

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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THE PRE-EMPTIVE RAISING OF TARIFFS ON NEW PRODUCTS
IN THE CONTEXT OF ARTICLE XXVIII

Submission from Japan

The following submission has been received from the delegation of Japan, with the request that it be circulated to members of the Negotiating Group.

1. New Products

Supported by recent technological innovations, there are increasing numbers of new products, causing significant impact to world trade and to the industrial structure of each contracting party. There have been cases in the past where bound tariff rates were raised as a preventive measure, before any sizable imports in such new products began to assure development and protection of domestic industries.

It is true that Article XXVIII permits the raising of bound tariff rates under certain conditions. However, in the special case of new products, there have been instances where the tariff was raised without fulfilling, or with doubts remaining as to the fulfilment of these conditions.

Article XXVIII establishes that a contracting party may, by negotiation and agreement with any contracting party with which such concession was initially negotiated and with any contracting party determined by the CONTRACTING PARTIES to have a principal supplying interest, and subject to consultation with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest in such concession, modify or withdraw a concession. (Article XXVII:1)

In such negotiations and agreement, which may include provision for compensatory adjustment with respect to other products, the contracting parties concerned shall endeavour to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this Agreement prior to such negotiations. (Article XXVIII:2)

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Nevertheless, since trade statistics are either nonexistent or insufficient in the case of new products, many uncertainties arise in the determination of the interested contracting parties and in the calculation of the compensations.

Re-negotiations under Article XXVIII conducted in such circumstances, may result in excessive protection with insufficient "compensatory adjustments" for new products which are in the early stages of marketing or yet to be introduced into the market.

2. Conditions in the re-negotiation under Article XXVIII

Bearing in mind the situation mentioned above, the following rules should be applied when invoking Article XXVIII for new products (products which are to be traded in the near future or which have just begun to be traded, such as high-technology products).

(1) Determination of the parties to the negotiation

The "applicant contracting party" should in general negotiate with the country which possesses "I" status of the tariff line where the new products in question are classified. Determination of the "P" or "S" status of the new product in question should take into account the actual production, future export estimates, production facilities, and amount of investment regarding the product in the exporting country, as well as the demand forecast based on the demand structure for the product in the importing country.

(2) Rules for calculating "compensatory adjustment"

For calculating compensation according to Article XXVIII, parties should take into account such factors as the actual production of the product in question, its future export estimates, production forecasts, production facilities, and amount of investment in the contracting parties concerned to be determined by the rules mentioned in (1) above, as well as the amount of import of substitutes, if any, its rate of growth and demand forecast in the applicant contracting party.

(3) Review

After a certain period of time (e.g. when three years' trade data after the raising of the bound rate becomes available), negotiation under Article XXVIII should take place again, in order to maintain the general level of concessions of the "applicant contracting party" stipulated in Article XXVIII:2, if so requested by the negotiating contracting party mentioned in paragraph (1) above, the contracting party which, according to the latest trade statistics, subsequently became the principal supplier or country with substantial interest, or by the "applicant contracting party". In such negotiation, actual trade of the new product in question between third countries should also be taken into account.