

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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ARTICLE XXVIII

Statement by Switzerland

The following statement, made by the delegation of Switzerland at the fourteenth meeting of the GATT Articles Group, is circulated for the information of all participants.

Switzerland considers that the amendment of Article XXVIII and its adaptation to the present situation of world trade are essential for the strengthening of the GATT rules. We expect an extension of bindings, not only in terms of sectors but also - and especially - as regards the number of countries which will bind their tariffs. To assure small and medium-sized countries that they can defend their rights in the GATT framework is an essential element in the strengthening of the multilateral system. In this spirit, we welcome the contribution made by the countries which have subscribed to the communication before us. My remarks on this proposal will be confined to three points, for the time being:

- the formula for the determination of additional suppliers' rights;
- new products;
- tariff rate quotas.

I should also like to raise a fourth problem not discussed in document MTN.GNG/NG7/W/59, namely:

- retaliatory action.

1. Formula for the determination of additional suppliers' rights

We share the analysis given in the communication concerning the concentration of negotiating rights in the hands of an ever-smaller number of contracting parties. We consider that, as the submission by Hungary shows, this situation could be redressed by granting additional rights to any contracting party able to justify a substantial interest, on the basis of a criterion that takes into account the effects of the withdrawal of

a concession on the economy of a given country. However, Switzerland's position differs somewhat concerning the definition of substantial interest and the nature of additional rights.

Definition of substantial interest

For Switzerland, the effects of the withdrawal of a concession on the economy of a given country may be gauged by two factors:

- the share of exports of the product in question in relation to total exports of the country concerned;
- the share of exports in the gross domestic product (GDP) of the country concerned.

A new definition of substantial interests providing entitlement to additional rights should take account of these two elements, to be economically justifiable. For it is only by taking these two elements into consideration that it is possible to gauge the extent to which an economy is open to the exterior, in keeping with the philosophy of GATT. A solution that fails to do so would have the effect of:

- favouring countries for which external trade represents a small part of their national economy;
- favouring countries with undiversified economies.

The written version of our statement contains a formula which uses an economy's openness to the exterior as a weighting factor for the definition of additional substantial interests.

Nature of additional rights

The revision of Article XXVIII must ensure that the changes do not make it unduly difficult to invoke the Article. Experience has shown that a negotiating right is hard to exercise in practice, if the country that has received it does not account for a substantial share of the imports of the country intending to withdraw or modify a concession. Instead of a negotiating right, it would therefore appear more interesting for small and medium-sized trading nations to have additional rights of consultation. Switzerland therefore proposes that all parties for which the effects of the unbinding of a rate exceed a certain threshold (to be determined) should have an additional consultation right.

2. New products

We agree with the analysis in document MTN.GNG/NG7/W/59 to the effect that Article XXVIII was not designed to deal with the problems of new products. However, major interests are at stake, and suitable regulations must therefore now be established in this area.

Unfortunately, the methods advocated for the evaluation of the amount of compensation are based on criteria that are too static or too vague to be operational. In our view, the proposed criteria leave too much room for subjectivity.

Switzerland therefore proposes a different approach. It is based on the principle of greater discipline, in the case of the creation of a tariff line for new products. The essential elements of this discipline could be:

- the creation of a tariff line for a new product should be based on the characteristics the product has in common with similar products of an existing tariff line;
- the tariff applied to the new product cannot be higher than the tariff applied to the like product bearing the lowest tariff;
- prohibition of unbinding this new tariff for the first three years of trade in the new product;
- if unbinding occurs after three years, the growth rate of trade for the product concerned should be taken into account to calculate compensation.

This approach would have the advantage of ensuring that a new product is not shut out of the market before it has even had a chance to win a foothold, and at the same time resolves the problem of compensation, since the prohibition of any unbinding during the first three years of trade will ensure that the necessary data are available to determine both the holders of suppliers' rights and the amount of compensation.

3. Tariff rate quotas

We also share the analysis in the communication concerning this subject. Without prejudging the question of the consistency of tariff quotas with the General Agreement, it is necessary to avoid both encouraging the use of such measures and also simply prohibiting them, which might well have even worse consequences for world trade. The best means of discouraging the introduction of a tariff rate quota remains fair compensation. However, as in the case of new products, the methods envisaged leave too much room for subjectivity and are based on unreliable criteria.

In order to ensure that tariff rate quotas are introduced on an exceptional basis, while at the same time averting the danger of more frequent recourse to complete unbinding, compensation should:

- exceed the amount of the trade actually affected by the partial unbinding; and
- not be so much of a burden as to make it more advantageous to unbind the entire tariff heading.

This result could be achieved by including in the amount of compensation a certain percentage of trade not affected by the tariff quota.

4. Retaliatory action

Article XXVIII appears to give rise to varying interpretations as to the way in which retaliatory action can be taken. Some interpret it as permitting only retaliation erga omnes. Switzerland considers that this interpretation would have the result that third parties which have nothing to do with the dispute are doubly injured: first by the measures leading to the withdrawal or modification of a concession, and a second time when the parties which have not been able to obtain the compensation to which they were entitled decide in turn to withdraw a concession.

Switzerland therefore proposes the introduction of an interpretative note to paragraph 3 of Article XXVIII explicitly authorizing contracting parties to take retaliatory action on a bilateral basis against the contracting party which originally withdraws its concession. To avoid possible misuse, the implementation of retaliatory measures should be subject to the prior approval of the CONTRACTING PARTIES.