

# GENERAL AGREEMENT ON TARIFFS AND TRADE

## Preparatory Committee

### RENEGOTIATION OF CONCESSIONS (ARTICLE XXVIII)

#### Note by the Secretariat

1. This note is issued under the responsibility of the secretariat and is intended to facilitate further discussion in the Preparatory Committee. It seeks to identify, in the light of the discussions recorded in PREP.COM(86)SR/4 and earlier discussions, the main considerations which would appear to be relevant should the Committee decide to formulate recommendations on renegotiation of concessions (Article XXVIII). The note is not intended to be a summary of the discussions. It in no way prejudices the views that delegations may have as to whether and how issues relating to the renegotiation of concessions (Article XXVIII) might figure in the Preparatory Committee's recommendations to Ministers, nor should the listing of points for further discussion be regarded as exhaustive.

#### Main points emerging from the discussion

2. It was noted that this item comprised three distinct issues: first, the definition of suppliers' rights for the purpose of renegotiations under Article XXVIII; second, the concern about the effect of routine invocations of Article XXVIII:5 on the stability of tariff bindings; third, rules for compensation in cases of modification or withdrawal of tariff concessions relating to new products entering international trade.

3. On the question of the definition of suppliers' rights it was noted that a proposal made in another GATT forum provided for the granting of an additional principal supplying right to the exporting country for which trade in a specific product had the most importance. In support of this proposal it was pointed out that since Article XXVIII had been drafted, the world economic situation had changed considerably and that it was therefore necessary to establish a better balance of rights and obligations. Negotiating rights under Article XXVIII had tended to be concentrated on a restricted number of countries, mainly the big trading nations. Consequently, a review of this provision was called for. Another view was that on the whole Article XXVIII had functioned well, the bulk of the renegotiations having been settled amicably between contracting parties, with few disputes arising, and that there was thus no need to single out this provision for separate review except possibly in the context of an overall discussion on the operation of the General Agreement.

4. On the stability of bindings, it was suggested that the invocation of Article XXVIII:5 had increased over the years, although the need for the renegotiation of particular bindings might not have been apparent at the time of the invocation. This situation had led to expressions of concern over the security of bound tariff concessions, even though the number of actual renegotiations may not have been very large.

5. On rules for compensation for newly-traded products, the view was put forward that a review of Article XXVIII should aim to improve and clarify the rules on the determination of compensatory adjustments in order to enhance the security of conditions of market access.

Points for further discussion

6. Is a formal review of Article XXVIII considered to be necessary? If so, would or should this review be part of an overall re-examination of the General Agreement?

7. Should the present rules relating to negotiating rights under Article XXVIII be formally amended or would it be sufficient to recommend to contracting parties to use more flexibility, in individual cases, in recognizing other contracting parties' trade interests?

8. Would it be possible to establish guidelines for the exercise of the right of invocation of Article XXVIII:5 which would limit the number of invocations and thus contribute to the stability of tariff concessions?

9. How can the rules of Article XXVIII, as they apply to newly-traded products, be improved?