

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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COMMUNICATION FROM ARGENTINA

The following communication, dated 14 September 1987, has been received from the delegation of Argentina with the request that it be circulated to members of the Group.

I. In accordance with Article XXVIII (paragraph 1) and the explanatory notes, in the event of a modification of schedules by a contracting party, negotiating rights exist for the contracting party with which the concession in question was initially negotiated and for the contracting party which is the principal supplier. In addition, a principal supplying interest may be recognized on the basis of the significance of the trade affected in relation to a contracting party's total exports, when it constitutes a major part of the latter (interpretative note, paragraph 1.5).

According to the note by the secretariat in document MTN.CNG/NG7/W/9, this latter provision has never been invoked before the CONTRACTING PARTIES, although it may have been utilized in bilateral negotiations.

II. In addition to the above-mentioned negotiating right, the contracting parties affected have the right to be consulted in accordance with Article XXVIII (paragraph 1) when they are suppliers having a substantial interest.

The Interpretative Note Ad Article XXVIII (paragraph 1.7) does not give a precise definition of the expression "supplier having a substantial interest", although in practice in their bilateral negotiations contracting parties have interpreted the expression to mean at least a ten-per-cent share of the market of the contracting party resorting to Article XXVIII to modify its schedules.

III. Taking into account the large number of contracting parties now members of the General Agreement compared with the situation until the 1960s, it is clearly necessary to analyse whether the procedures provided to safeguard rights under the General Agreement in the event of a modification of schedules by a party under Article XXVIII can ensure criteria of fairness meeting the interests of all contracting parties concerned.

IV. Experience shows that, as regards the utilization of the negotiating and prior consultation rights provided for in Article XXVIII:1, negotiating rights are concentrated on a small number of contracting parties, usually those with the greatest trading weight.

It would therefore be important to clarify and, if necessary, amend the Interpretative Note Ad Article XXVIII (paragraph 1.5) in such a way that a new right of principal supplier and of supplier having a substantial interest is precisely determined.

V. The criterion that could be used for this definition would be that of the dependence of other contracting parties on market X, i.e. that of the contracting party resorting to the procedure of modification of schedules under Article XXVIII.

In this case, exports to market X for the product for which schedules are to be modified would be related to exports of that product to all destinations by the party affected.

The contracting party having the highest degree of dependence, in other words, the highest ratio of exports to market X in relation to its total exports of that product, would be guaranteed a negotiating right in accordance with the amended explanatory note.

In accordance with the provisions of Article XXVIII, a consultation right would also be guaranteed for contracting parties where this dependence ratio is over 10 per cent, that is to say, where the value of exports to market X over total exports for the product for which schedules are to be modified is higher than 10 per cent.

VI. The suggested procedure would make it possible to include a new negotiating right and new consultation rights which would take into account, above all, the interests of contracting parties of medium or small trading weight, favouring their efforts to diversify their foreign trade.

The legal protection they would be ensured would enable them to defend their rights regardless of whether the sector in question is a new export sector, of whether the exports in question are not significant in relation to total exports (for example in the case of a non-traditional sector), and of whether the exports are not significant in relation to Gross National Product or per capita exports.

In other words, this would meet the criterion of safeguarding specific trade flows from the standpoint of exporting contracting parties, for which the closure of markets may represent the disruption of a major effort to diversify their foreign trade structure, even if it is not significant when evaluated by the criteria followed hitherto with regard to negotiating rights and suppliers having a substantial interest.

VII. It is considered of interest that the Negotiating Group on GATT Articles should discuss and reach agreement on the above arguments. To that end, it might be useful to have information from the secretariat, taking into account the latest negotiations held under Article XXVIII, as to the repercussions which the application of the suggested criteria would have had in terms of the number of contracting parties having negotiating and consultation rights.