTING PARTIES to

determine that more than one contracting party, or in those exceptional cases where there is near equality more than two contracting parties, had a principal supplying interest.

5. Notwithstanding the definition of a principal supplying interest in note 4 to paragraph 1, 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.

6. It is not intended that provision for participation in the negotiations of any contracting party with a principal supplying interest, and for consultation with any contracting party having a substantial interest in the concession which the applicant contracting party is seeking to modify or withdraw, should have the effect that it should have to pay compensation or suffer retaliation greater than the withdrawal or modification sought, judged in the light of the conditions of trade at the time of the proposed withdrawal or modification, making allowance for any discriminatory quantitative restrictions maintained by the applicant contracting party.

7. The expression “substantial interest” is not capable of a precise definition and accordingly may present difficulties for the CONTRACTING PARTIES. It is, however, intended to be construed to cover only those contracting parties which have, or in the absence of discriminatory quantitative restrictions affecting their exports could reasonably be expected to have, a significant share in the market of the contracting party seeking to modify or withdraw the concession.

Paragraph 4

1. Any request for authorization to enter into negotiations shall be accompanied by all relevant statistical and other data. A decision on such request shall be made within thirty days of its submission.

2. It is recognized that to permit certain contracting parties, depending in large measure on a relatively small number of primary commodities and relying on the tariff as an important aid for furthering diversification of their economies or as an important source of revenue, normally to negotiate for the modification or withdrawal of concessions only under paragraph 1 of Article XXVIII, might cause them at such time to make modifications or withdrawals which in the long run would prove unnecessary. To avoid such a situation the CONTRACTING PARTIES shall authorize any such contracting party, under paragraph 4, to enter into negotiations unless they consider this would result in, or contribute substantially towards, such an increase in tariff levels as to threaten the stability of the Schedules to this Agreement or lead to undue disturbance of international trade.

3. It is expected that negotiations authorized under paragraph 4 for modification or withdrawal of a single item, or a very small group of items, could normally be brought to a conclusion in sixty days. It is recognized, however, that such a period will be inadequate for cases involving negotiations for the modification or withdrawal of a larger number of items and in such cases, therefore, it would be appropriate for the CONTRACTING PARTIES to prescribe a longer period.

4. The determination referred to in paragraph 4 (*d*) shall be made by the CONTRACTING PARTIES within thirty days of the submission of the matter to them unless the applicant contracting party agrees to a longer period.

5. In determining under paragraph 4 (*d*) whether an applicant contracting party has unreasonably failed to offer adequate compensation, it is understood that the CONTRACTING PARTIES will take due account of the special position of a contracting party which has bound a high proportion of its tariffs at very low rates of duty and to this extent has less scope than other contracting parties to make compensatory adjustment.

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXVIII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Members hereby *agree* as follows:

1. For the purposes of modification or withdrawal of a concession, the Member which has the highest ratio of exports affected by the concession (i.e. exports of the product to the market of the Member modifying or withdrawing the concession) to its total exports shall be deemed to have a principal supplying interest if it does not already have an initial negotiating right or a principal supplying interest as provided for in paragraph 1 of Article XXVIII. It is however agreed that this paragraph will be reviewed by the Council for Trade in Goods five years from the date of entry into force of the WTO Agreement with a view to deciding whether this criterion has worked satisfactorily in securing a redistribution of negotiating rights in favour of small and medium-sized exporting Members. If this is not the case, consideration will be given to possible improvements, including, in the light of the availability of adequate data, the adoption of a criterion based on the ratio of exports affected by the concession to exports to all markets of the product in question.

2. Where a Member considers that it has a principal supplying interest in terms of paragraph 1, it should communicate its claim in writing, with supporting evidence, to the Member proposing to modify or withdraw a concession, and at the same time inform the Secretariat. Paragraph 4 of the "Procedures for Negotiations under Article XXVIII" adopted on 10 November 1980 (BISD 27S/26-28) shall apply in these cases.

3. In the determination of which Members have a principal supplying interest (whether as provided for in paragraph 1 above or in paragraph 1 of Article XXVIII) or substantial interest, only trade in the affected product which has taken place on an MFN basis shall be taken into consideration. However, trade in the affected product which has taken place under non-contractual preferences shall also be taken

into account if the trade in question has ceased to benefit from such preferential treatment, thus becoming MFN trade, at the time of the negotiation for the modification or withdrawal of the concession, or will do so by the conclusion of that negotiation.

4. When a tariff concession is modified or withdrawn on a new product (i.e. a product for which three years' trade statistics are not available) the Member possessing initial negotiating rights on the tariff line where the product is or was formerly classified shall be deemed to have an initial negotiating right in the concession in question. The determination of principal supplying and substantial interests and the calculation of compensation shall take into account, *inter alia,* production capacity and investment in the affected product in the exporting Member and estimates of export growth, as well as forecasts of demand for the product in the importing Member. For the purposes of this paragraph, "new product" is understood to include a tariff item created by means of a breakout from an existing tariff line.

5. Where a Member considers that it has a principal supplying or a substantial interest in terms of paragraph 4, it should communicate its claim in writing, with supporting evidence, to the Member proposing to modify or withdraw a concession, and at the same time inform the Secretariat. Paragraph 4 of the above-mentioned "Procedures for Negotiations under Article XXVIII" shall apply in these cases.

6. When an unlimited tariff concession is replaced by a tariff rate quota, the amount of compensation provided should exceed the amount of the trade actually affected by the modification of the concession. The basis for the calculation of compensation should be the amount by which future trade prospects exceed the level of the quota. It is understood that the calculation of future trade prospects should be based on the greater of:

(a) the average annual trade in the most recent representative three-year period, increased by the average annual growth rate of imports in that same period, or by 10 per cent, whichever is the greater; or

(b) trade in the most recent year increased by 10 per cent.

In no case shall a Member's liability for compensation exceed that which would be entailed by complete withdrawal of the concession.

7. Any Member having a principal supplying interest, whether as provided for in paragraph 1 above or in paragraph 1 of Article XXVIII, in a concession which is modified or withdrawn shall be accorded an initial negotiating right in the compensatory concessions, unless another form of compensation is agreed by the Members concerned.

II. INTERPRETATION AND APPLICATION OF ARTICLE XXVIII

A. SCOPE AND APPLICATION OF ARTICLE XXVIII

1. General

The present text of Article XXVIII was drafted during the Review Session of 1954-55 by the Review Session Working Party on Schedules and Customs Administration, whose Report notes that the revised text reflected the view "that the Article should provide for the extension of the firm validity of the schedules by three-year periods, but with greater flexibility in the right to renegotiate and in the procedures for negotiation, both during the periods of firm validity and at the end of each period".[1] The General Agreement as agreed in 1947 provided that Schedules of concessions would have firm validity and would not be renegotiable until 1 January 1951. This date was by stages extended to 1 January 1958; at the same time the CONTRACTING PARTIES accorded "sympathetic consideration" to case-by-case requests for renegotiation of concessions.

The principal changes made to Article XXVIII in the Review Session were the provision of rights for "principal suppliers" and the insertion of paragraphs 4 and 5. "Regulations" for the use of Article XXVIII were negotiated at the same time, and were inserted as interpretative notes to Article XXVIII. These amendments came into effect on 7 October 1957.[2] Procedures have been adopted for renegotiations under Article XXVIII; the Procedures now in effect, which were adopted in 1980, appear *in extenso* at pages 960-961.

In the Uruguay Round an Understanding on Article XXVIII was agreed and was incorporated into GATT 1994. The text of this Understanding appears above.

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[1] L/329, adopted on 26 February 1955, 3S/205, 217, para. 27(iii).

[2] Declarations extending the validity of Schedules for those contracting parties with respect to which the revised Article XXVIII was not yet in effect appear at 6S/19-22 (Declaration of 30 November 1957) and 9S/29-32 (Declaration of 19 November 1960).

2. Paragraph 1

(1) "On the first day of each three-year period ..."

The Report of the Review Working Party on "Schedules and Customs Administration" provides that

"... the revised text of paragraph 1 of the Article should be considered with particular reference to [paragraphs] 1 to 5 [of the Interpretative Notes to Article XXVIII]. The new paragraph 1 of the revised Article provides for the automatic renewal of the firm validity of the Schedules for successive period of three years unless the CONTRACTING PARTIES specify some other period by a majority of two-thirds of the votes cast. Contracting parties not wishing to accept the period thus specified will have the right of recourse to paragraph 5".[3]

While the date specified in Article XXVIII:1 is the deadline for completion of renegotiations conducted thereunder, this deadline has on occasion been extended by the Council for all or for specific contracting parties.[4]

(2) "by negotiation and agreement"

During discussion of the draft of this Article and Article XXVII (which were at the time numbered as XXVI and XXV) at the Geneva session of the Preparatory Committee, it was stated that "There is a difference between Article XXVI [XXVIII] and Article XXV [XXVII]. Article XXV [XXVII] permits a country to take action first: in other words to determine that a particular concession it negotiated with a country which does not become a contracting party will be withheld. In the case of Article XXVI [XXVIII], the intention is ... that consultation shall precede the withdrawal of the concession - that is to say, the modification of the concession. The action will not be taken first and consultation later".[5]

(3) "any contracting party with which such concession was initially negotiated"

(a) Initial negotiating rights (INRs)

For each concession, the contracting party with whom the concession was "initially negotiated", or holder of "initial negotiating rights" ("INR holder"), is determined generally through consulting the Schedules and the negotiating records associated with the concession. Rules for rounds of tariff negotiations before the Kennedy Round included the "principal supplier rule", which typically stated that "Participating countries may request concessions on products of which they individually, or collectively, are the principal suppliers to the countries from which the concessions are asked. This rule shall not apply to prevent a country not a principal supplier from making a request, but the country concerned may invoke the principal supplier rule if the principal supplier of the product is not participating in the negotiations or is not a contracting party to the General Agreement".[6] Concessions made in these rounds were typically negotiated by the principal supplier at the time, which then became the INR holder with respect to the concession.

In addition, in many cases a contracting party other than a principal supplier has initially negotiated a concession and thereby become an INR holder, or has secured agreement to accord to it the status of INR holder (a "negotiated INR") in respect of a concession which was initially negotiated by another contracting party. If the tariff on an item has been reduced through successive concessions over the years, the item may have a number of INRs, at different concession rates, for different contracting parties. The determination of INRs and INR holders may therefore be complex. Further concerning sources for determination of initial negotiating rights in schedules, see the discussion of schedules under Article II.

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[3]L/329, adopted 26 February 1955, 3S/205, 217, para. 28.

[4]See, e.g., C/W/165, C/M/63 p. 5 (agreement to extend deadline from 1 January 1970 until 31 December 1970); C/W/315, C/M/131 (agreement to extend deadline from 1 January 1979 to 30 June 1979 for Czechoslovakia and to 31 March 1979 for the United States).

[5]EPCT/TAC/PV/14, p.13.

[6]See Dillon Round rules at 8S/114, 115-116, para. II.(b)(i); identical statement in Rules for the Geneva tariff conference of 1956 at 4S/79, 80, para. II.3.

Articles II:4, XVIII:7, XVIII:18 and XXVII also refer to concessions initially negotiated, or to contracting parties with which concessions were initially negotiated.

(b) Floating initial negotiating rights

During the Kennedy Round, tariff cuts were for the first time negotiated on the basis of a general formula applied to tariff rates.[7] During the closing days of the Kennedy Round, the Trade Negotiations Committee approved a proposal, responding to the issue posed for INRs by the use of a general tariff-cutting formula, providing that "for the generality of concessions negotiated in the Kennedy Round, no initial negotiator would be specified".[8] This proposal was then adopted by the CONTRACTING PARTIES at the Twenty-fourth Session on 16 November 1967:

> "In respect of the concessions specified in the Schedules annexed to the Geneva (1967) Protocol, a contracting party shall, when the question arises, be deemed for the purposes of the General Agreement to be the contracting party with which a concession was initially negotiated if it had during a representative period prior to that time a principal supplying interest in the product concerned".[9]

During discussion of the text of this decision in the Trade Negotiations Committee of the Kennedy Round, "it was understood that the words 'that time' in the text refer back to 'when the question arises'. In other words, if a question of the type referred to arose, say, in some five or eight years, the representative period referred to would be a period related to that time".[10] At the Twenty-fourth Session, the Chairman of the CONTRACTING PARTIES also noted that "the proposal would only apply in the case of concessions for which no initial negotiator was specified ... it therefore followed that the adoption of the recommendation would not affect initial negotiating rights on concessions granted before the Kennedy Round, nor would it alter the rights which Article XXVIII gave to substantial suppliers".[11]

In the Tokyo Round (1973-1979), the use of a tariff-cutting formula was also agreed, and concessions were thus in most cases not the result of bilateral negotiations. The following "Action by the CONTRACTING PARTIES on the MTN Tariff Concessions" was therefore adopted on 28 November 1979:

> "1. The CONTRACTING PARTIES note that as a result of the tariff negotiations in the Multilateral Trade Negotiations, the Geneva (1979) Protocol to the General Agreement on Tariffs and Trade and the Protocol Supplementary to the Geneva (1979) Protocol have been drawn up.
>
> "2. The CONTRACTING PARTIES adopt the following decision: in respect of the concessions specified in the Schedules annexed to the Geneva (1979) Protocol to the General Agreement on Tariffs and Trade and the Protocol Supplementary to the Geneva (1979) Protocol, a contracting party shall, when the question arises, be deemed for the purposes of the General Agreement to be a contracting party with which a concession was initially negotiated if it had during a representative period prior to the time when the question arises a principal supplying interest in the product concerned. This decision does not affect initial negotiating rights which are the result of bilateral negotiations and which have been duly notified".[12]

In introducing the Harmonized System of tariff nomenclature, many contracting parties have conducted Article XXVIII negotiations with respect to their tariff schedules. The Council adopted a Decision on 15 June 1988 on "Floating Initial Negotiating Rights" providing that in respect of the concessions specified in the Schedules annexed to the protocols drawn up in connection with the introduction of the Harmonized System,

> "a contracting party shall, when the question arises, be deemed for the purposes of the General Agreement to be a contracting party with which a concession was initially negotiated if it had during a representative period prior to the time when the question arises a principal supplying interest in the product concerned.

[7]Concerning the use of formulas in tariff negotiations see generally under Article XXVIII*bis*.
[8]Proposal at TN.64/103; discussion and adoption at TN.64/SR.16 p. 9-10, paras. 35-40; reported in L/2867.
[9]15S/67.
[10]L/2867; TN.64/SR.16 p. 9, para. 36.
[11]L/2867; SR.24/10, p. 115.
[12]26S/202.

This decision does not affect initial negotiating rights which are the result of bilateral negotiations and which have been duly notified".[13]

The Council minutes for 15 June 1988 record the following explanation by the Legal Adviser to the Director-General of the background of this Decision: "... in the Kennedy and Tokyo Rounds, tariff reductions had been granted according to an across-the-board formula. Thus, no contracting parties had acquired initial negotiating rights to most of the concessions granted, as opposed to previous rounds where results had been achieved through bilateral negotiations which clearly identified initial negotiators. Decisions taken at the end of the Kennedy and Tokyo Rounds provided that the rights of an initial negotiator would accrue to the contracting party that had the main supplying rôle at the time of a particular renegotiation of a bound item. The principal supplier would thus have the same rights as the initial negotiator would have under Article XXVIII. As the concessions resulting from the Kennedy and Tokyo Rounds had come up for renegotiation in connection with the introduction of the Harmonized System, it had proved necessary to have a similar rule for the concessions resulting from those renegotiations. Accordingly, the draft decision ... was not an amendment to Article XXVIII, but simply a definition of 'initial negotiator' in the context of that particular type of negotiation. The substantial suppliers would not at all be affected by it. The draft decision was required because for many concessions there were no initial negotiators in the traditional sense, hence the reference to 'floating' negotiating rights, which would remain 'floating' until they became activated in a concrete case".[14]

(c) INRs and initial negotiating rights in compensatory concessions

Paragraph 7 of the Uruguay Round Understanding on the Interpretation of Article XXVIII of the GATT 1994 provides as follows:

"7. Any Member having a principal supplying interest, whether as provided for in paragraph 1 above or in paragraph 1 of Article XXVIII, in a concession which is modified or withdrawn shall be accorded an initial negotiating right in the compensatory concessions, unless another form of compensation is agreed by the Members concerned."

(4) "with any contracting party determined by the CONTRACTING PARTIES to have a principal supplying interest ... and ... with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest"

The original text of Article XXVIII referred only to "any contracting party determined by the CONTRACTING PARTIES to have a substantial interest". During the Geneva session of the Preparatory Committee in 1947, in the discussion by the Tariff Agreement Committee of this provision, it was stated that the purpose of including this phrase was "to limit the right of other countries to hold up or delay or prevent the withdrawal or modification of the Schedule ... any country can claim that it has an interest in any item in a Schedule, and if they wish to be difficult, it would be possible for them to hold up a modification of the Schedule by claiming an interest in a commodity, their interest in which was exceedingly remote. ... the obvious thing to do was to give the right of decision to the CONTRACTING PARTIES, so that if a country claimed an interest and the country which had granted the concession did not think that that interest was sufficiently significant to give the country the right to be consulted, then it could be settled by majority vote ... and you could get on with the business".[15]

The reference to contracting parties determined to have a "principal supplying interest" was inserted into Article XXVIII as one of the Review Session amendments.

See the Interpretative Notes 4-7 to paragraph 1 of Article XXVIII for a definition of these terms.

[13]L/6367, 35S/336; see also 1988 Report of the Committee on Tariff Concessions, 35S/29-30.
[14]C/M/222, p. 2-3.
[15]EPCT/TAC/PV/14, p. 14-15, discussing proposal in EPCT/W/326.

(a) Submission of claims of interest

See the "Procedures for Negotiations under Article XXVIII" adopted on 10 November 1980, cited *in extenso* at page 960-961.

(b) "substantial interest"

No precise definition for "substantial interest" has ever been agreed. During the meeting of the Committee on Tariff Concessions in July 1985, it was stated that the "10 per cent share" rule had been generally applied for the definition of "substantial supplier".[16]

(c) Principal supplier rights where a concession affects a major part of a contracting party's exports

Note 5 *Ad* Article XXVIII:1 provides 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."

In 1985-86, discussions took place in the Committee on Tariff Concessions on a Swiss proposal that a test be carried out in the context of the negotiations linked to introduction of the Harmonized System, by offering a negotiating right to "the exporter for which trade in a specific product has the most importance".[17]

At the September 1992 Council meeting, Argentina noted its request for recognition of its principal supplying interest with respect to concessions in the EEC Schedule on soyabeans and soyacakes on the basis that its exports to the EEC of these products constituted a major part of its total exports and therefore met the criteria in Note 5. Argentina requested the establishment of a panel to examine this claim so that the CONTRACTING PARTIES could determine this interest under Article XXVIII:1. At the November 1992 Council meeting, the EEC stated that "Argentina's recourse to the dispute settlement mechanism in this case was inappropriate and improper" as in its view this was not a dispute between Argentina and the Community, but a dispute between Argentina and the CONTRACTING PARTIES; the EEC offered to recognize Argentina's claim of rights subject to the later conclusions of a working group. Argentina noted that

> `"... paragraph 4 of the Procedures for Negotiations under Article XXVIII adopted in November 1980 .. provided that any contracting party which considered that it had a principal or substantial supplying interest in a concession that was the subject of negotiation and consultation under Article XXVIII should communicate its claim in writing to the contracting party intending to modify or withdraw the concessions concerned. If the latter contracting party -- the Community in the present case -- recognized such a claim, that recognition would constitute a determination by the CONTRACTING PARTIES of an interest in the sense of Article XXVIII:1. If the claim was not recognized, the contracting party having made it could refer the matter to the Council. ... Clearly, if the Community and the Council did not recognize such a claim, the matter would be considered closed. However, for the Community to condition such a recognition on the establishment of a working group which would examine the consequences thereof did not make any sense, and did not square with the 1980 procedures".[18]

After the EEC then reiterated its acceptance of Argentina's principal supplying interest in soyabeans and soyacakes, the Chairman stated that "it was his understanding that the matter referred to the Council had been satisfactorily resolved between the parties concerned, and that the Council should, accordingly, take note of this", the US representative commented that

> "... three options had been raised in the present discussion to resolve the matter: the first was the establishment of a working group, to which the Community had alluded but which did not appear to be satisfactory to Argentina; the second was the establishment of a panel, as requested by Argentina, and which would be an automatic Council decision if Argentina insisted on it; and the third was for some

[16]TAR/M/16, p. 10.
[17]TAR/W/57, dated 18 December 1985; TAR/132. 1986 Report of the Committee, 33S/133, 134, para. 6.
[18]C/M/260, p. 28.

consensus whereby the Council determined that Argentina had principal supplier rights in the products concerned. ...".[19]

The Director-General, in support of the Chairman, said that

"... for the sake of having the Council take appropriate action to conclude this item, he would quote paragraph 4 of the 1980 Procedures for Negotiations under Article XXVIII, which read as follows: 'If the contracting party referred to in paragraph 1 [which intends to negotiate for the modification or withdrawal of concessions under Article XXVIII:1] recognizes the claim [of principal or substantial supplying interest], the recognition will constitute a determination by the CONTRACTING PARTIES of interest in the sense of Article XXVIII:1'. In other words, it was enough for the two parties concerned to have agreed on this matter for it to constitute a 'determination by the CONTRACTING PARTIES'. Therefore, the Chairman was correct in proposing that the Council should take note that the matter referred to it had been satisfactorily resolved between the two parties, and nothing more".[20]

The Council took note of the statements, and also that the matter referred to it had been satisfactorily resolved between Argentina and the European Community.

Paragraphs 1 and 2 of the Uruguay Round Understanding on the Interpretation of Article XXVIII of the GATT 1994 provide as follows:

"1. For the purposes of modification or withdrawal of a concession, the Member which has the highest ratio of exports affected by the concession (i.e. exports of the product to the market of the Member modifying or withdrawing the concession) to its total exports shall be deemed to have a principal supplying interest if it does not already have an initial negotiating right or a principal supplying interest as provided for in paragraph 1 of Article XXVIII. It is however agreed that this paragraph will be reviewed by the Council for Trade in Goods five years from the date of entry into force of the WTO Agreement with a view to deciding whether this criterion has worked satisfactorily in securing a redistribution of negotiating rights in favour of small and medium-sized exporting Members. If this is not the case, consideration will be given to possible improvements, including, in the light of the availability of adequate data, the adoption of a criterion based on the ratio of exports affected by the concession to exports to all markets of the product in question.

"2. Where a Member considers that it has a principal supplying interest in terms of paragraph 1, it should communicate its claim in writing, with supporting evidence, to the Member proposing to modify or withdraw a concession, and at the same time inform the Secretariat. Paragraph 4 of the 'Procedures for Negotiations under Article XXVIII' adopted on 10 November 1980 (BISD 27S/26-28) shall apply in these cases."

d) Principal and substantial supplier rights and trade conducted at other than most-favoured nation duty rates

Paragraph 3 of the Uruguay Round Understanding on the Interpretation of Article XXVIII of the GATT 1994 provides as follows:

"In the determination of which Members have a principal supplying interest (whether as provided for in paragraph 1 [of the Understanding] or in paragraph 1 of Article XXVIII) or substantial interest, only trade in the affected product which has taken place on an MFN basis shall be taken into consideration. However, trade in the affected product which has taken place under non-contractual preferences shall also be taken into account if the trade in question has ceased to benefit from such preferential treatment, thus becoming MFN trade, at the time of the negotiation for the modification or withdrawal of the concession, or will do so by the conclusion of that negotiation."

[19] *Ibid.*, p. 31.
[20] *Idem.*

(6) Negotiating rights and trade in new products

Paragraphs 4 and 5 of the Uruguay Round Understanding on the Interpretation of Article XXVIII of the GATT 1994 provide as follows:

> "4. When a tariff concession is modified or withdrawn on a new product (i.e. a product for which three years' trade statistics are not available) the Member possessing initial negotiating rights on the tariff line where the product is or was formerly classified shall be deemed to have an initial negotiating right in the concession in question. The determination of principal supplying and substantial interests and the calculation of compensation shall take into account, *inter alia,* production capacity and investment in the affected product in the exporting Member and estimates of export growth, as well as forecasts of demand for the product in the importing Member. For the purposes of this paragraph, 'new product' is understood to include a tariff item created by means of a breakout from an existing tariff line.
>
> "5. Where a Member considers that it has a principal supplying or a substantial interest in terms of paragraph 4, it should communicate its claim in writing, with supporting evidence, to the Member proposing to modify or withdraw a concession, and at the same time inform the Secretariat. Paragraph 4 of the ... 'Procedures for Negotiations under Article XXVIII' shall apply in these cases."

(7) "modify or withdraw a concession"

See the discussion below at page 959 and following of procedures for negotiations under Article XXVIII and their relationship to the ensuing modification or rectification of schedules.

(a) Renegotiation of Schedule concessions other than tariffs

In 1956 Germany withdrew a concession relating to screen quotas for the exhibition of films of foreign origin, after renegotiations under Article XXVIII.[21] Various concessions relating to the operation of import monopolies have been modified or withdrawn pursuant to negotiations under Article XXVIII, in the context of Article XXIV:6. In recent years some governments have included in their Schedules, in addition to tariff concessions, such non-tariff commitments as minimum import quotas[22], or commitments for elimination of import permit requirements, import licensing schemes, or import prohibitions.[23] Some of these Schedules have also provided explicitly for negotiations in the event of withdrawal of these commitments; in a number of instances such Schedules have specified initial negotiating rights with respect to these commitments.

3. Paragraph 2

(1) "maintain a general level of reciprocal and mutually advantageous concessions not less favourable": concepts of equivalence of concessions

During the discussion on the provisions which became the present Article XXVIII during the Geneva session of the Preparatory Committee in 1947, the addition of this sentence was suggested together with the possibility of counter-withdrawals (see paragraph 3) in order to "keep before us the objectives of the Charter to achieve a substantial reduction of tariffs, and, at the same time, permit the necessary flexibility for withdrawing individual items as an alternative to complete withdrawal from the Agreement".[24]

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[21]SECRET/27, Spec/86/56.

[22]Schedule XXXII - Austria, Part III, non-tariff concessions (1979); Schedule XX - United States, note 2 to chapter 2, unit B.

[23]See Schedule LXXVII - Mexico (indication in Column 7 of items to be exempt from prior import permit requirement); Schedule LXXXVI - Venezuela (indication in Column 7 of items for which certain notes to Venezuelan tariff to cease to apply); Schedule LXXXVIII - Guatemala (indication in Column 7 of items to be exempt from prohibitions, licensing and restrictive permits, and other quantitative import restrictions); Schedule LXXXV - Costa Rica (indication in Column 7 of items to be exempt from licensing or quantitative restrictions or from duties and charges inconsistent with Articles III and VIII); Schedule LXXXVII - El Salvador (indication in Column 7 of items to be free from quantitative restrictions except to protect health or morals or national security, and free from charges and taxes inconsistent with Article III); Schedule LXXXIV - Bolivia (exemption from import licensing or quantitative restriction for items for which US has initial negotiating rights); Schedule LXXXIII - Tunisia (indication of exemption from import licensing or other quantitative restrictions for certain items).

[24]EPCT/TAC/PV/14, p. 32.

See also the material in the chapter on Article XXVIII*bis* on measurement of value of concessions in the context of trade negotiating rounds. See also a Secretariat technical note of 1988 on methodology for evaluating equivalence of concessions in another context.[25]

(a) Base period for determination of value of tariff concessions

In 1963, a Panel was established to render an advisory opinion to the EC and the United States in relation to the renegotiation by the EC under Article XXIV:6 of certain bound tariff concessions on poultry. The Panel examined the value to be ascribed to United States exports of poultry to the Federal Republic of Germany, on the basis of the definition of poultry provided in item 02.02 of the EEC Common Customs Tariff and the rules and practices of the GATT, and in the context of the unbindings concerning this product.

> "The Panel recognized that the matter before it fell to be dealt with in the context of the Article XXIV:6 negotiations. This was relevant both to the choice of the reference period … and to the manner in which this determination [of the value of such poultry exports as of 1 September 1960] was to be made.
>
> "In its choice of a reference period, the Panel was guided by the practice normally followed by contracting parties in tariff negotiations, namely to lay particular emphasis on the period for which the latest data were available. As, in its view, the latest data which could reasonably have been expected to be available on 1 September 1960 would run up to 30 July 1960, the Panel decided to take as the reference period the year 1 July 1959 to 30 June 1960. …".[26]

The 1978 Panel Report on "Canada - Withdrawal of Tariff Concessions" examined a proposed withdrawal of concessions by Canada under Article XXVIII:3. In December 1974 the EC (acting under a prior invocation of Article XXVIII:5) notified its desire to negotiate under Article XXVIII in order to convert specific duties on unwrought lead and unwrought zinc to ad valorem rates of duty. In December 1975 the EC submitted its final report on the negotiations in which Australia had agreed on rates of duty of 3.5 per cent ad valorem on both lead and zinc; no agreement had been reached with Canada. The EC then introduced these new duty rates on 1 January 1976. In May 1976 Canada notified proposed withdrawals of bindings on various items in the Canadian tariff schedule, the trade coverage of which was equivalent to the annual average figure for Canada's total exports to the Community of zinc in the period 1973-75. Canada did not contest the final rate on lead.[27]

> "The Panel based its consideration of the case on Article XXVIII of the GATT which, as both parties agreed, was the applicable provision, *inter alia*, for negotiations which are undertaken with the aim of converting specific rates of duty into ad valorem rates. In this connexion, the Panel considered of special importance paragraph 2 of Article XXVIII which provides that the contracting parties concerned 'shall endeavour to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this Agreement prior to such negotiations'.
>
> "The Panel noted that as a general principle, Article XXVIII negotiations had in the past been based on the most recent three-year period for which trade statistics were available, for the purpose of determining principal or substantial supplier rights. It was also the understanding of the Panel that in past negotiations a three-year period had been used as an element in the determination of the value of tariff concessions. The Panel noted on the other hand that no clear precedent could be found as regards the selection of a base period for the purpose of converting specific into ad valorem rates of duty. In the absence of agreement between the parties on an appropriate base period, the Panel held that the general principle of using the most recent three-year period should be applied to this case as well in order to allow account to be taken of cyclical movements and random events."[28]
>
> "The Panel does not consider that full statistics for the applicable base period must be available at the very beginning of the negotiations, provided these data become available later in the negotiations and the latter are not unduly delayed. By June 1975, Community statistics (on which Canada had agreed to conduct

[25]Spec(88)48.
[26]L/2088 (partially reprinted at 12S/65). See also GATT/AIR/352, C/M/18.
[27]L/4636, adopted on 17 May 1978, 25S/42, 43, paras. 6-7.
[28]*Ibid.*, 25S/47, paras. 14-15.

the negotiations) for the first ten or eleven months of 1974 became available (except for Ireland) for both lead and zinc. The offer of the Community in the negotiations on both lead and zinc, submitted to Canada in late June 1975, should therefore, in the Panel's view, have taken account of trade figures for 1974. The Panel came to the conclusion that a correct and reasonable interpretation of the GATT, in the particular circumstances applying in this case, would be to base the ad valorem equivalents on global trade statistics for the years 1972-74. The Panel, in basing its decision on figures relating to global Community imports of zinc rather than relating to imports from Canada only, took account of the provision of Article XXVIII:2 which refers to the maintenance of a 'general level' of concessions, not less favourable to 'trade', formulations which in the view of the Panel clearly indicate the requirement, in the absence of specific agreement between the parties, to base the ad valorem equivalent of a specific duty on total import figures. To take another view would, in the case of two or more principal or substantial suppliers with different price levels, result in different ad valorem rates which is inconceivable under the General Agreement. The 1972-74 figures submitted to the Panel by the Community indicate an ad valorem equivalent of 2.64 per cent for total Community imports of zinc. Consequently, the Panel considers that, as it was not the intention of the Community to modify the scope of the concession, the ad valorem duty rate of the Community for zinc should have been rebound, after conversion, at that level or at the closest round half-percentage point figure, rather than at 3.5 per cent".[29]

The Panel found that Canada was entitled to proceed to a withdrawal of concessions; see at page 948 below.

(b) Tariff conversion on the basis of weighted averages

The 1978 Panel Report on "Canada - Withdrawal of Tariff Concessions", referred to directly above, goes on to note that:

"In the Panel's view, this result would also be appropriate when considering lead and zinc together. … the Panel noted that the trade-weighted ad valorem equivalent for both products together for the years 1972-74 amount to 2.97 per cent, a figure indicating that a rebinding for lead of 3.5 per cent (as implemented by the Community) and for zinc at the lower level, as indicated in the previous paragraph, would have been in conformity with the requirement of Article XXVIII:2 of the GATT".[30]

See also the Report of the "Panel on Vitamins"[31] discussed under Article II.

(c) Renegotiation following an increase in the value of a concession

The 1984 Report of the "Panel on Newsprint" examined the claim of Canada concerning the application of a tariff concession on newsprint established by the European Communities. The concession in the EC's Schedule LXXII provided for an annual tariff quota of 1.5 million tonnes duty-free, leaving the bound duty rate at 7 per cent for imports exceeding that quota. Under agreements between the EC and the EFTA countries, newsprint imports from EFTA countries became duty-free as from 1 January 1984, and the EC then opened a duty-free tariff quota for m.f.n. suppliers of 500,000 tonnes for newsprint for the year 1984.

"… the Panel concluded that the EC, in unilaterally establishing for 1984 a duty-free quota of 500,000 tonnes, had not acted in conformity with their obligations under Article II of the GATT. The Panel shared the view expressed before it relating to the fundamental importance of the security and predictability of GATT tariff bindings, a principle which constitutes a central obligation in the system of the General Agreement. …

"While holding that the right of Canada to compete within a duty-free tariff quota of 1.5 million tonnes has been impaired by the EC action, the Panel recognized, however, that as a result of newsprint imports from EFTA countries entering the EC market duty-free since 1 January 1984 under the terms of the free-trade agreements, the *value* of the EC concession had greatly increased for non-EFTA suppliers and especially for Canada as the most important m.f.n. supplier. The Panel concluded that this increased value

[29]*Ibid.*, 25S/47-48, paras. 14-17.
[30]*Ibid.*, 25S/48, para. 18.
[31]L/5331, adopted on 1 October 1982, 29S/110.

of the concession justifies the EC engaging in renegotiations under Article XXVIII, in accordance with the customary procedures and practices for such negotiations, with the objective of achieving some reduction in the size of the tariff quota. In the view of the Panel, such a reduction would, in a case like the one before the Panel where the increased value of the concession derives from an action by the EC to grant duty-free access to newsprint imports from the EFTA countries, be without payment of compensation. In this connection, the Panel found that although the statistical data before it did not differentiate between imports entering duty-free under the GATT quota and those under the autonomous régime, the fact that the GATT quota was filled while total Canadian exports never exceeded half that quota is evidence that the EFTA countries did participate in the GATT quota up until the end of 1983.

"The Panel carefully noted and examined the statement by the EC that, should the Panel consider the action taken by the EC as not being in conformity with the GATT, they might proceed to option (b) under which the tariff quota would be maintained at 1.5 million tonnes but that imports from all sources, including the EFTA countries, would be recorded against that quota; once the latter had been filled, the Community's formal contractual obligations would have been met. While the Panel could find no specific GATT provision forbidding such action and no precedents to guide it, it considered that this would not be an appropriate solution to the problem and would create an unfortunate precedent. It is in the nature of a duty-free tariff quota to allow specified quantities of imports into a country duty-free which would otherwise be dutiable, which is not the case for EFTA imports by virtue of the free-trade agreements. Imports which are already duty-free, due to a preferential agreement, cannot by their very nature participate in an m.f.n. duty-free quota. The situation in this respect could only change if the free-trade agreements with the EFTA countries were to be discontinued; in this case these countries would be entitled to fall back on their GATT rights vis-à-vis the EC, which rights continue to exist.

"On the basis of the findings and conclusions reached above, the Panel suggests that the CONTRACTING PARTIES recommend that the European Communities engage promptly in renegotiations under the procedures of Article XXVIII of the GATT with regard to the tariff quota on newsprint in Schedule LXXII. Further, the Panel suggests that the CONTRACTING PARTIES recommend to the European Communities that, pending the termination of such negotiations, the duty-free tariff quota of 1.5 million tonnes for m.f.n. suppliers be maintained".[32]

(d) Renegotiation and institution of a tariff quota

Paragraph 6 of the Uruguay Round Understanding on the Interpretation of Article XXVIII of the GATT 1994 provides as follows:

"6. When an unlimited tariff concession is replaced by a tariff rate quota, the amount of compensation provided should exceed the amount of the trade actually affected by the modification of the concession. The basis for the calculation of compensation should be the amount by which future trade prospects exceed the level of the quota. It is understood that the calculation of future trade prospects should be based on the greater of:

"(a) the average annual trade in the most recent representative three-year period, increased by the average annual growth rate of imports in that same period, or by 10 per cent, whichever is the greater; or

"(b) trade in the most recent year increased by 10 per cent.

"In no case shall a Member's liability for compensation exceed that which would be entailed by complete withdrawal of the concession."

[32] L/5680, adopted on 20 November 1984, 31S/114, 131-133, paras. 52, 54-56.

4. Paragraph 3

(1) "shall be free ... to withdraw ... substantially equivalent concessions"

(a) Basis and consequences of withdrawals under paragraph 3

During discussions on the provisions which became the present Article XXVIII, in the Tariff Agreement Committee at Geneva in 1947, the proposal to include a paragraph providing for the right to make compensatory withdrawals was explained as follows: "… if we wish to take an item out of our Schedule then clearly it is fair and proper that the countries with whom we negotiate should be free to make the corresponding changes in their Schedules in order to restore the balance. … but we want any such exercise to be limited to what is corresponding and not to be used in a punitive way".[33]

Later, when the Tariff Agreement Committee discussed the draft of Article XXVIII, which was phrased "suspend … the application to the trade of the contracting party taking such action, of substantially equivalent concessions", the question was put whether - given the similarity to the nullification and impairment provisions proposed - it was intended that action be discriminatory. It was stated in reply that "There is only a question here of withdrawal of concessions; there is no question of discriminatory measures against a particular country"[34] and "this is, so to speak, a negotiation in reverse. It is not like the Nullification Article…"[35] The Chairman in summing up stated: "It was agreed that there was no intention to interfere in any way with the operation of the most-favoured-nation clause. This Article is headed 'Modification of Schedules'. It refers throughout to concessions negotiated under paragraph 1 of Article II, the Schedules, and there is no reference in the Article to Article I, which is the Most-Favoured-Nation clause. Therefore, I think the intent is clear: that in no way should this Article interfere with the operation of the Most-Favoured-Nation clause."[36] It was also agreed then that by "non-discriminatory action to adjust the balance of the Schedules … we mean withdrawal and not suspension of concessions".[37] The Committee altered the provision accordingly. The issue of contracting parties affected by counter-withdrawals was also raised at that time. It was stated that "it is probably not desirable to carry it beyond the stage of the original action and the countermeasures. … if unfairness does result from the practical action of those measures, it will have to be sorted out by the [CONTRACTING PARTIES]".[38]

The 1990 Award by the Arbitrator on "Canada/European Communities - Article XXVIII Rights", also referred to at page 951 below, notes concerning compensatory withdrawal of concessions under Article XXVIII:3 by Canada that "Should Canada exercise her right to withdraw concessions, she undertakes obligations to compensate third countries having negotiating rights in respect of Canada for the products on which concessions would be withdrawn."[39]

(b) Extent of withdrawals under paragraph 3

In introducing the draft of Article XXVIII during the discussions of the Tariff Agreement Committee at Geneva, the chairman of the ad-hoc Sub-committee which drafted it stated, regarding the draft: "It was agreed in the Sub-Committee that both the contracting parties with which a concession was initially negotiated and a contracting party which was substantially affected should have the right to withdraw substantially equivalent concessions. What was a substantially equivalent concession would be determined in the light of what the party concerned had paid for the concession which had been withdrawn. It was also agreed that, since the contracting party which proposes to withdraw a concession or to modify a concession has, under the proposed draft, been given the right to act if negotiations break down without having to seek the approval of the [CONTRACTING PARTIES], the same right should be given to any other contracting party which is affected by the action."[40]

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[33]EPCT/TAC/PV/14, p. 20.
[34]EPCT/TAC/PV/18, p. 42.
[35]*Ibid.*, p. 44.
[36]*Ibid.*, p. 46.
[37]*Ibid.*, p. 43.
[38]*Ibid.*, p. 44.
[39]DS12/R, 37S/80, 86.
[40]EPCT/TAC/PV/18, p. 40, discussing draft in EPCT/194.

See also Note 6 *Ad* Article XXVIII:1, which provides that the applicant contracting party should not "have to pay compensation or suffer retaliation greater than the withdrawal or modification sought, judged in the light of the conditions of trade at the time of the proposed withdrawal or modification, making allowance for any discriminatory quantitative restrictions maintained by the applicant contracting party".

In 1963, a Panel was established to render an advisory opinion to the EC and the United States in relation to the renegotiation by the EC under Article XXIV:6 of certain bound tariff concessions on poultry; concerning the reference period used, see above at page 944. The Panel examined the value to be ascribed to United States exports of poultry to the Federal Republic of Germany, on the basis of the definition of poultry provided in item 02.02 of the EEC Common Customs Tariff and the rules and practices of the GATT, and in the context of the unbindings concerning this product.

> "The Panel recognized that the matter before it fell to be dealt with in the context of the Article XXIV:6 negotiations. This was relevant both to the choice of the reference period … and to the manner in which this determination [of the value of such poultry exports as of 1 September 1960] was to be made. …
>
> "The Panel was satisfied that it was in accordance with the normal practice of the GATT for a correction to be made to the figures for the reference period to take account of the discriminatory quantitative restrictions existing in the Federal Republic of Germany during that period.
>
> "It was the Panel's view that, in the absence of such quantitative restrictions, United States exports would have had a larger share of the existing German market. Moreover, the unrestricted entry of lower-priced United States poultry would have brought about an increase in German consumption and United States exports would also have had a share in this increase. The Panel then attempted to assess what the United States could reasonably have expected that the value of their exports would have been in the reference period had there been no discriminatory quantitative restrictions.
>
> "The Panel considered that it could not reasonably be argued that the whole of the increase in German consumption of poultry would have been taken up by United States exports. It was certainly to be expected that the other supplying countries would adjust their price policies in an endeavour to maintain their share of the market. Account also had to be taken of the additional sources of supply resulting from new production in certain European countries. The Panel felt, however, that the share in the reference period of the various exporting countries in the Swiss market, which was free and competitive, afforded a fair guide as to the proportion of the increased German poultry consumption likely to be taken up by United States exports.
>
> "Having taken account of these factors, and basing itself entirely on the information which could have been known on 1 September 1960, the Panel came to the conclusion that the advisory opinion it should render to the parties concerned was that a figure of $26 million would reasonably represent the value to be ascribed, as of 1 September 1960, in the context of the unbindings concerning this product, to United States exports of poultry to the Federal Republic of Germany …".[41]

The 1978 Panel Report on "Canada - Withdrawal of Tariff Concessions" concluded, on the basis of the findings noted above at pages 944-945:

> "… Canada was entitled, in the Panel's opinion, to proceed to a withdrawal of concessions. The Panel, however, was of the view that the withdrawal of concessions should have been less than the equivalent of the total export volume of zinc to the Community as account should have been taken of the rebinding of the Community duty. Also, the right of retaliation should be related to the actual damage suffered by Canada and consequently the withdrawals should have been based on the difference between the ad valorem equivalent of the specific rate calculated on imports from Canada only and the new ad valorem rate. Finally, account should have been taken of the fact that the ad valorem duty on lead had been fixed at a level lower than the incidence in respect of Community imports from Canada. In view of the complexity of assessing the value of a tariff binding, irrespective of the rate of duty involved, the Panel abstained from making any quantitative assessment in this respect. In the interest of maintaining the highest possible general level of

[41] L/2088, partially reprinted at 12S/65; cited portion not reprinted in BISD. See also GATT/AIR/352, C/M/18.

concessions the Panel finds that the Canadian retaliatory action should be withdrawn; i.e. that the previous Canadian tariff bindings should be re-established as soon as the Community proceeds either to decrease their tariff on zinc or to make tariff concessions on other products of export interest to Canada of an equivalent value."[42]

At the May 1988 Council meeting, in discussion of the follow-up to the 1987 Panel Report on "United States - Taxes on Petroleum and Certain Imported Substances" and a related request by the EEC for authorization to suspend concessions with respect to the United States, the Legal Advisor to the Director-General stated as follows:

"There had never been any decision by the CONTRACTING PARTIES regarding the actual calculation of the level of damage. The most common case involved the withdrawal of tariff concessions, for which there were fairly well established criteria that were taken into account in the calculation of compensation. The first criterion was the development of the imports during, normally, the three years before the renegotiations started. What was taken into account was not just a statistical average, but also the trend in the development of trade during that period. Furthermore, account was taken of the size of the tariff increase being negotiated. Moreover, an estimate was made of the price elasticity of the product concerned. The CONTRACTING PARTIES had agreed on two occasions that it was not possible to draw up firm rules for the calculation of damage in such cases, and that it had to be left to the negotiators in each individual case to calculate what they considered to be the damage and the appropriate compensation. ..."[43]

In Council meetings in 1988 and 1989, the European Community, stating that the United States transposition of its tariff schedule to the Harmonized System had resulted in increased duties on certain textiles inconsistent with Section 2 of the Decision of 12 July 1983 on "GATT Concessions under the Harmonized Commodity Description and Coding System", proposed that its differences of view with the United States on these items be submitted to arbitration by the Director-General. The United States stated that since both the Community and the United States had achieved a balance, any examination of the conversion should review the overall balance of concessions on both sides; the United States did not believe that arbitration was a tool well-suited for such broad-gauged evaluation. The Council took note of the statements.[44]

(c) Pre-requisites for compensatory withdrawals under Article XXVIII:3

The CONTRACTING PARTIES have decided in many instances to grant or extend waivers suspending the application of Article II of the General Agreement to enable a contracting party to implement a modified Schedule in advance of completion of negotiations under Article XXVIII, subject to specified conditions. In recent years, the following conditions have been included in most cases:

"1. The Government of [contracting party] will as soon as possible enter into negotiations or consultations pursuant to paragraphs 1 to 3 of Article XXVIII.

"2. The negotiations or consultations mentioned above shall be completed not later than [date].

"3. Pending the entry into force of the results of the negotiations or consultations mentioned above, the other contracting parties will be free to suspend concessions initially negotiated with [contracting party] to the extent that they consider that adequate compensation is not offered by the Government of [contracting party]."[45]

At the June 1988 Council meeting, in the discussion of the waivers requested by Bangladesh and Mexico in connection with their implementation of the Harmonized System:

[42]L/4636, adopted on 17 May 1978, 25S/42, 48-49, para. 19.
[43]C/M/220, p. 35-36.
[44]C/M/227, p. 27-28; C/M/228, p. 20-21; C/M/231, p. 11-13.
[45]See, e.g., Waiver decisions on "Indonesia - Establishment of a new Schedule XXI", L/6331, Decision of 22 April 1988, 35S/347; "Bangladesh - Establishment of a new Schedule LXX", L/6374, Decision of 18 July 1988, 35S/348; "Mexico - Establishment of a New Schedule LXXVII", L/6377, Decision of 18 July 1988, 35S/351.

"The representative of Jamaica noted that paragraphs 1 and 3 of Article XXVIII required prior action by the CONTRACTING PARTIES acting jointly if a contracting party sought to withdraw concessions in terms of ensuring compensation, while paragraph 2 did not require a prior determination by the CONTRACTING PARTIES. With this in view, he pointed out that paragraph 1 in each of two of the draft decisions referred to negotiations and consultations with interested contracting parties pursuant to paragraphs 1, 2 and 3 of Article XXVIII, while paragraph 3 of the draft decisions merely stated that other contracting parties would be free to suspend concessions initially negotiated to the extent that they considered that adequate compensation was not offered by the government seeking the waiver. He asked for clarification on this point.

"... the Legal Adviser to the Director-General said that paragraph 3 of the two draft decisions only foresaw a temporary situation before the negotiations were actually terminated and the results entered into force. The final corresponding situation was covered by paragraph 3(a) of Article XXVIII, which did not provide for any approval by the CONTRACTING PARTIES. The only requirement was that contracting parties which had negotiating rights under Article XXVIII had to notify the CONTRACTING PARTIES that they intended to withdraw substantially equivalent concessions. They did not have to ask for permission to do so".[46]

(d) Time-limits for invocation of Article XXVIII:3 (including application in the context of Article XXIV:6)

During the Review Session of 1954-55, in a discussion of the Declaration on Continued Application of the Schedules, the Executive Secretary observed that the notice period provided in the Declaration for modifications or withdrawals referred to "the date on which the change affected the Schedule of the contracting party rather than the date on which the duty was formally altered by internal action of the contracting party".[47]

At the Council meeting of 26 April 1974, "The representative of the United States stated that the United States and the European Communities had not yet concluded their negotiations under Article XXIV:6 under the applicable procedures of Article XXVIII. He pointed out that the United Kingdom, Denmark and Ireland had been applying import treatment in accordance with their Accession agreements with the European Communities, rather than in accordance with their Schedules referred to in Article II. This raised the question of whether the concessions should be considered withdrawn or modified as of 1 January 1974. He felt that if this were the case, Article XXVIII:3 could be interpreted as requiring notification to the CONTRACTING PARTIES of any compensatory withdrawals on or before 31 May 1974". The representative of the EC stated that it "did not consider that the time-limit laid down in Article XXVIII:3 posed a problem at the present time, because the renegotiations were still in progress and the six-month period mentioned in that Article would run only as from the end of the renegotiations". In response to a joint request made by the US and the EC, "the Council decided that without prejudice to the interpretation of Article XXVIII:3 the six-month period referred to in Article XXVIII:3 would not be considered to expire prior to 31 August 1974".[48]

At the Council meeting of 19 July 1974, the EC representative stated that the Communities considered the renegotiations under Article XXIV:6 to be terminated, and intended as of 31 July to withdraw the schedules of concessions of the Six and of Denmark, Ireland, and the United Kingdom and replace them with two new schedules for the Community of Nine, one relating to the EEC and one to the ECSC. The representatives of the United States and of Australia each stated that the negotiations pursuant to Article XXIV:6 had not achieved satisfactory results with respect to compensation for certain specific concessions. The United States and Australia each reserved the right under Article XXVIII:3 to withdraw substantially equivalent concessions: with respect to those concessions; with respect to any modification made by the EC to its schedules pursuant to its reservation mentioned below; with respect to any modification by the EC to its schedules referred to in the Report filed by that country and the EC on the Article XXIV:6 negotiations; and with respect to any failure by the EC to implement the concessions in these new schedules on or before 31 July 1974. The EC representative stated that the EC considered that the concessions in its new schedules provided full compensation for the withdrawals in question, and noted that the EC had inserted in those schedules a reservation reserving the right to make counter-withdrawals in the event of withdrawals by its trading partners after the Article XXIV:6 negotiations. The Council agreed that the six-month period referred to in Article XXVIII:3 would not apply to actions pursuant to these reservations and

[46]C/M/222, p. 5.
[47]SR.9/47 p. 2.
[48]C/M/95, p. 1-2; see also request to Council at L/4019.

that such actions could be taken at any time upon expiration of thirty days from the day that written notice is given to the CONTRACTING PARTIES.[49]

At the Council meeting of 24 March 1975, Canada and the EC gave notice of: a Joint Declaration which stated that they had been able to reach agreement in their Article XXIV:6 negotiations except for certain cereal items; a statement by the EC regarding inclusion in its Schedules of the reservation above regarding counter-withdrawals; and a statement by Canada that its adherence to the Declaration "in no way implies acceptance by Canada of General Note 1 in the draft new Schedules LXXII and LXXII*bis*, nor limits Canada's right to request the CONTRACTING PARTIES to examine whether the reservation of rights envisaged in this General Note is consistent with the European Communities' obligations under the provisions of the General Agreement". The Council agreed to the joint request by Canada and the European Communities to extend the time-limit under Article XVIII:3 insofar as certain cereal items were concerned.[50]

The 1990 Award by the Arbitrator on "Canada/European Communities - Article XXVIII Rights" finds, concerning the Agreement on Quality Wheat concluded by Canada with the Community on 29 March 1962:

> "Given the fact that wheat exports to the European Economic Community are of great importance to Canada, given the fact that it was not known in 1962 what the import restrictions on wheat would be under the CAP, and given the fact that the parties were under considerable pressure to conclude the XXIV:6 negotiations, given these facts and the safe assumption that the parties were fully versed and competent in GATT matters and were acting in good faith, on the basis of these considerations I reach the conclusion that the purpose of these agreements was to place Canada in a legal position *equivalent* to the one she would be in if the time-limits of Article XXVIII did not apply. Otherwise, I see no reason for Canada to have signed them".[51]

The Award further notes:

> "The question still remains whether, by formally acknowledging the conclusion in 1962 of the XXIV:6 Negotiations (which followed the procedures of Article XXVIII) Canada lost her right to invoke the provisions of Article XXVIII:3, including the right to withdraw equivalent concessions. This paragraph of Article XXIII can be invoked only if an agreement cannot be reached. Moreover, there are severe time-limits tied to the exercise of this right to withdraw. These have long since expired so far as the 1960-62 XXIV:6 negotiations are concerned.
>
> "However, as noted earlier, I conclude that the very purpose of this bilateral agreement was to put Canada into a legal position *equivalent* to the one it would be in if the time-limits of Article XXVIII did not apply.
>
> "It follows that Canada still maintains a right to withdraw equivalent concessions if the negotiations under the bilateral agreement are not successfully concluded.
>
> "In sum, I conclude that Canada maintains through the bilateral Agreement of 29 March 1962 with respect to Quality Wheat all the negotiating rights provided for in Article XXVIII, or their equivalent.
>
> "It needs stressing that the time-limits established in Article XXVIII:3 have, *inter alia*, the purpose of safeguarding the interests of third countries. Should Canada exercise her right to withdraw concessions, she undertakes obligations to compensate third countries having negotiating rights in respect of Canada for the products on which concessions would be withdrawn."[52]

A communication from the United States of 30 November 1990[53] noted that because, in connection with the accession of Spain and Portugal to the European Communities, the EC had effected the withdrawal of Spain's concession on corn and sorghum and replaced them with variable levies, and no agreement had been

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[49] C/M/99, p. 1-7.
[50] C/M/105, p. 1-3; see also C/W/259.
[51] DS12/R, 37S/80, 83.
[52] *Ibid.*, 37S/85-86.
[53] L/6774.

reached on compensation under Articles XXIV:6 and XXVIII, the United States had notified in May 1986 the suspension of certain concessions in Schedule XX[54], but that these concessions had been restored subject to the provisions of an agreement between the United States and the EC under Article XXIV:6 concluded 29 January 1987, which set forth certain compensatory measures, provided for a review, and "reserved full GATT rights including those which would otherwise be time-limited".[55] The Communication notified suspension of certain concessions in Schedule XX to take effect midnight 31 December 1990, and stated:

> "Where a contracting party to the GATT has withdrawn a concession in the expansion of a customs union, Article XXIV entitles other contracting parties to negotiated compensation, or, in the absence of a successful negotiation, to use Article XXVIII to 'withdraw substantially equivalent concessions'. The Article XXVIII right is time-limited to six months. The agreed 'review of the situation' began in July and has not resulted in a negotiated continuation of compensation to the United States. If negotiations to continue compensation to the United States are not successful, then compensation under the 1987 agreement will expire at midnight on December 31, 1990. Moreover, the time-limited Article XXVIII right could be construed, in this case, to expire on December 31, 1990 unless exercised".[56]

The European Communities' reply of 7 December 1990 stated that

> "The Community view is that this bilateral agreement [of January 1987] concluded the negotiations between the two sides under Article XXIV:6 and that the compensation was therefore part of a final settlement. ... The United States appears to consider that this review provision represents a continuation of the tariff negotiations under Article XXIV:6. As indicated above, the Community does not share this view, since those tariff negotiations were concluded in early 1987 and the two parties are no longer in a tariff negotiation in terms of Article XXVIII. In any event the proposed action by the United States on 1 January 1991 is neither necessary nor justified; either GATT rights under Article XXVIII exist - in which case they are not time-limited, under the terms of the agreement - or such rights do not exist, in which case US action is illegal in GATT".[57]

The US later gave notice that as the EC had agreed to extend the provisions of the January 1987 agreement until 31 December 1991 it would not suspend such concessions at that time, but reserved its rights with respect to the withdrawals announced by the EC on 13 February 1986.[58] The two parties later jointly notified the agreement of the EC to extend the provisions set forth in the annexes to the January 1987 agreement until December 1992 and December 1993.[59]

Time-limits under Article XXVIII:3 were also extended in the case of the transposition of the United States schedule into the Harmonized System tariff nomenclature.[60] See also the discussion of time-limits under Article XIX:3.

(2) Invocations of Article XXVIII:3

The tables on the use of Article XXVIII which follow this chapter include all instances of compensatory withdrawals under Article XXVIII:3 (except for Article XXVIII:3 withdrawals under Article XXIV:6). The only instances noted in these tables are action by Australia in February 1968 following the withdrawal by the EC of concessions on certain types of cheese[61], action by Canada in May 1976 following the conversion by the EC of specific duties on lead and zinc into ad valorem duties[62] and action by Canada in March 1986 following the increase of the applied rate of duty on single-strength orange juice by the United States.[63] A 1983 Secretariat Note on Article XXVIII states:

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[54]L/5997, 26 May 1986.
[55]L/6774.
[56]L/6774, p. 2.
[57]L/6785, p. 1-2.
[58]L/6774/Add.1, 8 January 1991.
[59]L/6944 (communication dated 12 November 1991) and L/6944/Add.1 (communication dated 11 December 1992).
[60]SECRET/HS/7/Add.1-2 and supplements.
[61]SECRET/165/Add.2.
[62]See the Panel Report referred to at page 944 above.
[63]SECRET/314/Add.2.

"... In the majority of Article XXVIII cases, a satisfactory agreement was reached between the parties concerned. ... The very rare use of the retaliation provision of Article XXVIII:3 would therefore appear to be based on the fact that in almost all cases negotiations were successful and partly also because of the difficulty inherent in finding appropriate concessions with regard to which retaliatory action can be taken; the latter point applies especially to countries with a limited number of tariff concessions".[64]

5. Paragraph 4

(1) "The CONTRACTING PARTIES may ... authorize a contracting party to enter into negotiations"

The renegotiation procedure "in special circumstances" in paragraph 4 was added to Article XXVIII as one of the amendments agreed in the Review Session of 1954-55. It incorporated elements of the procedures for "sympathetic consideration" of requests for renegotiation in "exceptional circumstances" during the period of validity of schedules, described below at page 963.

The Report of the Review Working Party on "Schedules and Customs Administration" notes that "paragraph 4 is intended to bring into the Agreement a provision for renegotiations under authority obtained from the CONTRACTING PARTIES in special circumstances, on the lines of the 'sympathetic consideration' procedures adopted at the eighth session, but providing in certain circumstances for modification or withdrawal even if the negotiations are not successful".[65] The Intersessional Procedures adopted at the Review Session provided that the Intersessional Committee "shall examine applications for authority, in special circumstances, to enter into negotiations for the modification or withdrawal of concessions included in Schedules to the Agreement and shall act for the CONTRACTING PARTIES in performing the functions prescribed in any procedures and conditions established by them".[66] This and other functions of the Intersessional Committee were conferred upon the Council of Representatives at its establishment in 1960.[67]

The 1986 Report of the Committee on Tariff Concessions notes that "At the Council meeting of 17 June 1986, following a request by a country under Article XXVIII:4 for authority to renegotiate its schedule in view of the introduction of the Harmonized System, one delegation suggested that a general decision should be taken to allow countries which have not reserved their rights under Article XXVIII:5 to renegotiate their schedules. The Committee was requested to examine this question ... and came to the conclusion that there was no need for a general decision because countries were always free to present requests to the Council".[68]

The tables of invocations of Article XXVIII which follow this chapter include a complete list of invocations of Article XXVIII:4. As of March 1994, Article XXVIII:4 or the "sympathetic consideration" procedures which preceded it had been invoked 66 times, primarily in the period before 1965.

In March 1992, the Report of the Members of the Reconvened Oilseeds Panel on "Follow-up on the Panel Report 'EEC - Payments and Subsidies paid to Processors and Producers of Oilseeds and Related Animal-Feed Proteins'" made the following recommendation: "The Panel ... recommends that the Community should act expeditiously to eliminate the impairment of the tariff concessions -- either by modifying its new support system for oilseeds or by renegotiating its tariff concessions for oilseeds under Article XXVIII. In the event that the dispute is not resolved expeditiously in either of these ways, the CONTRACTING PARTIES should, if so requested by the United States, consider further action under Article XXIII:2 of the General Agreement."[69] On 4 June 1992 the EEC requested the authorization of the CONTRACTING PARTIES to enter into negotiations under Article XXVIII:4 for modification of the EEC concessions with respect to soya beans, rape or colza seeds, sunflower seeds, and oilcake included in Schedule LXXX - EEC, stating that "This procedure will enable the negotiations to be concluded rapidly and ensure that they take place under the full control of

[64]TAR/W/42, p. 4.
[65]L/329, adopted on 26 February 1955, 3S/205, 217, para. 30.
[66]3S/11, para. 8; see also revised Intersessional Procedures at 7S/8, para. 3, referring explicitly to Article XXVIII:4.
[67]9S/7.
[68]TAR/132, 33S/133, 134, para. 8.
[69]DS28/R, dated 31 March 1992, para. 88.

the CONTRACTING PARTIES."[70] During the Council discussion of this request, the EEC representative stated that:

> "... The Panel had ... given the Community a free choice between the two options, while insisting on the need to act expeditiously ... In the Community's view, Article XXVIII offered two options: the multilateral option in paragraph 4, and what was in effect a bilateral option in paragraph 5. The Community had opted for the provision of Article XXVIII which it believed would give the most satisfaction at the multilateral level and which would, at the same time, allow the CONTRACTING PARTIES to have a degree of control over the proceedings. The bilateral option in paragraph 5, furthermore, did not provide any strict guarantee as to the time period for the procedures to be followed thereunder, and would be determined by the free choice of the two parties concerned... As he had stated earlier, paragraph 4 permitted the CONTRACTING PARTIES to exercise some control and almost permanent monitoring over the negotiations thereunder, as stipulated in its sub-paragraphs (c) and (d). Furthermore, these provisions provided very strict time frames: thirty days for the CONTRACTING PARTIES to decide whether to authorize a contracting party to enter into renegotiations; sixty days thereafter for the contracting parties primarily concerned to reach agreement; and thirty days for a final determination by the CONTRACTING PARTIES under sub-paragraph (d)".[71]

This authorization was granted on 19 June 1992.[72]

(2) "in special circumstances"

In discussion at the Review Session of 1954-55 concerning continued application of the Schedules, "the Executive Secretary pointed out that if the transposition of a tariff from specific to ad valorem duties in fact involved modifications or withdrawals of concessions, then contracting parties were obliged to act under Article XXVIII. Such a transposition, however, would fall under the qualification of 'special circumstances' and could therefore take place under the revised paragraph 4 of Article XXVIII".[73] See also the discussion of conversion from specific to ad valorem duties under Article II.

The 1958 Report of the Working Party on "Conversion of Specific Duties in the Norwegian Schedule" examined the proposal of the Norwegian Government, consequent to the adoption of the Brussels Nomenclature, to convert a number of specific duties in Schedule XIV into ad valorem duties. The Report notes that "The Working Party wishes to record that it considers the circumstances in which the application was made to be such as would warrant a finding of 'special circumstances' within the terms of paragraph 4 of Article XXVIII".[74]

In 1970, during the discussion in the Council of a request for an authorization under Article XXVIII:4 to renegotiate a tariff concession, it was stated "that for reasons of principle it was essential to stress that the abolition of a quantitative restriction should not be used as the pretext for a duty increase".[75]

In 1973, during the discussion in the Council of what constituted the "special circumstances" in terms of a request under Article XXVIII:4, it was stated "that the question of defining special circumstances had been raised in the Council before and that it would not be a good policy to define special circumstances too rigorously, since it could encourage contracting parties to invoke paragraph 5 of Article XXVIII more easily".[76]

See also the reference in the second interpretative note to paragraph 4 to authorization of negotiations under paragraph 4 by "certain contracting parties depending in large measure on a relatively small number of primary commodities and relying on the tariff as an important aid for furthering diversification of their

[70]DS28/2, dated 5 June 1992.
[71]C/M/257, p. 11-12.
[72]*Ibid.*, p. 26.
[73]SR.9/47, p. 2.
[74]L/913, adopted on 14 November 1958, 7S/112, 113, para. 6.
[75]C/M/63, p.6.
[76]C/M/85, p. 9; C/M/86, p. 4.

economies or as an important source of revenue". See also the provisions of Article XVIII:7 permitting "out of season" renegotiations by those contracting parties which fall under Article XVIII:4(a).

(3) "refer the matter to the CONTRACTING PARTIES"

At the September/October 1992 Council meeting, the EEC noted that in 16 August 1992, it had referred the matter of its negotiations concerning certain oilseeds items under Article XXVIII:4 to the CONTRACTING PARTIES: "The Community had brought this matter before the Council under … Article XXVIII:4, and after it had exhausted the provisions in paragraph (a) thereof, and since (b) unfortunately did not apply, it had had to move on to paragraph (c) … Under Article XXVIII:4(d) it was incumbent upon the 'applicant contracting party' – the Community in this case – to refer the matter to the CONTRACTING PARTIES if an agreement had not been reached in sixty days".[77]

This has been the only instance of invocation of paragraphs (c) or (d) of Article XXVIII:4.

(4) "the CONTRACTING PARTIES shall promptly examine the matter and submit their views to the contracting parties primarily concerned with the aim of achieving a settlement"

At the September/October 1992 Council meeting, the EEC, noting this referral, stated three series of questions concerning the interpretation of Article XXVIII, and requested the establishment of a working group to assist the CONTRACTING PARTIES on the interpretation of Article XXVIII.[78] Consensus was not reached on this request.

At the same meeting, the United States proposed binding arbitration concerning the total value to be ascribed to the impairment of tariff concessions in the oilseeds area by the Community's subsidy programme. At the November Council meeting, the EEC stated that no further decision on action under Article XXIII should be taken until the Article XXVIII:4 procedure authorized in June had been exhausted. Consensus was not reached on this request, nor on the later United States request for authorization to suspend concessions under Article XXIII:2.[79] At the Forty-eighth Session in December 1992, the EC representative noted that negotiations between the Community and the United States had led to a compromise agreed *ad referendum* which would enable the Community to end its Article XXVIII:4 negotiations with the United States.[80] At the June 1993 Council meeting the EC representative noted that this compromise had been approved by the EC Council of Ministers and the EC would resume negotiations as quickly as possible.[81]

6. Paragraph 5

(1) "reserve the right ... to modify the appropriate schedule"

The Report of the Review Working Party on "Schedules and Customs Administration" notes:

> "Concerning paragraph 5, the Ninth Session Working Party on Schedules and Customs Administration wishes to place on record, in order to eliminate any possibility of misunderstanding that, without prejudice to the provisions of [interpretative Note 3 to paragraph 1], a reservation of the right under that paragraph to modify a schedule applies to the whole schedule and cannot apply to selected items only".[82]

During the GATT Council meeting in December 1981, the representative of Australia said "that Australia was currently conducting a series of negotiations with a number of its trading partners under the provisions of Article XXVIII:1, and expressed the hope that these negotiations would be concluded prior to 1 January 1982. He said that in the event that these negotiations had not been finalized by that date, Australia would continue any ongoing discussions after 1 January 1982 under the provisions of Article XXVIII:5". In reply, the EC representative

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[77]C/M/259, p. 32, 52; SECRET 336/Add.1.
[78]C/M/259, p. 32-33; statement appears also in L/7096.
[79]C/M/260, p. 26, referring to L/7096, DS28/3.
[80]SR.48/2, p. 15-16.
[81]C/M/264, p. 52. As of late March 1994 the Secretariat had not yet received notice of agreement resolving these negotiations.
[82]L/329, adopted on 26 February 1955, 3S/205, 218, para. 31.

said that "the late notification of products by Australia and the incomplete communication of statistical figures had seriously diminished the time available for negotiation. In his view, the entry into force of the increased rates on 1 January 1982, in the event that the negotiations could not be completed within the very short deadline, would not be in conformity with normal GATT procedures in this respect, nor was the Australian intention to transform concessions that had been granted prior to 1965 without providing up-to-date statistics. He stated that the European Economic Community expressly reserved all its GATT rights on both these points and hoped that Australia would abide by GATT procedures before proceeding to any withdrawals or transformations of concessions".[83]

Problems related to the interpretation and application of paragraph 5 in case of a pre-emptive tariff increase against a new product prior to its full-scale commercial production and trade (e.g. determination of "initial negotiator", "principal supplier" and "substantial interest" in the absence of sizeable trade, and calculation of compensation in case of the prospect of rapid future trade growth of the new product) were discussed on several occasions in the GATT Council[84], in the Committee on Tariff Concessions[85] and in submissions by individual contracting parties.[86]

(2) Invocations of Article XXVIII:5

Tables on the invocation of Article XXVIII:5 follow this chapter. Whereas for the first three-year period 1958-60, only four contracting parties reserved their right to modify their schedule, the number had risen to twelve for the period 1973-75 and stands at 37 for the present period of 1994-1996. A Secretariat Note of 1983 for the Committee on Tariff Concessions concerning the use of Article XXVIII states:

> "It would appear … that countries increasingly tend to invoke paragraph 5 of Article XXVIII even though a need for renegotiations of bound rates for particular products might not be in sight at the time of the invocation. In this context, concern has been expressed about the insecurity of tariff bindings if countries, having invoked the provision in question, may at any time (during a three-year period) proceed to a modification or withdrawal of existing concessions".[87]

During the meeting of the Committee on Tariff Concessions in April 1982, it was "noted that certain delegations had made abundant use of Article XXVIII:5 procedures, so that negotiations had been excessively prolonged. Perhaps these prolongations had led a contracting party to an interpretation of Article XXVIII, paragraph 5, according to which a contracting party would be authorized to implement, without a waiver, notified withdrawals together with the compensatory offers before the negotiations were concluded and even without notification of the absence of their conclusion".[88] In a later meeting of the same body it was also stressed "that a number of Article XXVIII negotiations had become rather protracted … in some circumstances, it might be necessary to proceed with the implementation of tariff changes for domestic reasons, before negotiations had been formally concluded but it should not prevent the parties involved from continuing their efforts to reach an agreed settlement".[89]

See also the discussion under Article II and above at page 949 on the practice of requesting waivers of Article II when a contracting party wishes to implement changes in its tariff in advance of the conclusion of negotiations under Article XXVIII.

7. Note *Ad* Article XXVIII: "the greatest possible secrecy"

The Interpretative Note to Article XXVIII as a whole provides for "the greatest possible secrecy" in negotiations and consultations under the Article. The Report of the Review Working Party on "Schedules and Customs Administration" notes that "In recommending the inclusion of [the interpretative Note] concerning the preservation of secrecy in order to avoid the disclosure of prospective tariff changes, the Working Party took note

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[83]C/M/154, p. 13-14.
[84]C/M/170, 171, 183.
[85]TAR/M/11, 13.
[86]L/5522, L/5537, C/W/424.
[87]TAR/W/42.
[88]TAR/M/6, p. 20, para. 7.1.
[89]TAR/M/9, p. 9, para. 8.1.

that several countries have public procedures for preparations for tariff negotiations and that the Regulation is not intended to disturb or prevent the continued use of such procedures".[90]

B. RELATIONSHIP BETWEEN ARTICLE XXVIII AND OTHER GATT PROVISIONS

1. Article II

See material on "maintenance of 'treatment' versus modification of a concession" under Article II.

2. Article XVIII:A

The present text of Article XVIII:7 (Section A of Article XVIII) was drafted during the Review Session in 1954-55 in the same Review Working Party on Schedules and Administration which drafted the present text of Article XXVIII. The proviso in Article XVIII:7 permitting the applicant contracting party to modify or withdraw concessions where it cannot, for good reasons, provide adequate compensation corresponds to Article XXVIII:4(d) including the right of other contracting parties to withdraw substantially equivalent concessions initially negotiated with that contracting party.[91]

3. Article XIX

In a number of instances, contracting parties which have suspended a concession under Article XIX have ceased to invoke Article XIX as a result of a modification or withdrawal of the concession under Article XXVIII. See the table of Article XIX actions following the chapter on Article XIX.

4. Article XXIII (including arbitration, conciliation and good offices)

See the references above at page 947 to the discussions in 1947 concerning the relationship between the basis and extent of action under Article XXVIII and the basis and extent of action under Article XXIII:2.

In 1974, when Article XXIV:6 negotiations between Canada and the European Communities did not produce a mutually satisfactory result, Canada referred the matter to the CONTRACTING PARTIES pursuant to paragraph 1(c) and 2 of Article XXIII and requested that a panel of experts be appointed to investigate whether the new Schedules LXXII and LXXIIbis maintained a general level of reciprocal and mutually advantageous concessions between Canada and the European Communities, not less favourable to trade than that provided for in Schedules XL, XLbis, XIX, XXII and LXI.[92] The representative of the European Communities recalled "that the negotiations that had led to this new Schedule covered practically the whole of the customs tariffs in question and a difficult assessment of both a quantitative and qualitative character was therefore called for. The Community could not accept the proposal. The conciliation procedures of the GATT had hitherto mostly been used in cases of violations of the General Agreement; in the present case, a number of factors made this procedure inappropriate. Such an exercise would involve highly sophisticated assessments in complex trade fields where the criteria for reaching judgements were exceedingly imprecise".[93] At the following Council meeting, the Chairman "concluded that it was the wish of the Council, with the exception of the European Communities, to establish such a panel and that he should, in due course, discuss the question of the panel in consultation with the parties most concerned".[94] The two parties reached a bilateral agreement, referred to above at page 951.

The 1984 Report of the "Panel on Newsprint" (see page 945 above) includes the following findings:

> "Taking all factors mentioned above into account, the Panel concluded that the EC, in unilaterally establishing for 1984 a duty-free quota of 500,000 tonnes, had not acted in conformity with their obligations under Article II of the GATT. The Panel shared the view expressed before it relating to the

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[90]L/329, adopted on 26 February 1955, 3S/205, 218, para. 33.
[91]L/329, adopted on 26 February 1955, 3S/205, 215, para. 23. See also documents listed below from the Review Session.
[92]C/M/101, p.7.
[93]C/M/101, p. 8.
[94]C/M/102, p. 4.

fundamental importance of the security and predictability of GATT tariff bindings, a principle which constitutes a central obligation in the system of the General Agreement.

"… the Panel found that the EC action constituted a *prima facie* case of nullification or impairment of benefits which Canada was entitled to expect from the General Agreement. …

"On the basis of the findings and conclusions reached above, the Panel suggests that the CONTRACTING PARTIES recommend that the European Communities engage promptly in renegotiations under the procedures of Article XXVIII of the GATT with regard to the tariff quota on newsprint in Schedule LXXII. Further, the Panel suggests that the CONTRACTING PARTIES recommend to the European Communities that, pending the termination of such negotiations, the duty-free tariff quota of 1.5 million tonnes for m.f.n. suppliers be maintained.

"In the light of the suggested recommendations contained in paragraph 56 above, the Panel saw no need to express itself on the request by Canada that it be authorized to suspend the application of appropriate concessions or other obligations under the GATT".[95]

At the special meeting of the Council in October 1988 to review developments in the trading system, the Director-General informed the Council that in April 1988, Canada and the EC had asked him, with reference to paragraph 8 of the 1979 "Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance",[96] to render an advisory opinion on whether a tariff concession granted by Portugal to Canada in 1961 was applicable to wet salted cod. This issue had arisen in tariff negotiations between Canada and the EC under Article XXIV:6. He had agreed on 15 April to render such an opinion and on 15 July had made it available to the two parties concerned.[97]

The 1992 Report of the Members of the Reconvened Oilseeds Panel on "Follow-up on the Panel Report 'EEC - Payments and Subsidies paid to Processors and Producers of Oilseeds and Related Animal-Feed Proteins'" notes as follows:

"… the Panel found that benefits accruing to the United States under Article II of the General Agreement in respect of the zero tariff bindings for oilseeds in the Community Schedule of Concessions continued to be impaired as a result of the production subsidy scheme provided for in Regulation 3766/91 …

"The Panel noted that over two years had passed since the Oilseeds Panel Report had been adopted by the CONTRACTING PARTIES. While the Community Regulations had been modified, the impairment of the tariff concessions had not been eliminated. Under these circumstances, the Panel can see no reason for the CONTRACTING PARTIES to continue to defer consideration of further action in relation to the impairment of the tariff concessions.

"The Panel therefore recommends that the Community should act expeditiously to eliminate the impairment of the tariff concessions -- either by modifying its new support system for oilseeds or by renegotiating its tariff concessions for oilseeds under Article XXVIII. In the event that the dispute is not resolved expeditiously in either of these ways, the CONTRACTING PARTIES should, if so requested by the United States, consider further action under Article XXIII:2 of the General Agreement".[98]

In June 1992 the EEC requested and was granted authorization to renegotiate its tariff concessions for oilseeds and oilcake under Article XXVIII:4 (see above at page 953). In August 1992, the EEC referred certain issues to the CONTRACTING PARTIES under Article XXVIII:4(c) and (d), including the following.

[95]L/5680, adopted on 20 November 1984, 31S/114, 132-133, paras. 52-53, 56-57.
[96]L/4907, adopted on 28 November 1979, 26S/210, 211, para. 7.
[97]C/M/225, p. 2.
[98]DS28/R, dated 31 March 1992, paras. 85-88.

"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 which 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?"[99]

See also the material on non-violation nullification or impairment under Article XXIII. Consensus was not reached on a response to the EC request for the views of the CONTRACTING PARTIES. At the Forty-eighth Session in December 1992, the EC representative noted that thus far the CONTRACTING PARTIES had been unable to respond to the questions addressed by the EEC, and noted that negotiations between the Community and the United States had led to a compromise agreed *ad referendum* which would enable the Community to end its Article XXVIII:4 negotiations with the United States.[100]

See also the reference on page 948 to the 1963 advisory opinion on the value of unbindings on poultry, the reference on page 941 to the request of Argentina in 1992 for establishment of a panel under Article XXIII:2 concerning the rights of Argentina under Article XXVIII, and the references to arbitration under Article XXVIII on page 949 and arbitration under Article XXIII on page 955. At the June 1993 Council meeting the EC representative noted that this compromise had been approved by the EC Council of Ministers and the EC would resume negotiations as quickly as possible.[101]

5. Article XXIV:6

See above at page 950, and see also the material under Article XXIV:6.

6. Article XXVII

See above at page 938.

C. PROCEDURES FOR RENEGOTIATIONS AND FOR MODIFICATION AND RECTIFICATION OF SCHEDULES

Article XXVIII provides for three types of negotiations: (a) normal three-year (open season) renegotiations under paragraph 1; (b) renegotiations in special circumstances, after authorization by the CONTRACTING PARTIES, under paragraph 4; and (c) renegotiations following a reservation made under paragraph 5. In addition, Article XVIII:7 (the present text of which was drafted in parallel with the text of Article XXVIII:4) provides for renegotiation of concessions at any time by a contracting party coming within the scope of Article XVIII:4(a), and Article XXIV:6 provides for use of the procedures of Article XXVIII. Article XXVII also provides for consultation with substantial suppliers with respect to concessions withheld or withdrawn thereunder.

[99]L/7096, dated 7 October 1992 (communication dated 28 September 1992).
[100]SR.48/2, p. 15-16.
[101]C/M/264, p. 52. No further information had been received by the Secretariat as of late March 1994.

1. Procedures for negotiations under Article XXVIII

On 31 May 1957 the Executive Secretary, in compliance with instructions given to him by the CONTRACTING PARTIES[102], issued a Note concerning arrangements for negotiations under Article XXVIII in 1957.[103] This note served as a procedural guideline for Article XXVIII negotiations until 1978.

In June and September 1978, the Director-General issued Notes with revised procedural guidelines for renegotiations under Article XXVIII.[104] These guidelines were replaced by Procedures for Negotiations under Article XXVIII[105], adopted by the Council on 10 November 1980 on the recommendation of the Committee on Tariff Concessions. All renegotiations under Article XXVIII are now being conducted under these Procedures, which provide as follows:

> "1. A contracting party intending to negotiate for the modification or withdrawal of concessions in accordance with the procedures of Article XXVIII, paragraph 1 -- which are also applicable to negotiations under paragraph 5 of that Article -- should transmit a notification to that effect to the secretariat which will distribute the notification to all other contracting parties in a secret document.[106] In the case of negotiations under paragraph 4 of Article XXVIII the request for authority to enter into negotiations should be transmitted to the secretariat to be circulated in a secret document and included in the agenda of the next meeting of the Council.
>
> "2. The notification or request should include a list of items, with corresponding tariff line numbers, which it is intended to modify or withdraw indicating for each item the contracting parties, if any, with which the item was initially negotiated. It should be indicated whether the intention is to modify a concession or withdraw it, in whole or in part, from the schedule. If a concession is to be modified, the proposed modification should be stated in the notification or circulated as soon as possible thereafter to those contracting parties with which the concession was originally negotiated and those which are recognized, in accordance with paragraph 4 below, to have a principal or a substantial supplying interest. The notification or request should be accompanied by statistics of imports of the products involved, by country of origin, for the last three years for which statistics are available. If specific or mixed duties are affected, both values and quantities should be indicated, if possible.
>
> "3. At the same time as the notification is transmitted to the secretariat or when the authorization to enter into negotiations has been granted by the Council -- or as soon as possible thereafter -- the contracting party referred to in paragraph 1 above should communicate to those contracting parties, with which concessions were initially negotiated, and those which have a principal supplying interest, the compensatory adjustments which it is prepared to offer.
>
> "4. Any contracting party which considers that it has a principal or a substantial supplying interest in a concession which is to be the subject of negotiation and consultation under Article XXVIII should communicate its claim in writing to the contracting party referred to in paragraph 1 above and at the same time inform the secretariat. If the contracting party referred to in paragraph 1 above recognizes the claim, the recognition will constitute a determination by the CONTRACTING PARTIES of interest in the sense of Article XXVIII:1.[107] If a claim of interest is not recognized, the contracting party making the claim may refer the matter to the Council. Claims of interest should be made within ninety days following the circulation of the import statistics referred to in paragraph 2 above.
>
> "5. Upon completion of each bilateral negotiation the contracting party referred to in paragraph 1 above should send to the secretariat a joint letter on the lines of the model in Annex A attached hereto signed by

[102]Decision of 27 April 1957, IC/SR.31; L/641, 6S/158.

[103]L/635.

[104]L/4651 and Rev.1 and Addenda 1-3.

[105]C/113 and Corr. 1, 27S/26.

[106]The footnote to this sentence in the Procedures reads: "The date for submission of a notification for negotiation under Article XXVIII, paragraph 1, shall comply with the provisions of interpretative note 3 to paragraph 1 of Article XXVIII."

[107]The footnote to this sentence in the Procedures reads: "If, in exceptional circumstances, the contracting party referred to in paragraph 1 above is not in a position to supply relevant import statistics, it shall give due consideration to export statistics provided by contracting parties claiming an interest in the concession or concessions concerned."

both parties. To this letter shall be attached a report on the lines of the model in Annex B attached hereto. The report should be initialled by both parties. The secretariat will distribute the letter and the report to all contracting parties as a secret document.

"6. Upon completion of all the negotiations the contracting party referred to in paragraph 1 above should send to the secretariat, for distribution in a secret document, a final report on the lines of the model in Annex C attached hereto.

"7. Contracting parties will be free to give effect to the changes agreed upon in the negotiations as from the first day of the period referred to in Article XXVIII:1, or, in the case of negotiations under paragraph 4 or 5 of Article XXVIII, as from the date on which the conclusion of all the negotiations have been notified as set out in paragraph 6 above. A notification shall be submitted to the secretariat, for circulation to contracting parties, of the date on which these changes will come into force.

"8. Formal effect will be given to the changes in the schedules by means of Certifications in accordance with the Decision of the CONTRACTING PARTIES of 26 March 1980.

"9. The secretariat will be available at all times to assist the governments involved in the negotiations and consultations.

"10. These procedures are in relevant parts also valid for renegotiations under Article XVIII, paragraph 7, and Article XXIV, paragraph 6."[108]

In discussion of these Procedures during the 3 November 1980 meeting of the Committee on Tariff Concessions, "the Chairman took up the question of the character of the document and recalled the comments made by the representative of Finland that the terms used in the text and particularly the word 'should' meant that the document should be interpreted as guidelines and that contracting parties entering into Article XXVIII negotiations were invited to follow those guidelines but should not consider them as binding obligations".[109]

2. Procedures for negotiations in connection with implementation of the Harmonized System

On 12 July 1983, the Council adopted a Decision on "GATT Concessions under the Harmonized Commodity Description and Coding System" setting out "basic principles" and "proposed special procedures" for renegotiations under Article XXVIII in order to facilitate the application of the Harmonized System with effect from 1 January 1987.

"3.2 The guidelines relating to procedures for negotiations under Article XXVIII ... will be the basis for this exercise. ... However, because of the amount and complexity of the work involved, and the exceptional nature of the exercise, it will be necessary to simplify the guidelines, as indicated below ...

"4.1 Each contracting party adopting the Harmonized System shall supply to the GATT secretariat the following information:

"4.1.1 An up-to-date consolidated schedule of concessions in the existing nomenclature in loose-leaf form.

"4.1.2 A proposed consolidated schedule of concessions in the nomenclature of the Harmonized System ...

"4.1.3 A concordance table from the existing to the proposed consolidated schedules of concessions ...

"4.1.4 A concordance table from the proposed to the existing consolidated schedules of concessions ...

"4.1.5 A list of items proposed for certification ...

"4.1.6 A list of items for renegotiation ...

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[108]C/113 and Corr.1, 27S/26-29. The Annexes are not reprinted in the BISD and can be found in C/113.
[109]TAR/M/3, p. 9-10, para. 4.7.

"4.2 When contracting parties consider it unavoidable to combine headings or parts of headings in implementing the Harmonized System they may have to modify certain of their existing concessions. Possible ways of arriving at new rates include:

"4.2.1 Applying the lowest rate of any previous heading to the whole of the new heading.

"4.2.2 Applying the rate previously applied to the heading or headings with the majority of trade.

"4.2.3 Applying the trade weighted average rate of duty for the new heading.

"4.2.4 Applying the arithmetic average of the previous rates of duty, where no basis exists for establishing reasonably accurate trade allocations.

"4.3 If a contracting party considers that the conversion of a concession, which has been notified as a rectification case by another contracting party, in effect impairs the value of the concessions and should have been notified for renegotiation under Article XXVIII, the first contracting party, having demonstrated at least its substantial interest in the concession, is free to request, in accordance with normal practice in rectification exercises, that the concession be restored (or, failing, that the item concerned be notified for renegotiation).

...

"4.5 Consistent with Part IV of the GATT special account would be taken of the needs of developing countries."[110]

Prior to the adoption of the Decision, it was stated "that, under this document, any contracting party was entitled to request the maintenance of particular tariff items of interest to it in the new nomenclature, whenever tariff lines with different bound rates were combined or whenever bound rates were combined with unbound rates. This understanding was in keeping with the basic principle stated in paragraph 2.1 [of the Decision,] namely that 'existing GATT bindings should be maintained unchanged'".[111]

At the November 1986 Council meeting, the Forty-second Session and the December 1986 meeting of the Committee on Tariff Concessions, a number of contracting parties noted the difficulties experienced by their delegations in analysing documentation and submitting claims of interest within the time-limits proposed. Other contracting parties stressed the necessity of avoiding a further postponement of the entry into force of the Harmonized System, which had been deferred from 1 January 1987 to 1 January 1988 due to lack of completion of the associated Article XXVIII negotiations. The 1987 Report of the Committee notes that "the Committee recognized that it was necessary to extend the time-limits for the submission of specific claims of interest related to the transposition of national schedules of tariff concessions into the Harmonized System".[112]

See also the Council minutes of discussions on the transposition of Schedule XX - United States into the Harmonized System nomenclature.[113] See also the Secretariat Note of 26 September 1985 on "Loose-Leaf Schedules based on the Harmonized System Nomenclature"[114] and the discussion of Schedules under Article II.

3. Procedures for rectification and modification of Schedules of concessions

Procedures for Modification and Rectification of Schedules of Tariff Concessions were adopted by the CONTRACTING PARTIES on 17 November 1959[115], 19 November 1968[116], and 26 March 1980.[117] Paragraph 1 of the Decision of 26 March 1980 provides that "Changes in the authentic texts of Schedules annexed to the General Agreement which reflect modifications resulting from action under Article II, Article XVIII, Article XXIV,

[110] L/5470/Rev.1, 30S/17, 17-21.
[111] C/M/170, p. 15.
[112] Report of 10 November 1987, TAR/142, 34S/81, para. 3; see also SR.42/1 p. 5-8, SR.42/4, C/W/509, and discussion in TAR/M/22.
[113] C/M/227, p. 27; C/M/228, p. 20; C/M/231, p. 11.
[114] TAR/W/55.
[115] 8S/25.
[116] 16S/16.
[117] 27S/25.

Article XXVII or Article XXVIII shall be certified by means of Certifications". The text of the Decision of 26 March 1980 appears *in extenso* in the chapter on Article II, which also discusses practice regarding Certifications. See also under Article XXX concerning the former practice of issuing protocols of rectification or modification of Schedules.

III. PREPARATORY WORK AND SUBSEQUENT MODIFICATIONS

Concerning the preparatory work associated with the schedule provisions of the General Agreement, and the relationship between the Havana Charter and Schedules under the General Agreement, see generally Section III under Article II. Since the Charter did not directly provide for schedules of concessions, it also did not provide for the renegotiation of concessions nor for modification of schedules. The text of Article XXVIII emerged from discussions of the Tariff Agreement Committee and a draft by an ad-hoc sub-committee, during September and October 1947 at the Geneva session of the Preparatory Committee.[118]

The text of Article XXVIII of the General Agreement as agreed 30 October 1947 provided that concessions could be renegotiated only after 1 January 1951; moreover, Article XXXI did not permit withdrawal prior to 1 January 1951. The sole general "escape clause" from the general obligation to maintain tariff concessions was Article XIX. During the negotiation of the text at Geneva one delegate summarized the legal situation as: "the obligation that we are accepting here in respect of a tariff item is initially to bind the item at the rates set out in the Schedule for three years …".[119] Paragraph 1 of Article XXVIII provided for renegotiation after 1 January 1951 "by negotiation and agreement" with INR holders and "subject to consultation with such other contracting parties as the CONTRACTING PARTIES determine to have a substantial interest in such treatment".

By a Resolution of 1 April 1950, the CONTRACTING PARTIES recommended prolongation of the assured life of the schedules negotiated at Geneva in 1947 and Annecy in 1949.[120] One year later, paragraph 6(a) of the Torquay Protocol of 21 April 1951 amended the date in paragraph 1 to substitute "January 1, 1954" for "January 1, 1951"[121] and in a Declaration the CONTRACTING PARTIES agreed that "they will not invoke prior to 1 January 1954, the provisions of Article XXVIII, paragraph 1, of the General Agreement to modify or cease to apply the treatment which they have agreed to accord under Article II of the General Agreement to any product described in the appropriate schedule annexed to the General Agreement".[122] A similar Declaration on 24 October 1953 extended this date to 1 July 1955.[123]

Renegotiations did nevertheless take place, under waiver or under the "sympathetic consideration" procedure discussed below, even prior to 1 January 1951. The situation was summarized by the report of the Working Party in the Eighth Session on "Continued Application of Schedules Annexed to the Agreement", which drafted the 1953 Declaration:

> "A contracting party which wishes to renegotiate an item in its schedule in order to afford protection for developmental purposes can have recourse to Article XVIII. In appropriate circumstances, contracting parties can also have recourse to other provisions of the General Agreement. Apart from the cases specifically provided for, the provisions of the General Agreement for the modification or withdrawal of tariff rates which are bound in the schedules would not operate, if the assured life of the schedules is extended as proposed, until 1 July 1955. The Working Party noted, however, that during the first and second periods of assured validity of the schedules, some contracting parties had felt the need, in exceptional circumstances, to modify certain bound rates of duty and have sought authority from the CONTRACTING PARTIES to enter into negotiations to this end. All such requests have been examined with sympathy and understanding and the CONTRACTING PARTIES have authorized the renegotiations. …

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[118]See EPCT/TAC/PV/14 p. 4-35, EPCT/194, EPCT/TAC/PV/18 p. 38-46.
[119]EPCT/TAC/PV/14, p. 19.
[120]GATT/CP/25, Annex 1, p. 6; proposal at GATT/CP.4/7, draft at GATT/CP.4/25, discussion at GATT/CP.4/SR.6, 7, 8, 19.
[121]I/89.
[122]Declaration of 21 April 1951, II/30-31.
[123]2S/22-23.

> "There is no reason to believe that contracting parties will be less ready in the future than they have been in the past to consider requests of this kind and to join in granting authority for the necessary negotiations, and the approval of this report would in itself be confirmation that the CONTRACTING PARTIES would give sympathetic consideration to such requests".[124]

The Intersessional Committee was given the authority to examine and authorize such requests for "sympathetic consideration".[125]

In the 1954-55 Review Session, Article XXVIII was extensively revised. Paragraph 4 was added, replacing the "sympathetic consideration" procedure; other additions included the provisions on rights for "principal suppliers", paragraph 5, and the Interpretative Notes (originally negotiated as "regulations" for the use of Article XXVIII). These modifications came into effect on 7 October 1957 through entry into force of the Protocol Amending Parts II and III of the General Agreement.[126]

IV. RELEVANT DOCUMENTS

Geneva

Discussion:	EPCT/TAC/SR.14, 18 EPCT/TAC/PV/14, 18, 25
Reports:	EPCT/135, 189, 194, 196, 209, 214/Add.1/Rev.1
Other:	EPCT/W/193, 273, 274, 285, 312, 326

CONTRACTING PARTIES

Discussion:	GATT/CP.4/SR.6-8, 16, 19
Reports:	GATT/CP.4/7, 25, 42

Review Session

Discussion:	SR.9/16, 17, 25, 36, 37, 45, 47
Reports:	W.9/107, 124, 206, 212+Corr.1, 236/Add.3, 248, L/329, 3S/205
Other:	GATT/181-185, 187, 188, 191, 192, 194, 195, 201 L/189, 217, 246, 261/Add.1/Corr.1, 270, 274, 277, 282 W.9/19, 21, 39/Add.1, 43, 44, 49, 108, 118, 124, 166, 176, 182, 207 Sec/126/54, 140/54, 141/54, 147/54 MGT/66/54+Add.1+Corr.1 Spec/18/55+Revs.1-2, 49/55, 99/55, 123/55, 147/55

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[124] G/54, adopted 23 October 1953, BISD 2S/61, 62-62 paras. 4-5.

[125] 2S/9.

[126] Declarations extending the validity of Schedules for those contracting parties with respect to the revised Article XXVIII was not yet in effect, appear at 6S/19-22 (Declaration of 30 November 1957) and 9S/29-32 (Declaration of 19 November 1960).

V. TABLES

A. USE OF ARTICLE XXVIII:1, 4, AND 5: SUMMARY TABLE: STATUS AS OF 1 JANUARY 1995

NOTE: The figures below indicate requests to renegotiate one or more concessions under Article XXVIII:1, 4 or 5 (including "sympathetic consideration" procedures) and are based on Tables C, D and E below. Each such request may range from one tariff item to an entire Schedule. The column on Article XXVIII:5 refers to requests for renegotiation of concessions. Invocations of Article XXVIII:5 in order to reserve rights with request to an entire Schedule for a three-year period appear in Table B below.

Contracting party	Para. 1	Para. 4	Para. 5	Total
Australia	6	13	14	33
Austria	3	1	6	10
Benelux	5	2		7
Brazil		1	2	3
Canada	4	5	9	18
Chile		1		1
Cuba	1	2	1	4
Czechoslovakia / Czech & Slovak Republic	2			2
Denmark	1	3	1	5
Dominican Republic	2			2
EEC	3	2	12	17
Egypt			1	1
Finland	4	2	5	11
France	1			1
Germany	2			2
Greece	3	1		4
Haiti		1		1
Hungary			1	1
India	1	2	3	6
Israel		1		1
Italy	1			1
Japan	1	2	3	6
Mexico			1	1
Morocco		1		1
New Zealand	7	6	19	32
Nicaragua	1			1
Norway	3	2	1	6
Pakistan	2	2		4
Peru	2	1		3
Portugal		1		1
Romania	1			1
Senegal	1			1
South Africa	5		35	40
Spain			1	1
Sri Lanka	3	1		4
Sweden	2	2	7	11
Switzerland	1		2	3
Tunisia	1			1
United Kingdom	2	1	2	5
United States	5	8	7	20
Uruguay	1			1
Zaire	1			1
TOTAL	78	64	133	275

B. INVOCATION OF ARTICLE XXVIII:5 SINCE 1958: STATUS AS OF 1995

NOTE: This table records invocations of Article XXVIII:5, permitted once each three years (most recently as of 1 January 1994). By invoking Article XXVIII:5 a contracting party reserves its rights for a three-year period with regard to its entire Schedule. In many cases no renegotiations have taken place even though such a reservation was made.

Contracting party	1958-60	1961-63	1964-66	1967-69	1970-72	1973-75	1976-78	1979-81	1982-84	1985-87	1988-90	1991-93	1994-96
Argentina										X	X	X	
Australia				X	X	X	X	X	X	X	X	X	X
Austria						X		X	X	X	X	X	X
Bangladesh						X	X				X		
Benelux		X											
Bolivia												X	X
Brazil							X	X	X	X	X	X	X
Burundi				X									
Canada				X			X	X	X	X	X	X	X
Chile	X										X	X	X
Colombia													X
Costa Rica												X	X
Cuba	X	X											
Czech Republic													X
Czechoslovakia												X	
Denmark		X	X	X	X	X							
El Salvador													X
Egypt													X
EEC			X			X	X	X	X	X	X	X	X
Finland					X	X		X	X	X	X	X	X
France		X											
Germany		X											
Greece	X	X											
Guatemala													X
Haiti										X			
Hungary								X	X	X	X	X	X
Iceland										X			X
India				X	X	X		X	X	X			
Indonesia													X
Israel					X	X	X				X	X	X
Italy		X											
Japan							X	X	X	X	X	X	X
Korea											X	X	X
Malaysia											X	X	X
Mexico											X	X	X
Morocco												X	X
New Zealand	X	X			X	X		X	X	X	X	X	X
Norway								X	X	X	X	X	X
Pakistan					X								
Peru												X	X
Philippines												X	X
Poland							X	X	X	X	X	X	
Portugal										X			
Romania									X	X		X	X
Singapore											X	X	
Slovak Republic													X
S. Africa					X	X	X	X	X	X	X	X	X
Spain								X	X	X			
Sweden								X	X	X	X	X	X
Switzerland								X	X	X	X	X	X
Thailand											X	X	X
Tunisia													X
Turkey		X		X	X	X	X	X	X	X	X	X	X
United States						X	X	X	X	X	X	X	X
Uruguay											X	X	
Venezuela												X	
Yugoslavia											X	X	
Zaire													X
Zimbabwe											X	X	
TOTAL	4	9	2	6	9	12	11	18	19	23	28	35	37

C. RENEGOTIATIONS UNDER ARTICLE XXVIII:1

General notes:

1. In addition to notifications listed below, Article XXVIII negotiations have been carried out with respect to several Schedules under the special and simplified procedures adopted by the Council on 12 July 1983 (30S/17) in connection with the transposition of Schedules into the Harmonized System (SECRET/HS document series).

2. Australia, Benelux, Brazil, Chile, Cuba, Denmark, France, Haiti, Italy, New Zealand, South Africa, United Kingdom and Uruguay carried out renegotiations under Article XXVIII:1 in 1950 but detailed information is not available.

3. Renegotiations under Article XXVIII in certain particular cases where the paragraph of Article XXVIII was not specified have been listed under Article XXVIII:1.

Contracting party	Notification	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
AUSTRALIA	5.5.1955	SECRET/38 + Add.1-5	France, Czechoslovakia and United Kingdom	Galoshes, rubber sand boots and shoes. Galoons. Ribbons.	£A 403,880	
	2.10.1957	SECRET/90 + Add.1-9	France, United Kingdom,United States, Sweden, Germany, Benelux	Products listed in SECRET/90/Add.1	£A 75,606,421	
	27.7.1960	Spec/215 SECRET/119 + Add.1-17	Italy, France, Norway, Benelux, Germany, Sweden, Finland, Czechoslovakia, United States, United Kingdom and India; Ceylon (Part II)	Products listed in SECRET/119	£A 302,719,500	
	5.11.1963	SECRET/156 + Add.1-8	Sweden, South Africa, Norway, EEC, India, United States	Items listed in SECRET/156	£A 15,053,500	Forged steel flanges, refrigerator appliances, linseed oil and woollen piece goods: originally Article XIX actions
	30.9.1966	SECRET/168 + Add.1-5	Japan, EEC, Czechoslovakia	Footwear. Iron and steel. Cinematograph films. Dictating machines. Tools. Paints and colours. Acetylsalicylic acid.	£A 45,434,000	
	6.10.1981	SECRET/279 + Add.1		Whole schedule	n.a.	Transposition of Schedule into CCCN. Bilateral renegotiations carried out under Article XXVIII:5
AUSTRIA	21.5.1955	SECRET/21 + Corr.1 + Add.1-9	Finland, India, Benelux, Canada, Chile, Czechoslovakia, Denmark, France, Germany, Norway, Sweden, United Kingdom, United States, Greece, Italy	About 100 items	S 1,114,158,600	
	22.7.1957	SECRET/80 + Add.1-14	Germany, France, United Kingdom, United States, Benelux, Sweden, Denmark, Norway	Sulphite. Linoleum. Oil cloth of silk. Combustion engines. Boiler feeder pumps. Hay tedders. Refrigerator machinery. Eye/ opera glasses. Aromatic essences.	S 142,502,100	
	27.7.1960	SECRET/120 + Add.1-3	Czechoslovakia, Germany	Tableware (of porcelain or china)	S 35,008,000	
BENELUX (Belgian Congo)	26.2.1955	SECRET/29 + Add.1-7	Union of South Africa, Czechoslovakia, Germany, United States, United Kingdom, Italy, Canada	Sugar confectionery. Enamel colours and paints. Fancy jewellery. Storm lanterns.	BF 114,524,000	

Contracting party	Notification	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
(Metropolitan territory)	7.6.1955	SECRET/48 + Add.1-2	United States	Oranges and mandarins	Fl. 8,128,858.2	
(Belgian Congo, Rwanda Urundi)	10.7.1957	SECRET/78	South Africa, United Kingdom, Czechoslovakia, Germany, Rhodesia and Nyasaland, United States	Products listed in SECRET/78 (mainly textiles)	BF 1,004,141,000	
(Suriname)	22.7.1957	SECRET/81+ Add.1-5	United States, Canada, France	Products listed in SECRET/81	Sur. F 5,535,500	
(Netherlands Antilles)	18.11.1960	SECRET/132 + Add.1-4	United Kingdom, United States	Liquorice. Marzipan. Bonbons. Sugar conf. Cocoa powder/paste. Chocolate.	Ant. F.436,.250	
CANADA	13.4.1955	SECRET/35 + Add.1,2,3	United States	Fruits in cans. Ethylene glycol.	C$5,746,401	
	31.7.1957	SECRET/82 + Add.1-10	France, Benelux, Sweden, Chile, Italy, United States,	Iron. Steel. Wool. Zinc. Mushrooms and truffles. Onions. Fruits and vegetables, etc. Listed in S/82 + Add.1)	C$227,698,281	
	4.11.1960	SECRET/134 + Corr.1 + Add.1-5	United Kingdom, United States, France, Germany	Chickens, eggs. Coated papers. Iron or steel plates or sheets. Lawn or garden rollers. Hoes. Motion picture films.	C$ 3,840,285,000	
	5.11.1963	SECRET/155 + Add.1-4	United States, EEC	Items listed in SECRET/155	C$72,826,000	
CUBA	4.2.1955	SECRET/22 + Add.1-7	United States, Australia, Chile, Canada, Norway (Part II with United States only)	Some 50 products listed in SECRET/22/Add.1	$53,123,568	
CZECHO-SLOVAKIA	12.7.1978	SECRET/246 + Add.1-4	Australia, India	Whole schedule	-	Conversion of specific into ad valorem duties
CZECH AND SLOVAK REP.	26.11.1992	L/6911 + Add.1-2 SECRET/338 + Add.1	Canada and United States	Review of customs tariff	Statistics provided	Reneg. of schedule under waiver; transformation from centrally planned to market economy
DENMARK	30.8.1960	SECRET/126 + Add.1	Finland	Newsprint	n.a.	
DOMINICAN REPUBLIC	23.6.1955	SECRET/49 + Add.1-5	France, United States	Pigments and paints. Cognac and armagnac. Liqueurs, cordials. Dyes.	n.a.	
	18.11.1960	SECRET/133 + Add.1	United States	Brown paper of straw or wood.	RD$ 788,013	
EEC	1.6.1966	SECRET/165 + Add.1-8	Switzerland, Australia, Austria, Finland, Canada, New Zealand	Cheese	$24,621,000	
	26.9.1966	SECRET/167 + Add.1-4	Canada, United States, Uruguay	Oil foots and dregs. Oilcake and other residues	$55,000	
EEC	1.10.1969	SECRET/198+ Add. 1, 2	Norway, United States	Unwrought aluminum	$137,859,000	
FINLAND	17.6.1955	SECRET/47 + Add.1-7	France, Norway, Germany, Benelux, Czechoslovakia, Denmark, United Kingdom, United States	Potato meal. Mackerel, etc. Preserves of fruit. Wool yarns. Fabrics, ribbons, cords. Socks, stockings. Compressors, pumps. Refrigerator machines. Lacquers.	Fmk 2,988,593,027	

Contracting party	Notification	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
	20.8.1957	SECRET/85 + Add.1-16	Austria, Italy, Germany, France, United States, Benelux, Czechoslovakia, Norway, United Kingdom, Denmark, Sweden, Ceylon, India	Listed in SECRET/85 + Add.1	Fmk 7,756,591,700	
	13.7.1960	SECRET/124 + Add.1-17	Canada, Norway, Austria, Greece, Germany, Benelux, Switzerland, France, Pakistan, Sweden, India, United Kingdom, Czechoslovakia, Denmark, Italy, United States	For list of products see various addenda	(Fmk million) 41,838.75	
	5.11.1963	SECRET/154 + Add. 1-6	United States, Denmark, Greece, EEC	Vegetables. Fruit. Woven fabrics. Linoleum.	(Fmk million) 940.39	
FRANCE (metropolitan territory)	28.5.1955	SECRET/44 + Add.1-5	Czechoslovakia, Germany, United States, Canada, United Kingdom	Fruits. Abrasin oil. Chloride of ammonium. Sulphate. Nitrates. Nitrog. chemical fertilizer. Rubber. Charcoal. Crystal paper. Linters. Aluminum.	FF 2,457,496,500	
GERMANY	3.3.1955	SECRET/27, Spec/214/55 Spec/86/56, Spec/102/56	United States	Cereal flour. Bran, sharps (from cereals). Lard. Screen quotas for exhibition of foreign films.	DM 85,800,700 (for lard only)	
	3.7.1957	SECRET/79 + Add.1-5	Benelux, Denmark, Greece, France	Asparagus. Swedes. Flower seeds. Pips of locust beans. Olive oil. Fruits. Sea pike. Clover. Sesame seeds. Figs.	DM 10,884,000	
GREECE	10.2.1955	SECRET/23 + Add.1-11 L/831	U. of South Africa, Turkey, Benelux, Canada, France, Germany, Italy, UK, Norway, Finland, Austria, United States	About 30 products listed in SECRET/23 and Add.2	Dr 435,467,471,400	
	23.7.1957	SECRET/83 + Add.1-10	Czechoslovakia, Finland, United Kingdom, France, United States, Germany, Benelux, Austria	Fish. Whisky. Brandy. Leather. Skins. Wooden articles. Cutlery. Electrical articles. Optical instruments. Pencils.	Dr 132,231,406,000	
	18.5.1960	SECRET/131 + Add.1-10	Finland, France, Italy, Germany, Benelux, Japan, United States, Denmark, Austria, Turkey, United Kingdom	Products listed in addenda to SECRET/131	n.a.	Refrigerators: originally Art. XIX action
INDIA	12.5.1955	SECRET/39 + Add.1-4	Germany, United States and Czechoslovakia	Dyes	Rs 92,711,200	
ITALY	16.5.1955	SECRET/40 + Add.1-6	Denmark, Sweden and United States	Cheese, Wood panels and blocks. Printing machinery	6,269 million lire	
JAPAN	27.7.1960	SECRET/117 + Add.1-7	United States, Germany	Grinding machines. Metal or wood working machines. Photographic films. Gramophone records. Toluene. Polyethylene. Animal fats. Powdered milk. Sauces. Seeds of leguminous plants.	¥ 9,628,286,500	
NEW ZEALAND	12.2.1955	SECRET/25 + Add.1-7	Benelux, France, Czechoslovakia, United Kingdom and United States	Leather manufactures. Mufflers, pistons. Men's and boy's overcoats. Cards. Calendars. Cartridges. Metal wires. Buttons, crochets.	£NZ 356,749.5	
	11.9.1956	SECRET/70 + Add.1-3	United States, Germany	Goat-skins, kid-skins. Electric lamps.	£NZ 929,169.8	
	24.10.1956	SECRET/74 + Add.1 SECRET/75	Benelux	Oxides of zinc	£NZ 39,210.6	

Contracting party	Notification	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
	14.8.1972	SECRET/207	---	Cornsacks	n.a.	Converted into XXVIII:5 negotiations as from 1.7.1973 - see SECRET/214
	21.8.1972	SECRET/208	---	Floor coverings	$ (c.d.v.) 275,981	id.
	26.9.1972	SECRET/209	---	Fittings for loose-leaf binders	£NZ 92,954	id.
	5.10.1972	SECRET/210	---	Polyester	1,017,003	id.
NICARAGUA	8.3.1955	SECRET/32 + Add.1-9	France, Czechoslovakia, Norway, Benelux, Italy, United Kingdom, Chile, Canada, United States	Complete Annecy list	n.a.	
NORWAY	13.9.1957	SECRET/88 + Add.1-7	Germany, Czechoslovakia Sweden, Finland, United Kingdom	Handbags, Glass and glassware. Trunks.	NOK 6,490,300	
	4.8.1960	SECRET/122 + Add. 1-7	Italy, Germany, Czechoslovakia, Benelux	Lilac. Sausages. Felt hats. Wires of iron or steel. Hydro- electric conduits of steel	NOK 41,328,000	
	25.9.1969	SECRET/196 + Add. 1-4	EEC, United States	Rice. Dry yeast. Natural yeast	NOK 11,535,000	
PAKISTAN	8.3.1955	SECRET/31 + Add.1-3	France and United States	Fruit juices. Pineapples. Vegetables. Tobacco. Paints. Fountain pens. Razor blades. Typewriters. Wines	Rs. 6,216,631	
	6.9.1960	SECRET/127 + Add.1-13	Australia, France, Czechoslovakia, New Zealand, Sweden, Turkey, Benelux, United States, United Kingdom	Items listed in SECRET/127/Add.1	PRs. 63,422,300	
PERU	1.4.1955	SECRET/34 + Add.1-9	Canada, France, United States, Czechoslovakia, Benelux, Italy, United Kingdom	Products listed in SECRET/34	n.a.	
	4.8.1960	SECRET/121 + Add.1-12	Norway, Canada, India, France, Sweden, Italy, United Kingdom, Uruguay, Benelux, United States	Bars of iron or steel. Plates or sheets of iron coated with lead or zinc	Gold Soles (see SECRET/121/Add.1) 186,295,240	
ROMANIA	15.4.1993	L/6967, W.47/19 +Add.1-2 SECRET/339	Hungary	See documents	See documents	Introduction of new customs tariff; renegotiation under waiver
SENEGAL	2.8.1993	L/6784 SECRET/341 + Add.1	--	See documents	Statistics provided	Renegotiation of schedule under waiver
SOUTH AFRICA	26.1.1955	SECRET/19 + Add. 1-14	Australia, Benelux, Brazil, Burma, Czechoslovakia, Finland, France, Greece, Norway, Sweden, United Kingdom, United States	About 30 products listed in SECRET/19	£ 3,434,038.5	
	15.8.1957	SECRET/84 + Add.1-6	Austria, Benelux, Germany, United Kingdom, United States	Asparagus. Motorcars. Radios. Televisions. Combs	£ 10,800,270.4	
	7.9.1960	SECRET/128 + Add.1-17	Australia, Benelux, Ceylon, Czechoslovakia, Finland, France, Germany, Greece, Norway, Sweden, United Kingdom, United States	Products listed in SECRET/128	£ 90,385,201	

Contracting party	Notification	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
	5.11.1963	SECRET/153 + Add 1-10	Greece, Australia, New Zealand, Austria, EEC, Switzerland, United Kingdom, United States	Products listed in SECRET/153	R 53,344,641	
	7.10.1966	SECRET/170 + Add.1-7	EEC, United States, Norway, Finland, Sweden, United Kingdom	Products listed in SECRET/170	R 62,035,300	
SRI LANKA	5.3.1955	SECRET/28 + Corr.1 and Add.1-8	Union of South Africa, New Zealand, Czechoslovakia, France, Italy Australia, Benelux Sweden, United States	Confectionery, fruits tinned, jams, jellies. Marmalades. Chinaware. Porcelain, glass and glassware. Wood screws (iron and steel). Agricultural implements. Leather and leather goods. Umbrellas. Exercise books. Brass/copper nails/screws.	Cey Rs 20,594,703	
	27.7.1960	SECRET/116 + Add.1-17	South Africa, Czechoslovakia, Australia, New Zealand, Finland, Denmark, Canada, Norway, Sweden, Japan, Italy, France, Germany, Benelux, United States	Products listed in SECRET/116/Add.1 and Add.1/Corr.1	Cey Rs 278,960,000	
	2.8.1978	SECRET/247 + Add.1-4	Australia, Canada, New Zealand, South Africa	Part II of Schedule	Rs. 23,287,500	
SWEDEN	31.5.1955	SECRET/43 + Add.1-4	Benelux, Italy, United States	Edible fruits and berries	SEK 38,513,000	
	27.7.1960	SECRET/118 + Add.1-4	Germany, Japan, United States	Nylon socks and stockings. Tableware of porcelain, china or pottery, or of faience. Statuettes. Motor vehicles.	SEK 469,060,200	
SWITZERLAND	27.9.1966	SECRET/166 + Add.1-2	EEC	Cheeses	n.a.	
TUNISIA	12.7.1993	SECRET/340	---	See document.	See document.	
UNITED KINGDOM	20.4.1955	SECRET/36 + Add.1-4	Brazil, Benelux	Bananas. Fruit stocks of Malling varieties. Trees and shrubs	£11,010,875	
	9.9.1969	SECRET/194 + Add.1	Denmark, Uruguay	Eggs in shell and other egg products	£3,202,000	
UNITED STATES	8.12.1960	SECRET/129 + Add.1-5 L/1309	United Kingdom, Japan, Italy	Woven fabrics	n.a.	
	30.9.1969	SECRET/195 + Add.1-2	Japan	Stainless steel knives, forks, spoons	(stainless flatware) $17,010,600	
	5.10.1978	SECRET/249	---	Woven, knit and textile fabrics	$4,877,000	Compensation provided for in MTN reductions
	12.10.1978	SECRET/250 + Add. 1-3	EEC, Japan	Earthenware, tableware, china- ware, dinnerware	$ 187,588	Withdrawals
	11.10.1978	SECRET/251 + Add. 1-6	Canada, EEC, Japan, South Africa, Sweden	621 items including chemicals, metal and machinery products, textiles, etc.	$5.5 billion	Conversion of specific and compound duties to ad valorem duties
URUGUAY	27.4.1955	SECRET/37 + Add. 1	Norway and Sweden	Paper pulp, Sulphate, sulphite cellulose	$1,770.700	

Contracting party	Notification	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
ZAIRE	12.7.1990	SECRET/332 + Add.1 L/7170		Whole schedule	See Add.1 of SECRET/332	Renegotiation of schedule under waivers and transposition into HS nomenclature

D. RENEGOTIATIONS UNDER THE "SYMPATHETIC CONSIDERATION" PROCEDURE AND ARTICLE XXVIII:4

Country	Decision of CPs	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Reason for invocation
AUSTRALIA	16.10.1953	SECRET/1, SECRET/6	Czechoslovakia, Germany, Italy, United States	Lathes	£A 110,900	Tariff reclassification
	28.10.1955	SECRET/53 + Add.1-2	France and Germany	Sulphate of magnesia	£A 8,467,300	Domestic industry at severe disadvantage with certain overseas production
	26.7.1956	SECRET/69 + Add.1-6	United States	Taximetres	n.a.	Protection for infant industry
	28.6.1957	GATT/AIR/114 SECRET/94 + Add.1	Italy and France	Slide fastener tape	n.a.	Need for increased protection
AUSTRALIA	10.7.1958	GATT/AIR/135 SECRET/98 + Add.1-2	United Kingdom	Cotton yarns	£A 1,335,009	Tariff Board recommendations
	26.9.1958	SECRET/99 + Add.1-13	Czechoslovakia, Italy, United Kingdom (Hong Kong), United Kingdom, India	Buttons, almonds, drills, cotton sheeting, textiles	£A 10,334,204	Simplification and adjustment of duties
	11.2.1959	SECRET/104, SECRET/125	See SECRET/110	Woollen piece goods	---	See SECRET/110
	14.11.1959	SECRET/110 + Add.1-3	United Kingdom and France	Woollen piece goods	£A 1,169,636	Amalgamation of items (including SECRET/110) and modification of duties
	14.3.1960	GATT/AIR/182 SECRET/112, SECRET/125	United Kingdom (Hong Kong)	Boots and shoes	£A 264,544	Need for protection

Country	Decision of CPs	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Reason for invocation
	20.4.1960	SECRET/113, SECRET/114 + Add.1-2 SECRET/125	United Kingdom, France, Benelux, Czechoslovakia, Germany, Sweden, United States	Glue, trimmings, radio/TV equipment. Copper. Linen piece goods. Electrical machines and appliances	£A 15,660,083	Need for protection
	1.3.1961	SECRET/138 + Add.1-3	India	Cotton piece goods	£A 1,854,300	Need for protection
	16.1.1963	GATT/AIR/312 SECRET/152 + Add.1-2	EEC and Uganda	Coffee, raw and kiln dried	£A 3,057,150	Development of Papua and New Guinea
	24.1.1966	GATT/AIR/259 + Corr.1 Spec(67)6, SECRET/175	EEC, Czechoslovakia	Glassware, motor vehicles	£A 13,822,500	Need for protection. Glassware: originally Article XIX action.
AUSTRIA	15.4.1969	SECRET/186 + Add.1-3	EEC, Czechoslovakia	Malt, not roasted	S 8,862,500	Rapid increase in imports
BENELUX (Netherlands Antilles)	16.2.1955	SECRET/20 + Add.1, Corr.1; L/380	Canada, Dominican Republic, Haiti, Nicaragua, United States and Uruguay	About sixty products see SECRET/20	N.A. Fl. 101,827,000	Tariff review
(Surinam)	22.2.1962	SECRET/150 + Add.1	United States	Passenger motor vehicles	Surin. Fl. 2,727,000	To increase revenue
BRAZIL	7.9.1948	GATT/CP.2/W.9 GATT/CP/24	United Kingdom and United States	Milk in powder, etc. Almanacs and calendars. Penicillin	Cruzeiros 35,286,579	Monetary depreciation
CANADA	15.1.1957	SECRET/76 + Add.1	United States	Potatoes	n.a.	Adjustment of duty
	5.1.1961	GATT/AIR/215 (SECRET)	Benelux, France, Italy, Peru, Japan, United Kingdom, United States, Uruguay, Germany	Textiles (about forty items)	$88,547,600	Tariff revision
		SECRET/106 + Add.1-32	Austria, Switzerland, EEC, Czechoslovakia, India, Haiti			
CANADA	19.5.1961	SECRET/140	United States	Sodium hypochloride	n.a.	Nomenclature change
	21.6.1968	C/M/47 SECRET/183 + Add.1	EEC, United States	Chemicals and plastics	n.a.	Negotiations for delay of implementation of concessions
CHILE	12.4.1956	SECRET/60	Benelux, Canada, France, Norway, Sweden, United Kingdom, United States and Uruguay	Cotton fabrics, ammonium nitrate, aluminum, screws, bolts, cocks, faucets and valves. Wire. Refrigerators	Gold pesos 9,116,185.5	Tariff review
CUBA	14.9.1948	GATT/CP.2/W.12 GATT/CP/71	United States	Trimmings, ribbons, gallons, etc. Nylon stockings, hollow tyres and inner tubes	n.a.	Developments needs

Country	Decision of CPs	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Reason for invocation
	20.6.1949	GATT/CP.3/45 GATT/CP.3SR/28	Canada and United States	Table potatoes	n.a.	Need for protection
DENMARK	2.5.1958	SECRET/96 + Add.1 + Corr.1	Australia, Canada, France, United States	Corn products, wheat, rye, barley and oats. Mushrooms. Dates.	DKr 433,583	Protection of farm incomes
	14.11.1958	SECRET/100 + Add.1-12	France, Finland, Norway, Czechoslovakia, Switzerland, Italy, Benelux, Germany, United Kingdom, United States, Japan	Straight cast pipes. Staves for coopers. Stones cardboard. Chandeliers. Buttons. Iron and steel. Wines. Insulating glass. Boots. Shoes. Cameras. Telescopes, etc.	DKr 11,111,600	Conversion of specific into ad valorem duties on enacting new tariff (Brussels Nomenclature)
	14.11.1958	SECRET/109 + Add.1-9	Czechoslovakia, Sweden, Germany, Benelux, United States and United Kingdom, Japan	Sundry products (about 25)	DKr 47,939,700	As above
EEC	26.6.1967	SECRET/173 + Add.1	United Kingdom	Chocolate	n.a.	Modification to prevent abuses
	19.6.1992	SECRET/336 + Add.1 L/7076	---	Oilseeds and oilcakes	ECU 4,546,126,000	
FINLAND	24.9.1955	SECRET/52 and Add.1-2 L/362 + Add.1	France and United Kingdom	Cotton yarns	FIM 2,499,911,551.8	Uniformity of textile duties
	21.7.1977	SECRET/237	Canada, Hungary, New Zealand, Norway, Poland, South Africa, Switzerland, United States	Agricultural products	FIM 2,049,157,000	Conversion of specific into ad valorem duties
GREECE	2.11.1954	SECRET/15, L/391	United States and Germany	Kidskin and calfskin. Goat and sheep skins. Patent leather	Million old drachmae: 77,030.7	Need for protection
HAITI	3.10.1961	L/1568 SECRET/147 + Add.1-9	India, Benelux, Germany, UK, Norway, Canada, Denmark, France, United States	List of items renegotiated in L/1568	n.a.	Adjustments following new nomenclature
INDIA	23.10.1953	SECRET/3, SECRET/14	Sweden	Ball bearings and adapter bearings	Rs 2,239,000	Protection for new industry
INDIA	20.2.1954	SECRET/7, SECRET/11	France, Italy, UK, US, Czechoslovakia, Germany	Champagne and other sparkling wines; dyes derived from coal tar; glass beads and false pearls; safety razor blades	Rs 46,560,000	Protection of dev. industries; BOP; and low specific duties
ISRAEL	11.11.1968	L/3085 SECRET/182 + Add.1-10	Japan, Norway, Sweden, Finland, EEC, Switzerland, UK, US	List of items in SECRET/182	$29,845,000	Need for protection
JAPAN	8.12.1961	SECRET/144 + Add.1-8	Peru, Greece, Uruguay, EEC, US, Dominican Rep.	Items listed in SECRET/144 and Add.1	$12,784,800	Adjustments in connection with tariff revision
	15.7.1970	SECRET/201 + Add.1-2	United States	Chewing-gum	$228,750	Development of industry

Country	Decision of CPs	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Reason for invocation
MOROCCO	4.5.1988	L/6326 + Add.1		Sulphur, asbestos, coal, newsprint	Million dh 2,637	Tax reform aimed at introducing a fiscal levy
NEW ZEALAND	2-3.8.1954	GATT/AIR/51 (SECRET) SECRET/12 SECRET/18	Czechoslovakia and United Kingdom	Boots, shoes, etc. Slippers, n.e.i.	£NZ 213,611.25	Tariff review
	20.6.1963	SECRET/151 +Add.1-3	EEC	Woven pile & chenille fabrics of woollen or worsted thread (moquettes)	£23,822	Protection of new industry
	12.10.1964	SECRET/161 + Add.1-3	United States, EEC, Sweden	Saw blades	£ 162,954.5	Need for protection
	15.4.1969	SECRET/185	United Kingdom	Woven pile fabrics. Moquettes.	$NZ 135,829	Nomenclature change
	23.7.1969	SECRET/190 + Add.1	United Kingdom	Yarns of man-made and synthetic fibres. Thread.	$NZ 44.923	Rapid increase in imports
	31.5.1978	SECRET/245 + Add.1	---	Changes affected about 60 items (listed in SECRET/245)	$NZ 75,494.05	Introduction of a revised customs tariff as from 1.7.1978.
NORWAY	14.11.1958	L/856 + Add.1 + 2 SECRET/97 + Add.1-11	Greece, Austria, Finland, Italy, Japan, Czechoslovakia, Benelux, Germany, Denmark, Sweden, UK and United States	About 40 products	n.a.	Adoption of Brussels Nomenclature and transposition of specific into ad valorem duties
	19.11.1959	SECRET/111 + Add. 1-8	France, Denmark, Benelux, Germany, UK, United States and Czechoslovakia	Glass. Thermometers. Cigars. Articles of faience, iron and steel. Gramophones. Pipes, etc.	NOK 20,402,100	Transposition of further specific duties
PAKISTAN	6.9.1948	GATT/CP.2/25 GATT/CP/5/Add.3 GATT/CP.3/57	China, Czechoslovakia, France, Netherlands, United Kingdom and United States	Camphor. Textile manufactures. Ribbons. Glass beads and false pearls. Wireless receivers, etc. Musical instruments.	n.a.	Unforeseen development of imports
	18.5.1961	SECRET/139 + Add.1-4 L/1474 SECRET/127/Add.1-4	Germany, Japan, Italy and Czechoslovakia	List of items in SECRET/139	P.Rs. 24,646,500	Adjustments to prevent distortion and increase revenue
PERU	6.12.1961	L/1611 SECRET/145 + Add.1 SECRET/146 + Add.1	Canada, United States Benelux and France	Iron or steel wire. Iron or steel tubes. Copper bars and rods, flat bars. Copper pipes.	US$ 1,628,033.4	Development of industry
PORTUGAL	1.7.1983	SECRET/300	---	Carbon (in particular lampblack)	Escudos 338,653,00	Development of new industry

Country	Decision of CPs	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Reason for invocation
SRI LANKA	28.8.1948	GATT/CP.3/80	Australia, Benelux, China, Czechoslovakia, France, New Zealand, Norway, South Africa, United States	Whole 1947 schedule	n.a.	Need to increase revenue; BOP reasons
SWEDEN	26.9.1958	L/848, L/950 SECRET/102 + Add.1-12	Italy, United Kingdom, Germany, Denmark, France, Benelux, Japan, Uruguay, United States and Canada	Tissues. Some fruits. Umbrellas. Yarns. Spirits. Glues. Live plants. Mustard. Extracts. Buttons. Vegetables. Sauces, etc.	SEK 83,428,400	Tariff reform and consolidation of schedule
	30.4.1973 12.1.1978	L/3825 SECRET/242	United States	Non-alcoholic prep. for making beverages. Ice-cream powder and pudding powder	SEK 20,014,000	Imposition of variable levy
UNITED KINGDOM	24.9.1953	GATT/TN.2 SECRET/16, SECRET/10	France	Fresh strawberries	n.a.	Establishment of seasonal quota
	26.3.1956	SECRET/61 + Add.1	United States	Pork, salted or pickled, other than bacon and ham	n.a.	Tariff readjustments
	9.5.1956	GATT/AIR/88 SECRET/64 and Add.1 SECRET/67/Add.1-5	Czechoslovakia, France, Germany, Sweden and United States	Bars and rods. Hot finished seamless tubes and pipes. Articles of silk or artificial silk. Trunks, bags, handbags and pochettes	£1,934,273	Incidental modification for legal and technical reasons
UNITED STATES	23.8.1954	GATT/AIR/50 (SECRET) SECRET/13, SECRET/46	Benelux	Footwear	US$ 323,000	Nomenclature change
	26.10.1954 27.10.1954	L/237, SECRET/45	Canada	Fish, prepared or preserved, n.s.p.f.	n.a.	Classification of a new product
	12.4.1956	SECRET/63 + Add.1-2	United Kingdom	Fur felt hat bodies, etc.	n.a.	Originally Article XIX action. Court ruling on interpretation of description
	9.5.1956	SECRET/65 SECRET/66/Add.1-3	Cuba and Dominican Republic	Molasses and sugar syrups	n.a.	Equalization of tariff rates on liquid and dry sugar
	10.7.1958	L/837, GATT/AIR/132, GATT/AIR/133	Canada, Czechoslovakia, Japan	Boots, shoes or other footwear	US$ 4,934,599	Nomenclature change to avoid circumvention
	12.10.1959	SECRET/108, SECRET/72	United Kingdom, Benelux	Woven fabrics	US$ 53,940	Abolition of bound tariff quota because impracticable

Country	Decision of CPs	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Reason for invocation
UNITED STATES	5.1.1961	SECRET/136 + Add.1-7 GATT/AIR/214 SECRET/129/ Add.1	Austria, Benelux, Germany, United Kingdom, Sweden, Denmark	Bicycles and spring clothespins	US$ 16,506,366	Renegotiation of items after Article XIX action
	24.5.1962	Spec(64)123, Spec(65)1, Spec(66)5, L/2042, L/2053	See L/2592	For products, see documents quoted	n.a.	Nomenclature revision. Dried figs and toweling of flax, hemp or ramie: originally Article XIX actions.

E. RENEGOTIATIONS UNDER ARTICLE XXVIII:5

Country	Request notified	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
AUSTRALIA	17.11.1967	SECRET/174 + Add.1-6	United States, EEC, India, Japan	Blankets. Knitted piece-goods. Lace. Valves. Hyposulphite. Cinema films. Photographic plates and films, paper	$A 10,046,000	
	6.6.1968	SECRET/177	United States	Vehicles	$A 2,963,000	
	15.8.1968	SECRET/178	EEC	Butchers' knives. Cooks' knives	$A 222,500	
	17.9.1968	SECRET/179	Sweden	Spring rollers for blinds - wooden rollers	$A 562,000	
	28.11.1969	SECRET/199 + Add.1-2	Czechoslovakia, EEC	Iron and steel products	$A 17,019,000	
	19.12.1969	L/3299 SECRET/204 + Add.1	Japan	Shot and angular grit of iron or steel	$A 411,000	
	30.1.1974	SECRET/218 +Add.1-3	United States, Japan	Photographic or cinematographic cameras. Tripods. Projectors	$A 9,497,000	
	20.1.1982	SECRET/279/ Add.2-12	Norway, Sri Lanka, India, Sweden, South Africa, Chile, Czechoslovakia, Austria, Finland, Cuba, Pakistan	Whole Schedule	No statistics	
	8.2.1982	SECRET/285 + Add.1-2	---	Prepared/preserved meat (canned ham)	$A 1,369,000	
	19.9.1983	SECRET/302	---	Refrigerators	$A 1,954,000	
	3.10.1984	SECRET/309/Rev.1	---	Champagne, sparkling wine, still wine, vermouths	$A 31,622,000	

Country	Request notified	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
AUSTRALIA	3.3.1987	SECRET/324	---	Chemical products	$A 60,972,000	
	24.9.1987	SECRET/326	---	Vegetables	$A 29,011,000	
	8.9.1992	SECRET/337 + Add.1	---	Fruit juice and alcoholic beverage	$A 73,944,000	Conversion of specific into ad valorem rates
AUSTRIA	9.1.1975	SECRET/226 + Add.1	EEC	Macaroni, spaghetti, etc.	S 22,638,000	
	1.12.1975	SECRET/229 + Corr.1	---	TV picture tubes	S 357,371,000	
	26.2.1976	SECRET/231 + Add.1	EEC, Switzerland	Cheese	S 71,816,000	
	20.1.1978	SECRET/243 + Add.1-4	United States, EEC, Switzerland	Food preparations and beverages	S 350,109,000	
	5.8.1982	SECRET/291 + Add.1-2	EEC	Preserved vegetables	S 72,658,700	
	23.12.1986	SECRET/323 +Corr.1	---	Agricultural products, gramophones, video apparatus	Million A$ 1,068,668	
BRAZIL	12.8.1977	SECRET/238 + Add.1-5	EEC, United States, Canada, Japan, Sweden	Fifteen items listed in SECRET/238	No statistics	
	19.4.1991	SECRET/334	---	Sodium hydrogenocarbonate and salicylic acid	US$ 53,051	
CANADA	23.6.1967	SECRET/172 + Add.1-4	Denmark, Greece, United States, Sweden, EEC	List of products in SECRET/172	No statistics	
	18.9.1968	SECRET/180 + Add.1	United States, EEC	Lithographic stones. Matrices and metal plates for printing (music) etc.	C$ 60,540,500	
	12.4.1978	SECRET/244 + Add.1-4	United States, South Africa, Korea, EEC	Fruits and vegetables	C$ 500,821,000	
	30.6.1980	SECRET/267 + Add.1-3	United States, EEC	Aluminum and alloys thereof; rovings and yarns; yarns and warps; grouped filaments	C$ 163,339,000	
	28.7.1981	SECRET/276	---	Laboratory glassware	C$ 15,976,000	
	24.4.1983	SECRET/298	---	Bulldozer parts; feed pellet mill parts; crawler lawders, crawler pipelayers	C$ 76,621,000	
	28.10.1983	SECRET/305	---	Compressed yeast	C$ 486,000	
	2.3.1984	SECRET/307	---	65 items listed in document SECRET/307; renegotiation in connection with entry into force of Agreement on Implementation of Article VII	C$ 3,877,547,000 (1978)	
	1.8.1985	SECRET/316/ + Corr.1	---	Woven fabrics	C$ 53,466,000	
CUBA	8.11.1958	SECRET/101 + Rev.1 + Add.1-2	United States	Item numbers listed in SECRET/101	No statistics	Tariff reform
DENMARK	11.1.1962	SECRET/149 + Add.1-7	Canada, United States, Australia, United Kingdom, South Africa, Uruguay	Mushrooms. Vegetables. Bananas. Fruits in general. Liver paste. Meat products. Pickles. Tomato juice. Fruit juice, etc.	DKr 83,853,000	

Country	Request notified	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
EEC	23.12.1974	SECRET/224 + Add.1-4	Australia, Canada	Unwrought lead and zinc	UA 185,376,000	
	1.10.1979	SECRET/259 + Add.1-7	Indonesia, Brazil, Thailand	Manioc, arrowroot, etc.	UA 471,710,000	
	16.1.1981	SECRET/270 + Add.1	Switzerland	Cheese and curd	UA 28,630,000	
	24.2.1983	SECRET/296 + Add.1	---	Sound reproducers with laser optical reading system	No statistics	
	12.4.1984	SECRET/310	---	Maize products	$13,013,000	
	6.8.1984	SECRET/311	---	Cheddar cheese	No statistics	
	6.11.1984	SECRET/312 + Add.1-2	Canada	Newsprint	---	
	12.8.1985	SECRET/317 + Add.1	Japan	Image and sound recorders and reproducers	ECU 3,044,106,000	
	16.3.1987	SECRET/325 + Add.1	Thailand	Sweet potatoes	ECU 49,126,000	
	14.8.1990	SECRET/333	---	Sisal twine, cordage, rope and cables	ECU 12,310,000	
	26.10.1993	SECRET/343	---	Bananas ex 08030010	See documents	
	20.12.1994	SECRET/347	---	Heifers and cows	No statistics	
EGYPT	24.5.1994	SECRET/345	Australia, Canada, New Zealand, Norway, Sweden, Switzerland, United States	See documents. Renegotiation of certain concessions under waiver	See documents	Notification of conclusion of negotiations, relative to para. 7 of Marrakesh Protocol
FINLAND	7.6.1972	SECRET/206 + Add.1-2	Renegotiations not pursued. Request withdrawn in 1978	Sulphates, chemicals, sheets, plates, tubes, pipes, etc.	FIM 698,712,598	
	13.3.1980	SECRET/261 +Add.1-2	---	Pressed yeast	No statistics	
	11.6.1980	SECRET/266	---	Plants in pots	FIM 13,107	
	18.10.1985	SECRET/320 + Add.1	---	Seeds of lupin	No statistics	
	18.6.1986	SECRET/321	---	Vegetables in brine, manioc, dog/cat food	FIM 712,000 (excl. manioc)	
HUNGARY	11.6.1991	SECRET/335 + Add.1	---	Lysin, mixtures of isocyanates and colour TV sets	FF 3,713,816,000	
INDIA	4.6.1969	SECRET/188 + Add.1-2	EEC, United States	Chemicals. Wool. Paper. Machines. Zinc. Machinery. Lead. Tractors.	Rs 419,414,500	
	22.7.1976	SECRET/232 + Add.1-2	---	See documents	Rs 485.298,000	
INDIA	13.10.1993*	SECRET/342	Australia, Canada, EC, Finland, Japan, Norway, Sweden, United States	Items listed in documents SECRET/188, SECRET/227, SECRET/232	See documents	Report on results of negotiations related to notifications cited; *date provided is date of report

Country	Request notified	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
JAPAN	4.11.1974	SECRET/223 + Add.1-2	EEC	Ski-boots	Y(million) 1,845	
	25.9.1985	SECRET/319 + Add.1-3	EEC, United States	Leather and leather footwear	Y(million) 23,885	
	1.12.1988	SECRET/328 + Add.1-2	United States	Food preparations containing sugar	No trade	One of products covered by Panel Report at 35S/163
MEXICO	11.4.1990	SECRET/330	---	Newsprint	US$ 16,978,000	
NEW ZEALAND	28.9.1970	L/3306, SECRET/202	---	Electro-medical apparatus	$(c.d.v.) 338,934	
	23.7.1971	SECRET/203	---	Capacity measure	$(c.d.v.) 28,594	
	4.4.1972	SECRET/205	---	Mounted piezo-electric crystals	$(c.d.v.) 30,729	
	13.12.1972	SECRET/211	---	Hydrometers, other measuring instruments	$(c.d.v.) 2,149,793	
	23.1.1973	SECRET/212	---	Solder	$NZ 2,459	
	12.3.1973	SECRET/213	---	Marine engines	$NZ 406,251	
	30.7.1973	SECRET/215	---	Photographic plates	$NZ 3,707,620	
	12.9.1973	SECRET/216 + Add.1	South Africa	Fruits, etc.	$NZ 398,901	
	30.10.1973	SECRET/217	---	Electrical goods	$NZ 3,255,192	
	22.5.1974	SECRET/220	---	Artificial resins and plastic materials	$NZ 15,602,795	
	31.7.1974	SECRET/221	---	Blades for hand and machine saws	$NZ 10,766,000	
	23.12.1974	SECRET/225	---	Engines and motors	$NZ 5,595	
	15.4.1975	SECRET/228	---	Moulds. Moulding boxes. Certain dies. Other tools	$NZ 1,134,334	
	19.1.1976	SECRET/230	EEC, United States	Results of renegotiation of items mentioned above	n.a.	
	18.6.1981	SECRET/275	---	Unmanufactured tobacco	$NZ (c.i.f.) 12,790,986	
	15.7.1982	SECRET/289	---	Plastics	$NZ 267,699	
NEW ZEALAND	15.7.1982	SECRET/290	---	Fountain pens	$NZ 690,589	
	18.12.1984	SECRET/313	---	Base metal fittings and parts of motor vehicles	No statistics	
	20.3.1990	SECRET/329/Rev.1	---	Products of iron or non-alloy steel	$NZ 14,960,136	
NORWAY	25.2.1983	SECRET/297	---	Chapters 51 to 62 (Textile products)	Statistics supplied	Simplification of national customs tariff
SOUTH AFRICA	11.4.1974	SECRET/219 + Add.1	New Zealand	Meat. Offals. Poultry. Cheese. Hop cones and lupulin	R 1,218,000	
	21.10.1974	SECRET/222 + Add.1-2	United States	Refrigerators	R 279,040	

Country	Request notified	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
	8.5.1970	L/3297 SECRET/200 + Add.1-15	Finland, Sweden, Austria, Sri Lanka, Norway, Spain, Switzerland, United Kingdom, Greece, United States	see SECRET/200	R 429,545,609	
	3.8.1976	SECRET/233 + Add. 1-4	EEC, Sweden, Finland, Norway, United States	Cellulose film. Ball bearings. Medical instruments (including cannulae)	R 13,018,364	
	25.11.1976	SECRET/234	---	Floor glass. Polished plate glass	R 7,379,829	
	9.2.1977	SECRET/235	---	Piping and tubing	R 17,090	
	7.3.1977	SECRET/236	---	Scrapers	R 5,557,769	
	23.7.1977	SECRET/239	Greece	Epoxide resins	R 1,749,795	
	26.8.1977	SECRET/240	---	Radiographic plates and films	R 4,235,963	
	23.12.1977	SECRET/241	---	Iron or steel wire	R 1,165,408	
	12.9.1978	SECRET/248	---	Photographic plates. Films in rolls	R 2,102,994	
	12.10.1978	SECRET/252	---	Lithographic plates	R 1,314,047	
	13.2.1979	SECRET/253 + Add.1-2	Chile	Chemical products. Woven fabrics. Bungs. Medical plastic material	R 1,953,701	
	11.5.1979	SECRET/254 + Add.1	Australia	Tennis racquets and frames	R 188,960	
	16.8.1979	SECRET/258 + Add.1	Sri Lanka	Synthetic rubber latex	R 14,278,373	
	15.2.1980	SECRET/260 + Add.1	Sweden	Cranes	R 3,288,137	
	17.3.1980	SECRET/262 + Add.1	United States	Products mentioned above	---	
	3.4.1980	SECRET/264 + Add.1	Uruguay	Worsted fabrics	R 2,398,402	
SOUTH AFRICA	22.7.1980	SECRET/268	---	Tractors	R 62,662,547	
	16.1.1981	SECRET/271 + Add.1	United States	Acetic acid, reeds for looms	R 867,373	
	22.4.1981	SECRET/272	---	Acetic acid	No imports	
	17.8.1981	SECRET/277	---	Furfuryl alcohol, moulding powders, welding wire, lifting jacks	R 1,503,708	
	3.11.1981	SECRET/280 + Add.1	EEC	Products mentioned above	---	
	16.12.1981	SECRET/283	---	Gabions of wire netting	R 362,126	
	3.2.1982	SECRET/284	---	Woven fabrics	R 174,540	
	6.4.1982	SECRET/287	---	Transformers	R 5,542,502	
	28.6.1982	SECRET/288	---	Laboratory tubes	R 394,908	

Country	Request notified	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
	31.8.1982	SECRET/292	---	Polyethylene articles	R 3,513,995	
	2.9.1982	SECRET/293	---	Cricket balls	R 151,373	
	17.11.1982	SECRET/295	---	Tall oil fatty acids	R 535,412	
	5.7.1983	SECRET/301	---	Laboratory material	R 218,412	
	23.9.1983	SECRET/303	---	Sparking plugs (Part II)	R 402,252	
	24.9.1984	SECRET/306/Rev.1	---	Wire of high carbon steel	R 166,909	
	22.7.1985	SECRET/315	United States	Items listed in document SECRET/315	No statistics	Results of negotiations related to notifications in SECRET/277, 288, 292, 293, 295, 301
	22.8.1985	SECRET/318	EEC	Items listed in document SECRET/318	No statistics	Results of negotiations related to notifications in SECRET/254, 258, 260, 264, 268, 271, 272, 277, 283, 284, 287, 288, 292, 293
SPAIN	3.4.1984	SECRET/308+ Add. 1-2	Canada, Sweden	Pentaerythritol	Million Pesetas 303.8	
SWEDEN	19.7.1979	SECRET/257 + Add.1	EEC	Horticultural products	SEK 68,838,000	
	12.5.1980	SECRET/265 + Add.1-4	Poland, United States, Austria, EEC	Fruit and vegetable preparations	SEK 213,218,000	
SWEDEN	27.8.1981	SECRET/278	---	Fish preparations	SEK 289,378,000	
	9.6.1983	SECRET/299	---	Outer garments	SEK 2,719,028,000	
	19.6.1986	SECRET/322	---	Tomatoes (1 July-30 Sept.)	SEK 37,727,000	
	13.7.1988	SECRET/327 + Add.1-2	EEC, United States	Fresh applies and pears	SEK 48,150,000	
	15.6.1990	SECRET/331 + Add.1	Poland	Products of the milling industry	SEK 17,378,000	
SWITZERLAND	3.4.1980	SECRET/263 + Add.1-4	EEC, United States, Austria, Sweden	Food preparations. Chemical products	Sw F 139,994,000	
	5.8.1980	SECRET/269 + Add.1	EEC	Cheese	Sw F 16,880,000	
UNITED KINGDOM	18.9.1961	SECRET/148 + Add.1-2 GATT/AIR/253	Benelux and France	Strawberries, preserved	£590,264	
	9.12.1961	L/1674, L/1734	Brazil	Bananas	£21,389,974	
UNITED STATES	19.6.1979	SECRET/255	---	Carrots. Rapeseed oils	$7,051,000	
	3.7.1979	SECRET/256	South Africa, Canada, Sweden	Polypropylene.	$1,536,000	

Country	Request notified	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
				Unalloyed, unwrought zinc	$409,160	
	22.4.1981	SECRET/273	---	Ethyl alcohol	(av. 1977-79) $19,618,000 (1980) $71,423,000	
	22.4.1981	SECRET/274	---	Wire of iron or steel	$18,891,000	
	11.6.1985	SECRET/314 + Add.1-2	Canada	Orange juice	See doc. SECRET/314	SECRET/314/Add.2: Invocation of Article XXVIII:3 by Canada (mushrooms)
	3.5.1994	SECRET/344 + Add.1	Canada, EC, Sweden notified interest	Durum wheat and barley	See document SECRET/344	
	14.7.1994	SECRET/346, G/SECRET/2		Tobacco	See document SECRET/346	