

ARTICLE XXVII

WITHHOLDING OR WITHDRAWAL OF CONCESSIONS

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|------|---|-----|
| I. | TEXT OF ARTICLE XXVII | 927 |
| II. | INTERPRETATION AND APPLICATION OF ARTICLE XXVII | 927 |
| 1. | “or has ceased to be a contracting party” | 927 |
| (1) | <i>Succession</i> | 927 |
| (2) | <i>Change in international responsibility for a territory</i> | 928 |
| 2. | “that it was initially negotiated” | 929 |
| 3. | “a substantial interest in the product concerned” | 929 |
| 4. | Application of Article XXVII in specific cases | 929 |
| 5. | Article XXVII and tariff protocols | 929 |
| 6. | Modification and rectification of schedules of tariff concessions | 930 |
| III. | PREPARATORY WORK | 930 |
| IV. | RELEVANT DOCUMENTS | 931 |

I. TEXT OF ARTICLE XXVII

Article XXVII

Withholding or Withdrawal of Concessions

Any contracting party shall at any time be free to withhold or to withdraw in whole or in part any concession, provided for in the appropriate Schedule annexed to this Agreement, in respect of which such contracting party determines that it was initially negotiated with a government which has not become, or has ceased to be, a contracting party. A contracting party taking such action shall notify the CONTRACTING PARTIES and, upon request, consult with contracting parties which have a substantial interest in the product concerned.

II. INTERPRETATION AND APPLICATION OF ARTICLE XXVII

1. “or has ceased to be a contracting party”

(1) Succession

A Secretariat Note of 29 April 1949 on “The Position of Palestine in Relation to the Agreement” stated that upon termination of the League of Nations mandate of the United Kingdom with respect to Palestine, the successor state could not be regarded as being bound by obligations under the GATT. “The second question is, what is to be done in the light of this conclusion. In this connection it is relevant to record that the United Kingdom negotiated in Geneva on behalf of the mandated territory and the concessions negotiated on behalf of Palestine are contained in a separate section of Schedule XIX. Moreover, the concessions were applied separately on behalf of Palestine by notice on March 20, 1948 to the Secretary-General of the United Nations, in accordance with Paragraph 2 of the Protocol of Provisional Application.” The Note proposed the text of a Declaration based on Article XXVII.¹

The Executive Secretary, discussing this Note, stated that “the Secretariat paper had proceeded upon the assumption that the first question to be determined was whether or not Article XXVII applied. If the decision

¹CP.3/17.

was affirmative the consequences had two aspects. First, the concessions made on behalf of Palestine by the United Kingdom and included in Section E of Schedule XIX would disappear and it might be desirable to make the appropriate rectification subsequently. That could be done by a protocol of rectification approved by a unanimous vote. Secondly, there was the right of withdrawal of concessions granted by other Contracting Parties on Palestine products. This was clearly dealt with in Article XXVII which expressly provided for consultation with other interested Contracting Parties. ... The United Kingdom had negotiated in Geneva on behalf of the mandatory government of Palestine. On 15 May 1948, the mandatory government had ceased to exist. Therefore, at that date the United Kingdom could no longer be regarded as a contracting party in respect of Palestine. ... It was not correct to say that the United Kingdom was withdrawing concessions. The mandatory government having ceased to exist the United Kingdom had ceased to be a contracting party on behalf of Palestine".²

The Declaration adopted by the CONTRACTING PARTIES on 9 May 1949 provides:

"Whereas the Government of the United Kingdom in the course of the negotiations leading up to the drawing up of the General Agreement on Tariffs and Trade in 1947, negotiated on behalf of the mandated territory of Palestine for concessions to be accorded to products originating in such territory and for concessions to be accorded to the products of other contracting parties entering such territory, and

"Whereas the Government of the United Kingdom ceased to be responsible for the mandated territory of Palestine on 15 May 1948,

The CONTRACTING PARTIES

Declare that, since the United Kingdom ceased, as from 15 May 1948, to be a contracting party in respect of the territory formerly included in the Palestine mandate,

1. Section E shall be deemed to be no longer part of Schedule XIX; and
2. Any contracting party shall, in accordance with Article XXVII of the General Agreement, be free to withhold or withdraw, in whole or in part, any concession provided for in the appropriate schedule annexed to the GATT which such contracting party determines was initially negotiated with the United Kingdom on behalf of Palestine, provided that the contracting party taking such action shall give notice to all other contracting parties and, upon request, consult with the contracting parties which have a substantial interest in the product concerned."³

It was stated during the discussion of this matter at the Third Session that "It is certain that, during the duration of its mandate, the United Kingdom was competent to contract international obligations on behalf of Palestine. But it is equally certain that termination of its mandate deprived Great Britain of this power and that Great Britain has retained no obligation as a contracting party in respect of the territory of Palestine".⁴

²CP.3/SR.11 p. 3.

³II/14; see also draft declaration at CP.3/17, discussion and adoption at CP.3/SR.11 p. 1-5.

⁴GATT/CP.3/SR.14 p. 2.

(2) Change in international responsibility for a territory

In 1947 the Government of the United Kingdom negotiated and agreed to tariff concessions on most-favoured-nation and preferential duty rates on behalf of Newfoundland, which applied to the customs territory of Newfoundland. When Newfoundland changed status from an overseas territory of the United Kingdom to a province of Canada, the CONTRACTING PARTIES approved a Declaration of 11 August 1949, which provided that these tariff concessions were no longer part of the tariff schedules and ceased to have effect as from 31 March 1949:

“Whereas the Government of the United Kingdom in the course of the negotiations leading up to the drawing up of the General Agreement on Tariffs and Trade in 1947, negotiated on behalf of Newfoundland, as a separate customs territory for which the United Kingdom had international responsibility; and

“Whereas the concessions to be accorded as a result of such negotiations to the products of other contracting parties entering Newfoundland constituted Section B of Schedule XIX of the General Agreement; and

“Whereas the Government of the United Kingdom ceased to be responsible for Newfoundland on 31 March 1949 and Newfoundland became a part of the customs territory of Canada, which is also a contracting party,

“The CONTRACTING PARTIES declare that Section B shall be deemed to be no longer a part of Schedule XIX.”⁵

2. “that it was initially negotiated”

See *infra* material on initial negotiating rights (INRs) under Article XXVIII.

3. “a substantial interest in the product concerned”

See *infra* material on substantial supplier rights under Article XXVIII.

4. Application of Article XXVII in specific cases

Notifications of withdrawal of concessions appear in a table in this chapter. Of the countries listed in the middle column, China, Syria, Lebanon and Liberia subsequently notified their withdrawal of provisional application of the General Agreement. Colombia participated in the Annecy Round but decided against provision being made for its accession in the Annecy Protocol. Korea and Philippines participated in the negotiations at Torquay; schedules of concessions for these countries were included in the Torquay Protocol, but they did not accept the Protocol. Korea acceded in 1967.

5. Article XXVII and tariff protocols

Tariff protocols to which the concessions negotiated in rounds of multilateral trade negotiations have been attached have included provisions permitting participants to withhold or withdraw, in whole or in part, concessions with respect to any product for which the principal supplier is any other participant in the negotiating round or any government having negotiated for accession during the negotiating round, whose schedule has not yet become a Schedule to the General Agreement. Similar provisions also appear in the Marrakesh Protocol to the GATT 1994.⁶

⁵Declaration at II/14; see also GATT/CP/26 (notification by UK), GATT/CP.3/75 (Secretariat note and draft declaration), GATT/CP.3/SR.40 p. 8 (approval). GATT/CP.3/75 notes that this approach was taken after discussion with Canada and with the contracting parties with which the concessions in Schedule XIX were initially negotiated. See also Annecy Press Release No. 60 of 11 August 1949.

⁶See, e.g., paragraph 6 of the Protocol Embodying the Results of the 1960-61 Tariff Conference, 11S/10, and paragraph 3 in each of the following: Geneva (1967) Protocol (results of Kennedy Round), 15S/6; Geneva (1979) Protocol, 26S/4, and Protocol Supplementary to the Geneva (1979) Protocol, 26S/6 (results of Tokyo Round). See also paragraph 4 of the Marrakesh Protocol.

Notifications of withdrawal of concessions pursuant to Article XXVII

| Concessions granted by | Initially negotiated with | Reference |
|---|--|-----------------------|
| Australia | China, Syria/Lebanon, Philippines | L/1266 |
| Benelux: Section A - Metropolitan Territories | China, Syria/Lebanon, Liberia, Philippines | L/674 |
| Benelux: Section C - Netherlands New Guinea | China | L/658 and Add.1 |
| Canada | China, Liberia, Philippines, Korea | L/553 |
| Ceylon | China | L/1102, L/1505 |
| Chile | Colombia | L/3191 |
| Czechoslovakia | Palestine | GATT/CP/23 |
| Finland | China | L/659 |
| France | China, Syria/Lebanon, Philippines | L/460 and L/1269 |
| Germany, Fed. Rep. | Philippines | L/1264 |
| India | China, Colombia, Philippines | G/77 and L/1430 |
| Pakistan | China | L/1293 |
| Sweden | Colombia, Philippines, China | L/950 |
| United Kingdom | China | L/786 |
| United States | China | GATT/CP/115 and Add.3 |
| Uruguay | China, Colombia | L/1613 |

6. Modification and rectification of schedules of tariff concessions

In their Decision of 26 March 1980 on "Procedures for Modification and Rectification of Schedules of Tariff Concessions", the CONTRACTING PARTIES decided, *inter alia*, that

"Changes in the authentic texts of Schedules annexed to the General Agreement which reflect modifications resulting from action under ... Article XXVII ... shall be certified by means of Certifications. A draft of such change shall be communicated to the Director-General within three months after the action has been completed."⁷

III. PREPARATORY WORK

Article XXVII was drafted as part of the General Agreement in the New York Drafting Committee and at the Geneva meeting of the Preparatory Committee in 1947. It has no direct counterpart in the Havana Charter. During the Review Session of 1954-55, it was agreed to modify the final sentence of Article XXVII in order to require notice to the CONTRACTING PARTIES and consultation upon request with any contracting party claiming a substantial interest in the product concerned.⁸

⁷L/4962, 27S/25, para. 1.

⁸See Secretariat proposal at L/189, p. 17 and documents listed below.

IV. RELEVANT DOCUMENTS*Geneva*

Discussion: EPCT/TAC/SR.14, 15
EPCT/TAC/PV/14, 25
Reports: EPCT/135, 189, 196, 209,
214/Add.1/Rev.1
Other: EPCT/W/274, 285, 312

CONTRACTING PARTIES

- re Schedule XIX:B
(Newfoundland): GATT/CP.3/75;
GATT/CP.3/SR.40; II/14
- re Schedule XIX:E (Palestine):
GATT/CP.3/17;
GATT/CP.3/SR.11; II/14

Review Session

Reports: W.9/212, L/327, 3S/231
Other: L/189, 261/Add.1, 283
W.9/19, 45, 124, 217+Corr.1,
236; Spec/137/55