

ARTICLE XXVIII *bis*

TARIFF NEGOTIATIONS

I.	TEXT OF ARTICLE XXVIII <i>bis</i> AND OF INTERPRETATIVE NOTE AD ARTICLE XXVIII <i>bis</i>	985
II.	INTERPRETATION AND APPLICATION OF ARTICLE XXVIII <i>bis</i>	986
A.	GENERAL	986
B.	SCOPE AND APPLICATION OF ARTICLE XXVIII <i>bis</i>	987
1.	Paragraph 1: “negotiations on a reciprocal and mutually advantageous basis”	987
(1)	<i>Measurement of value of concessions</i>	987
(2)	<i>Reciprocity as regards developing countries</i>	987
(3)	<i>Negotiations on matters other than tariffs</i>	990
2.	Paragraph 2	992
(1)	<i>“negotiations ... on a selective product-by-product basis”</i>	992
(2)	<i>“or by the application of such multilateral procedures as may be accepted by the contracting parties concerned”: Procedures adopted for negotiating rounds in the GATT</i>	992
(3)	<i>“The binding against increase of low duties or of duty-free treatment shall, in principle, be recognized as a concession equivalent in value to the reduction of high duties”</i>	993
(4)	<i>Tariff negotiating rules, the “principal supplier rule”, and the use of formulas</i>	994
(5)	<i>Joint negotiations by more than one contracting party</i>	996
3.	Paragraph 3: “fiscal needs”	996
III.	PREPARATORY WORK	996
IV.	RELEVANT DOCUMENTS	997

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

Article XXVIII *bis*

Tariff Negotiations

1. The contracting parties recognize that customs duties often constitute serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis, directed to the substantial reduction of the general level of tariffs and other charges on imports and exports and in particular to the reduction of such high tariffs as discourage the importation even of minimum quantities, and conducted with due regard to the objectives of this Agreement and the varying needs of individual contracting parties, are of great importance to the expansion of international trade. The CONTRACTING PARTIES may therefore sponsor such negotiations from time to time.

2. (a) Negotiations under this Article may be carried out on a selective product-by-product basis or by the application of such multilateral procedures as may be accepted by the contracting parties concerned. Such negotiations may be directed towards the reduction of duties, the binding of duties at then existing levels or undertakings that individual duties or the average duties on specified categories of products shall not exceed specified levels. The binding against increase of low duties or of duty-free treatment shall, in principle, be recognized as a concession equivalent in value to the reduction of high duties.

(b) The contracting parties recognize that in general the success of multilateral negotiations would depend on the participation of all contracting parties which conduct a substantial proportion of their external trade with one another.

3. Negotiations shall be conducted on a basis which affords adequate opportunity to take into account:

(a) the needs of individual contracting parties and individual industries;

(b) the needs of less-developed countries for a more flexible use of tariff protection to assist their economic development and the special needs of these countries to maintain tariffs for revenue purposes; and

- (c) all other relevant circumstances, including the fiscal*, developmental, strategic and other needs of the contracting parties concerned.

Interpretative Note *Ad Article XXVIII bis* from Annex I

Paragraph 3

It is understood that the reference to fiscal needs would include the revenue aspect of duties and particularly duties imposed primarily for revenue purposes, or duties imposed on products which can be substituted for products subject to revenue duties to prevent the avoidance of such duties.

II. INTERPRETATION AND APPLICATION OF ARTICLE XXVIII BIS

B. GENERAL

Since 1947, seven “rounds” of multilateral tariff and trade negotiations have been completed within GATT: in 1947 (in Geneva), 1949 (Annecy, France), 1951 (Torquay, England), 1956 (Geneva), 1960-1961 (Geneva, the “Dillon Round”), 1964-1967 (Geneva, the “Kennedy Round”), and 1973-1979 (Geneva, the “Tokyo Round”). The eighth round of multilateral negotiations, the Uruguay Round, was launched in Punta del Este, Uruguay in September 1986 and was concluded with the Final Act signed at Marrakesh, Morocco on 15 April 1994.

Article XXVIII *bis* was added to the General Agreement as a result of agreements reached during the Review Session of 1954-55 in the Review Working Party on “Schedules and Customs Administration”. The Report of that Working Party notes that “The article would impose no new obligations on contracting parties. Each contracting party would retain the right to decide whether or not to engage in negotiations or to participate in a tariff conference”.¹ A 1985 Note by the Secretariat on “The Launching of Trade Negotiations” states:

“The General Agreement does not lay down any special procedures for the launching of negotiations nor any rules for their organization. Under Article XXV:1 the CONTRACTING PARTIES have the general power to take joint action ‘with a view ... to furthering the objectives of the (General) Agreement’, and under Article XXVIII *bis*:1 they are authorized to sponsor tariff negotiations’.”²

B. SCOPE AND APPLICATION OF ARTICLE XXVIII BIS

1. Paragraph 1: “negotiations on a reciprocal and mutually advantageous basis”

(1) *Measurement of value of concessions*

The Report of the Review Session Working Party on “Schedules and Customs Administration” records that in response to a proposal of Brazil, which wished to establish certain rules for tariff negotiations and, in particular, for the measurement of concessions:

“... The Working Party considered that governments participating in negotiations should retain complete freedom to adopt any method they might feel most appropriate for estimating the value of duty reductions and bindings. ... The Working Party noted that there was nothing in the Agreement, or in the rules for tariff negotiations which had been used in the past, to prevent governments from adopting any formula they might choose, and therefore considered that there was no need for the CONTRACTING PARTIES to make any recommendation in this matter”.³

¹L/329, adopted on 26 February 1955, 3S/205, 219, para. 36.

²Spec(85)46 p. 1.

³L/329, adopted on 26 February 1955, 3S/205, 219-220, para. 38.

The 1959 Second Report on “Tariff Reduction” of Committee I, which drew up the rules and procedures for the 1960-61 Dillon Round, notes that

“The Committee examined the proposal that the CONTRACTING PARTIES lay down rules for the evaluation of concessions based on the relative importance of a commodity in the exporting country, rather than its relative importance to the trade of the importing country. This proposal could not be accepted in view of the traditional attitude of the CONTRACTING PARTIES, reaffirmed at the review session (BISD, Third Supplement, page 219, paragraph 38) that governments participating in negotiations should retain complete freedom to adopt any method they might feel most appropriate for estimating the value of duty reductions and bindings”.⁴

(2) Reciprocity as regards developing countries

A Note by the Executive Secretary on “Participation of Less-Developed Countries in Trade Negotiations”, annexed to the March 1961 Report of Committee III, recalls statements in the Reports of Committee I that

“The principle underlying GATT tariff negotiations is the exchange of reciprocal and mutually advantageous concessions. This does not mean, however, that less-developed countries would always be held to strict reciprocity ... Less-developed countries should also bear in mind that concessions which they grant under the GATT are firm only for short periods, generally for three years, and that Article XXVIII gives them the right, at the end of those periods, to modify or withdraw concessions which might conflict with their development plans. Furthermore, the provisions of Article XVIII give them the possibility of re-negotiating concessions at any time, when such action is necessary for development purposes, and a special procedure has been provided to expedite such re-negotiations”.⁵

In the Conclusions of the Meeting of Ministers adopted on 30 November 1961

“the Ministers agreed that, in view of the stage of economic development of the less-developed countries, a more flexible attitude should be taken with respect to the degree of reciprocity to be expected from these countries”.⁶

The Ministerial Resolution of 21 May 1963, which inaugurated the Kennedy Round, provided

“That in the trade negotiations every effort shall be made to reduce barriers to exports of the less developed countries but that the developed countries cannot expect to receive reciprocity from the less developed countries”.⁷

See also Article XXXVI:8 and the Interpretative Note relating to that paragraph, which became effective on 27 June 1966.

The Declaration of Ministers, approved at Tokyo on 14 September 1973, inaugurating the Tokyo Round provides, *inter alia*:

“The developed countries do not expect reciprocity for commitments made by them in the negotiations to reduce or remove tariff and other barriers to the trade of developing countries, i.e., the developed countries do not expect the developing countries, in the course of the trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. The Ministers recognize the need for special measures to be taken in the negotiations to assist the developing countries in their efforts to increase their export earnings and promote their economic development and, where appropriate, for priority attention to be given to products or areas of interest to developing countries. They also recognize the importance of maintaining and improving the Generalized System of Preferences. They further recognize the importance of the application of differential measures to developing countries in

⁴COM.I/3, adopted on 19 November 1959, 8S/103, 110, para. 10.

⁵L/1435, 10S/167, Annex A, 10S/172, paras. 3-4.

⁶10S/25, 26.

⁷12S/36, 48, para. 8.

ways which will provide special and more favourable treatment for them in areas of the negotiations where this is feasible and appropriate.

“The Ministers recognize that the particular situations and problems of the least developed among the developing countries shall be given special attention, and stress the need to ensure that these countries receive special treatment in the context of any general or specific measures taken in favour of the developing countries during the negotiations”.⁸

The Decision on “Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries” which was negotiated in the Tokyo Round and adopted on 28 November 1979 provides, *inter alia*:

“The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e., the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter’s development, financial and trade needs... Having regard to the special economic difficulties and the particular development, financial and trade needs of the least-developed countries, the developed countries shall exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries, and the least-developed countries shall not be expected to make concessions or contributions that are inconsistent with the recognition of their particular situation and problems”.⁹

The Ministerial Declaration on the Uruguay Round, agreed at Punta del Este on 20 September 1986, launching the Uruguay Round, provides, *inter alia*:

“The CONTRACTING PARTIES agree that the principle of differential and more favourable treatment embodied in Part IV and other relevant provisions of the General Agreement and in the decision of the CONTRACTING PARTIES of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries applies to the negotiations. In the implementation of standstill and rollback, particular care should be given to avoiding disruptive effects on the trade of less-developed contracting parties.

“The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e. the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their industrial development, financial and trade needs. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter’s development, financial and trade needs.

“Less-developed contracting parties expect that their capacity to make contributions or negotiated concessions or take other mutually agreed action under the provisions and procedures of the General Agreement would improve with the progressive development of their economies and improvement in their trade situation and they would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement.

“Special attention shall be given to the particular situation and problems of the least-developed countries and to the need to encourage positive measures to facilitate expansion of their trading opportunities. Expedient implementation of the relevant provisions of the 1982 Ministerial Declaration concerning the least-developed countries shall also be given appropriate attention”.¹⁰

⁸20S/19, 21, paras. 5, 6.

⁹L/4903, 26S/203, 204, paras. 5,6.

¹⁰33S/21 paras. (iv)-(vii).

(3) *Negotiations on matters other than tariffs*

The procedures for the tariff negotiations held in Geneva in 1947 in connection with the negotiation of the General Agreement provided that “The various observations in this report regarding the negotiations of tariffs and tariff preferences should be read as applying (*mutatis mutandis*) to the negotiation of state-trading margins under Article 31 of the Charter”.¹¹ The procedures adopted for the negotiations in Annecy and Torquay each stated that:

“The Havana Charter provides that, in addition to customs tariffs and other charges on imports and exports, certain regulations, quotas, protection afforded through the operation of import and export monopolies, etc., shall be subject to negotiation in the manner provided in Article 17. The relevant provisions are provided in Articles 16 (including the Annexes thereto), 18, 19 and 31 [corresponding to GATT Articles I, III, IV, XVII and Annexes A through G]. Accordingly, requests may be submitted for concessions in respect of matters covered by these provisions in the same way as requests for tariff concessions”.¹²

The Rules and Procedures for the Geneva tariff conference of 1956 provided that “In addition to customs tariffs and other charges on imports, certain regulations, protection afforded through the operation of import monopolies, etc., as provided in Articles [I, II, III and IV] shall be subject to negotiation in accordance with these rules. Accordingly, requests may be submitted for concessions in respect of these matters in the same way as requests for tariff concessions”.¹³

The Rules and Procedures for the Dillon Round provided that participants could enter into negotiations in accordance with these rules in respect of not just tariffs but also the following matters: the protection afforded through the operation of import monopolies, as provided in Articles II and XVII (including the interpretative notes thereto); internal quantitative regulations as provided in paragraph 6 of Article III (mixing regulations); the level of screen quotas as provided in Article IV; import restrictions as provided in paragraph 2(c) of Article XI; the level of a subsidy which operates directly or indirectly to reduce imports; and internal taxes.¹⁴

The Ministerial Resolution of 21 May 1963 on “Arrangements for the Reduction or Elimination of Tariffs and other Barriers to Trade, and Related Matters” which launched the Kennedy Round included a provision that “the trade negotiations will deal not only with tariffs but also with non-tariff barriers.”¹⁵ During the Kennedy Round agreement was reached *inter alia* on the 1967 Agreement on Implementation of Article VI, and the Agreement Relating Principally to Chemicals.¹⁶

The Tokyo Ministerial Declaration of 14 September 1973, which launched the Tokyo Round, provided that “the negotiations should aim, *inter alia*, to: ...reduce or eliminate non-tariff measures or, where this is not appropriate, to reduce or eliminate their trade restricting or distorting effects, and to bring such measures under more effective discipline”.¹⁷ During the Tokyo Round, discussions took place both on rules regarding non-tariff barriers and on “non-tariff measures not dealt with multilaterally”. The former negotiations resulted in nine agreements: the 1979 Agreement on Implementation of Article VI, the Agreement on Interpretation and Application of Articles VI, XVI and XXIII, the Agreement on Implementation of Article VII, the Agreement on Import Licensing Procedures, the Agreement on Technical Barriers to Trade, the Agreement on Government Procurement, the Agreement on Trade in Civil Aircraft, the Arrangement Regarding Bovine Meat, and the International Dairy Arrangement.¹⁸ In the “Action by the CONTRACTING PARTIES on the Multilateral Trade Negotiations” of 28 November 1979, the CONTRACTING PARTIES note “that as a result of the Multilateral Trade

¹¹London Report p. 49, para. C.4.

¹²GATT/CP.2/26, p. 2; I/104.

¹³Report adopted 18 November 1955, 4S/74, 80, para. 4.

¹⁴L/1043+Add/1, Corr.1, adopted 19 November 1959, 8S/103, 116, para. II.(b)(ii). It was further agreed that “the inclusion of internal taxes in the negotiating rules would be subject to the understanding in the Interpretative Note to Article 17 of the Havana Charter” (*ibid.*, 8S/III, para. 16(v)). The Interpretative Note to Charter Article 17 provided that “An internal tax (other than a general tax uniformly applicable to a considerable number of products) which is applied to a product not produced domestically in substantial quantities shall be treated as a customs duty under Article 17 in any case in which a tariff concession on the product would not be of substantial value unless accompanied by a binding or a reduction of the tax”.

¹⁵12S/47.

¹⁶Texts appear in 15S/8-18, 24-35. The Agreement Relating Principally to Chemicals included provisions on valuation procedures, automobile road taxes, quantitative restrictions and reductions of preference margins in revenue duties; however, it never entered into force.

¹⁷MIN(73)1, 20S/19, 20, para. 3.

¹⁸Texts of these Agreements appear in the Twenty-sixth Supplement of the BISD and have also been published by the Secretariat.

Negotiations, a number of Agreements... have been drawn up. They further note that these Agreements will go into effect as between their parties... The CONTRACTING PARTIES also note that existing rights and benefits under the General Agreement of contracting parties not being parties to these Agreements, including those derived from Article I, are not affected by these Agreements".¹⁹

The Uruguay Round Declaration of 1986 provided that "Negotiations shall aim to reduce or eliminate non-tariff measures, including quantitative restrictions..." and that "Negotiations shall aim to improve, clarify, or expand, as appropriate, Agreements or Arrangements negotiated in the Tokyo Round of Multilateral Negotiations".²⁰ The negotiations resulted in conclusion of twelve agreements: the Agreement on Agriculture, the Agreement on the Application of Sanitary and Phytosanitary Measures, the Agreement on Textiles and Clothing, the 1994 Agreement on Technical Barriers to Trade, the 1994 Agreement on Implementation of Article VI, the 1994 Agreement on Implementation of Article VII, the Agreement on Preshipment Inspection, the Agreement on Rules of Origin, the Agreement on Import Licensing Procedures, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards. In addition, the Schedules of concessions on market access for goods include a new Part III for any concessions regarding non-tariff measures, as well as a new Part IV for commitments limiting domestic support and export subsidies on agricultural products covered by the Agreement on Agriculture.

2. Paragraph 2

(1) *"negotiations ... on a selective product-by-product basis"*

Express provisions for "selective product-by-product" negotiations on a request/offer basis were included in Article 17 of the Havana Charter, the procedures for the 1947 Geneva tariff negotiations, the negotiations in 1949 in Annecy, in 1951 at Torquay, and in 1956 in Geneva, and the 1960-1961 "Dillon Round".²¹ For example, the request-offer process in the Dillon Round of 1960-1961 proceeded as follows: in the first stage delegations presented request lists to the countries with which they wished to negotiate, and in the second stage delegations submitted consolidated offer lists. In the next stage countries gradually defined their positions in a series of bilateral meetings and finally struck a bilateral balance with each of their negotiating partners. In addition, participants negotiated for reciprocity from other countries which would benefit from the concessions which had been negotiated bilaterally, as the rules provided that "participating governments will be expected to take into account the indirect benefits which they will receive from the negotiations between other governments".²²

(2) *"or by the application of such multilateral procedures as may be accepted by the contracting parties concerned": Procedures adopted for negotiating rounds in the GATT*

The Report of the Review Session Working Party on "Schedules and Customs Administration", which drafted Article XXVIII *bis*, notes that

"Several delegations proposed to include in the new article certain rules for negotiations such as those in Article 17 of the Havana Charter, but others thought it was not necessary to burden the article with a set of rules since it is not its purpose either to prescribe or to exclude any of the rules that have been followed in the past; the article imposes no obligations, and therefore should contain nothing that is mandatory. Further, since the article clearly envisages the possibility of tariff negotiations in which some contracting parties might not be able to participate, it would be unwise to prejudge the form which these negotiations should take by prescribing procedures and rules. The procedures for holding any particular trade negotiations will have to be determined at the time the holding of the negotiations is under consideration and contracting parties will then have ample opportunity to advocate the procedures under which they would be prepared to negotiate. A contracting party that is not satisfied with the procedures adopted, would be free not to participate in the negotiations".²³

¹⁹L/4905, 26S/201, paras. 2-3.

²⁰Declaration of 20 September 1986, Min.Dec., 33S/19, 23, 25.

²¹See, respectively, Havana Charter Article 17:2; London Report 1946, p. 49; I/104; 4S/81; and 8S/118.

²²MTN/W/8, Note on "Rules and Procedures for the Dillon and Kennedy Rounds", p. 3-5, citing Dillon Round rules at 8S/118, para. VII(e).

²³L/329, adopted 26 February 1955, 3S/205, 219, para. 37.

Procedures for rounds of negotiations in the GATT have been determined in each instance. The table following lists these procedures; see also Secretariat background notes on negotiating procedures in the Dillon, Kennedy and Tokyo Rounds.²⁴

Procedures for Negotiations in the GATT	
Procedures adopted for the 1947 Geneva Tariff Conference	London Report, p. 47-49
Procedures adopted for the 1949 Annecy Tariff Conference	GATT/CP.2/26
Procedures adopted for the 1951 Torquay Tariff Conference	I/104
Procedures governing negotiations for accession	I/110
Procedures for negotiations between two or more contracting parties	I/166
Arrangements for tariff negotiations at times other than during general tariff conferences	II/166
Rules and procedures for the 1956 Geneva Tariff Conference	4S/79
Rules and procedures for the 1960-1961 Geneva Tariff Conference ("Dillon Round")	8S/114
Arrangements for the reduction or elimination of tariffs and other barriers to trade, and measures for access to markets for agricultural and other primary products (1964-1967 "Kennedy Round")	12S/47
Resolution, adopted on 6 May 1964, by the Meeting of the Trade Negotiations committee at Ministerial Level	13S/109
Declaration of Ministers, approved at Tokyo on 14 September 1973, setting out rules and procedures for the 1973-1979 Tokyo Round of Multilateral Trade Negotiations ("Tokyo Declaration")	20S/19
Ministerial Declaration on the Uruguay Round, adopted at Punta del Este on 20 September 1986, launching the 1986-1994 Uruguay Round of Multilateral Trade Negotiations	33S/19
Decisions of 28 January 1987 on negotiating structure and negotiating plans for the Uruguay Round	33S/31

(3) "The binding against increase of low duties or of duty-free treatment shall, in principle, be recognized as a concession equivalent in value to the reduction of high duties"

This sentence is taken from paragraph 2(d) of Article 17 of the Havana Charter. Similar statements appear in the procedures for the Geneva (1947), Annecy (1949) and Torquay (1950) trade negotiations.²⁵ The Report of the Review Session Working Party on "Schedules and Customs Administration," which drafted Article XXVIII *bis*, notes that

"The delegations of certain low-tariff countries were anxious to provide in the Agreement for certain principles to govern the tariff policy of the contracting parties in order to arrive at a better balance between the positions of the various contracting parties in this respect. While there was considerable sympathy ... it was considered inappropriate to expect contracting parties to accept any general form of commitment which would prejudice their freedom of action with respect to unbound tariffs. It was recognized, however, that in pursuit of its policies affecting international economic relations, including its tariff policy, each contracting party would have regard to the objectives of the Agreement and try to avoid unnecessary damage to the interests of other contracting parties".²⁶

²⁴Notes done for the Tokyo Round on "Rules and Procedures for the Dillon and Kennedy Rounds," MTN/W/8; "Use of Computer Facilities in the Multilateral Trade Negotiations," MTN/W/12; and "Accreditation of Delegations to the Multilateral Trade Negotiations", MTN/W/26; Notes done for the Uruguay Round on "Tariff Negotiations in the Kennedy and Tokyo Rounds," MTN.GNG/NG1/W/1; and "Data Base and Relevant Work Undertaken on Negotiating Techniques," MTN.GNG/NG2/W/1.

²⁵London Report, p. 49; GATT/CP.2/26, p. 3; I/104, 105, para. 3(d).

²⁶L/329, adopted 26 February 1955, 3S/205, 218-219, para. 35. The Review Session agreed to amend the General Agreement so as to include a new Article I on "Objectives", which would contain the text of the former Preamble; see Sec/152/54, W.9/197, 3S/240 para. 25 and the chapter in this book on the Preamble.

The Rules and Procedures for the 1956 tariff conference held in Geneva note with respect to “the binding against increase of low duties” that “This rule takes account, *inter alia*, of the position of countries which, whilst maintaining low or moderate duties on all or most of the products imported from their principal suppliers, find their exports or potential exports generally impeded by high rates of duty”.²⁷

(4) *Tariff negotiating rules, the “principal supplier rule”, and the use of formulas*

Rounds of tariff negotiations before the Kennedy Round provided for the use of 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”.²⁸

However, the use of general tariff-cutting formulas was debated since the earliest years of the GATT, as a means of reducing disparities in tariffs.²⁹ The first linear tariff offer was by the EEC in the Dillon Round.³⁰ In the Ministerial Conclusions adopted on 30 November 1961 during the Dillon Round, at the Nineteenth Session,

“The Ministers agreed that the reduction of tariff barriers on a most-favoured-nation basis in accordance with the terms of the General Agreement should be continued. They recognized, however, that while the traditional GATT techniques for tariff negotiations on a commodity-by-commodity and country-by-country basis had produced substantial results, both in the past and during the present tariff conference, they were no longer adequate to meet the changing conditions of world trade. Consideration should, therefore, be given to the adoption of new techniques, in particular some form of linear tariff reduction. The Ministers agreed to request the CONTRACTING PARTIES to establish machinery to examine this question in the light of the views and proposals put forward during the Ministers’ discussions”.³¹

The 1963 Report of the subsequently established Working Party on Procedures for Tariff Reductions recorded agreement on some basic principles.³² In the Resolution of 21 May 1963 on “Arrangements for the Reduction or Elimination of Tariffs and other Barriers to Trade, and Related Matters,” which launched the Kennedy Round, the Ministers agreed, *inter alia* on the principle

“That, in view of the limited results obtained in recent years from item-by-item negotiations, the tariff negotiations ... shall be based upon a plan of substantial linear tariff reductions with a bare minimum of exceptions which shall be subject to confrontation and justification. The linear reductions shall be equal. In those cases where there are significant disparities in tariff levels, the tariff reductions will be based upon special rules of general and automatic application”.³³

A Resolution of 6 May 1964 adopted by the Trade Negotiations Committee meeting at Ministerial Level noted that “The rate of 50 per cent has been agreed as a working hypothesis for the determination of the general rate of linear reduction ... The ultimate agreement on tariff reductions in accordance with the application of this

²⁷Report adopted 18 November 1955, 4S/74, 81, para. 11(c). The same statement appears in the Dillon Round procedures at 8S/118.

²⁸See Dillon Round rules at 8S/114, 115-116, para. 11(b)(i); identical statement in Rules for the Geneva tariff conference of 1956 at 4S/79, 80, para. 11.3. See also statement of “principal supplier rule” in the Procedures for the round of trade negotiations held in Geneva in 1948, in Annexure 10 of the London Report (p. 49), and paragraph 1 of the Procedures adopted for the Torquay Tariff Conference, I/104.

²⁹See, e.g., proceedings of the First Special Session of the CONTRACTING PARTIES (convened at Torquay in order to discuss proposals for reduction of disparities in European tariffs); Report of the Working Party on “The Disparity of European Tariffs,” GATT/CP.6/53, adopted 27 October 1951, II/211 (concerning discussions following on the First Special Session); Report of the Working Party on “Technical Aspects and Application of the French Proposal for the Reduction of Tariff Levels,” G/31, adopted 8 November 1952, 1S/67 (examination of proposal for automatic lowering of trade-weighted average tariff level for each sector over a three-year period, by thirty per cent compared to a reference period); Report of the Working Party on “Technical Study of the French Proposal for Reduction of Tariff Levels,” G/53, adopted 13 October 1953, 2S/67; *A New Proposal for the Reduction of Tariff Levels*, pamphlet dated January 1954, Sales No. GATT/1954-1; Note dated 22 November 1954 on “Proposals for Tariff Reduction” summarizing proposals made for the Review Session and discussions of tariff reduction plans (W.9/26); Report of the Working Party on “Plans for Tariff Reduction,” G/89, adopted 2 March 1955.

³⁰In the Dillon Round the EEC tabled an offer of a 20 per cent linear tariff reduction with some exceptions. MTN/W/8, p. 5.

³¹10S/25, 26.

³²L/2002.

³³12S/47, para. 4

hypothesis is linked with the solution of other problems arising in the negotiations, for example, tariff disparities, agricultural problems, exceptions and non-tariff problems, and, in general, with the achievement of reciprocity...”.³⁴ It was necessary to specify the rates to which this hypothesis would apply and it was therefore agreed that participants would notify the base date, the base level of duties and (since the linear cut only applied to industrial products) which products would be excluded. A number of exceptions to the rule were made.³⁵

The Tokyo Ministerial Declaration of 14 September 1973, which launched the Tokyo Round negotiations, stated that “negotiations should aim, *inter alia*, to ... conduct negotiations on tariffs by employment of appropriate formulae of as general application as possible...”.³⁶ In advance of the Round, the Committee on Trade in Industrial Products discussed tariff elimination in industrial products, linear tariff reduction, and tariff harmonization.³⁷ A tariff harmonization formula was later accepted and used by most developed countries in their offers.³⁸

The Ministerial Declaration on the Uruguay Round of 20 September 1986 does not refer to the use of formulas, and instead provides that “Negotiations shall aim, by appropriate methods, to reduce or, as appropriate, eliminate tariffs including the reduction or elimination of high tariffs and tariff escalation. Emphasis shall be given to the expansion of the scope of tariff concessions among all participants”.³⁹

See also under Article XXVIII concerning initial negotiating rights and the decisions on floating initial negotiating rights taken in connection with tariff reductions achieved through the formula approach.

(5) *Joint negotiations by more than one contracting party*

The Second Report of Committee I concerning preparations for the Dillon Round notes as follows: “With respect to the proposal that contracting parties be allowed to negotiate jointly on products of common concern the Committee agreed that the traditional rule in this matter, which has been maintained in the rules annexed hereto... was designed to permit this type of negotiation. ... Moreover there were examples of joint negotiation in the history of GATT tariff conferences”.⁴⁰

A Note by the Executive Secretary on “Participation of Less-Developed Countries in Trade Negotiations” annexed to the March 1961 Report of Committee III recalls the statements in the Reports of Committee I that

“there are a number of ways in which less-developed countries may participate in tariff negotiations with a view to securing meaningful concessions. For example, a country which is not a meaningful supplier of a commodity would not be excluded from making a request for concessions on that commodity on the grounds that it is not the principal supplier. In such cases it would join forces with other suppliers and take part in multilateral negotiations with the importing country and this group could be considered as the ‘principal supplier’ and obtain a concession which could be matched by a joint offer on the part of the group. It should also be borne in mind that the ‘principal supplier rule’ is applied by most importing countries with some elasticity. Secondary suppliers have joined in tariff negotiations either in cases where the principal supplier was not prepared to make a request or where the secondary suppliers wished to obtain a better concession than the one which the principal supplier accepted. Moreover, the Tariff Negotiations Committee, in 1956, was instructed to place itself at the disposal of any country or group of countries to arrange for negotiations on a triangular or multilateral basis. It was thus possible for secondary suppliers to improve the scope of concessions”.⁴¹

³⁴13S/109-110.

³⁵See MTN/W/8, Note on “Rules and Procedures for the Dillon and Kennedy Rounds”, p. 7-8.

³⁶20S/19, 20, para. 3(a).

³⁷L/3886, 20S/96.

³⁸Secretariat Note on “Tariff Negotiations in the Kennedy and Tokyo Rounds”, MTN.GNG/NG1/W/1, dated 25 March 1987; see also *The Tokyo Round of Trade Negotiations - Report by the Director-General of GATT*, April 1979, p. 40-48, and *Supplementary Report* p. 3-7.

³⁹33S/23.

⁴⁰L/1043 and Add.1, Corr.1, 8S/103, 109, para. 9.

⁴¹L/1435, 10S/167, Annex A, 10S/171-172, para. 2.

3. Paragraph 3: “fiscal needs”

See the Interpretative Note to paragraph 3.

III. PREPARATORY WORK

The various drafts of the ITO Charter all included an Article on trade negotiations, which imposed an obligation for each Member of the ITO to enter into and carry out negotiations directed to substantial reduction of tariffs, other duties and charges, and preferences. This article also provided rules regarding, *inter alia*, the basis for negotiations and the application of negotiated reductions to reductions in margins of preference. This Article was not included in the New York Draft of the General Agreement nor in the General Agreement agreed in 1947. See above concerning the negotiating rules that were drafted and used for the round of trade negotiations held in Geneva in 1947 in conjunction with the negotiation of the General Agreement. Article 17 of the Charter on “Reduction of Tariffs and Elimination of Preferences” obligated each ITO Member to negotiate on request concerning reduction of tariffs, other charges and preferences; paragraph 3 provided that the Geneva negotiations of 1947 would be deemed to be negotiations under Article 17.

The present Article XXVIII *bis* was added in the Review Session of 1954-55. A Progress Report in 1954 by the Chairman of Review Working Party II on Tariffs, Schedules and Customs Administration notes that proposals submitted for the Review Session had suggested that an article similar to Article 17 be included in the General Agreement; that the General Agreement should include an undertaking to reduce customs duties deemed to be an obstacle to the development of trade; or that the CONTRACTING PARTIES endeavour to reach an understanding on collective automatic reduction and equalization of tariffs. It further notes the proposal that “a compromise solution might be found by inserting an article in which the obligation to negotiate would be recommendatory rather than mandatory and which would underline the principle of mutual advantage, reciprocity, etc.”⁴²

The Report of the Review Working Party on “Schedules and Customs Administration,” which drafted Article XXVIII *bis*, introduces the discussion of this provision by noting that “The Working Party has examined the proposals for tariff reduction submitted by its Chairman, which were the result of discussions on the proposals submitted by the Benelux, German and Scandinavian delegations, and has decided to recommend the insertion of a new article in the General Agreement, dealing with tariff negotiations sponsored by the CONTRACTING PARTIES”.⁴³

The insertion of Article XXVIII *bis* was effected by the 1955 Protocol Amending the Preamble and Parts II and III, which entered into force on 7 October 1957. This Article would have become Article XXIX if the 1955 Protocol Amending Part I and Articles XXIX and XXX had entered into force.

IV. RELEVANT DOCUMENTS

Review Session

Discussion: SR.9/16, 17, 20, 25, 26, 36, 37, 40,
47
Reports: W.9/124, 194, 203, 204,
212 + Corr.1, 236/Add.3, L/329
Other: L/261/Add.1, 271, 273, 275, 276
W.9/26, 39, 43, 49, 161

⁴²W.9/124, 20 December 1954, p. 5-6.

⁴³L/329, adopted 26 February 1955, 3S/205, 218, para. 34; proposals referred to appear in L/261/Add.1, L/271, L/273, L/275, and L/276.