

ARTICLE XXVIII *bis*

TARIFF NEGOTIATIONS

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- (c) all other relevant circumstances, including the ~~case~~^{case}, developmental, strategic and other needs of the contracting parties concerned.

Interpretative Note Ad Article XXVIII bis from Annex I

Paragraph 3

It is understood that the reference to fiscal needs would include the revenue ~~aspects~~^{aspects} duties and particularly duties imposed primarily for revenue purposes, or duties imposed on products which can be substituted for products subject to revenue duties to prevent avoidance of such duties.

II. INTERPRETATION AND APPLICATION OF ARTICLE XXVIII BIS

B. GENERAL

Since 1947, seven "rounds" of multilateral tariff and trade negotiations have been completed within GATT: in 1947 (in Geneva), 1949 (Annecy, France), 1951 (Torquay, England), 1956 (Geneva), 1960-1961 (Geneva, the "Dillon Round"), 1964-1967 (Geneva, the "Kennedy Round"), and 1973-1979 (Geneva, the "Tokyo Round"). The eighth round of multilateral negotiations, the Uruguay Round, was launched in Punta del Este, Uruguay in September 1986 and was concluded with the Final Act signed at Marrakesh, Morocco on 15 April 1994.

Article XXVIII bis was added to the General Agreement as a result of agreements reached during the Review Session of 1954-55 in the Review Working Party on "Schedules and Customs Administration". The Report of that Working Party notes that "The article would impose no new obligations on contracting parties. Each contracting party would retain the right to decide whether or not to engage in negotiations or to participate in a tariff conference".¹ A 1985 Note by the Secretariat on "The Launching of Trade Negotiations" states:

"The General Agreement does not lay down any special

ways which will provide special and more favourable treatment for them in areas of the negotiations where this is feasible and appropriate.

“The Ministers recognize that the particular situations and problems of the least developed among the developing countries shall be given special attention and stress the need to ensure that these countries receive special treatment in the context of any general or specific measures taken in favour of the developing countries during the negotiations”.

The Decision on “Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries” which was negotiated in the Tokyo Round and adopted on 28 November 1979 provides, inter alia:

“The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e., the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter’s development, financial and trade needs... Having regard to the special economic difficulties and the particular development, financial and trade needs of the least-developed countries, the developed countries shall exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries, and the least-developed countries shall not be expected to make concessions or contributions that are inconsistent with the recognition of their particular situation and problems”.

The Ministerial Declaration on the Uruguay Round, agreed at Punta del Este on 20 September 1986, launching the Uruguay Round, provides, inter alia:

“The CONTRACTING PARTIES agree that the principle of differential and more favourable treatment embodied in Part IV and other relevant provisions of the General Agreement and in the decision of the CONTRACTING PARTIES of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries applies to the negotiations. In the implementation of standstill and rollback, particular care should be given to avoiding disruptive effects on the trade of less-developed contracting parties.

“The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e. the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter’s development, financial and trade needs.

“Less-developed contracting parties expect that, with capacity to make contributions or negotiated concessions or take other mutually agreed action under the provisions and procedures of the General

(3) *Negotiations on matters other than tariffs*

The procedures for the tariff negotiations held in Geneva in 1947 in connection with the negotiation of the General Agreement provided that "The various observations in this report regarding the negotiations of tariffs and tariff preferences should be read as applying (mutatis mutandis) to the negotiation of state-trading margins under Article 31 of the Charter".¹¹ The procedures adopted for the negotiations in Annecy and Torquay each stated that:

"The Havana Charter provides that, in addition to customs tariffs and other charges on imports and exports, certain regulations, quotas, protection afforded through the operation of import and export monopolies, etc., shall be subject to negotiation in the manner provided in Article 17. The relevant provisions are provided in Articles 16 (including the Annexes thereto), 18, 19 and 31 [corresponding to GATT Articles I, III, IV, XVII and Annexes A through G]. Accordingly, requests may be submitted for concessions in respect of matters covered by these provisions in the same way as requests for tariff concessions".¹²

The Rules and Procedures for the Geneva tariff conference

Procedures for rounds of negotiations in the GATT have been determined in each instance. The table following lists these procedures; see also Secretariat background notes on negotiating procedures in the Dillon, Kennedy and Tokyo Rounds.²⁴

(3) "The binding against increase of low duties or of duty-free treatment shall, in principle, be recognized as a concession equivalent in value to the reduction of high duties"

This sentence is taken from paragraph 2(d) of Article 17 of the Havana Charter. Similar statements appear in the procedures for the Geneva (1947), Annecy (1949) and Torquay (1950) trade negotiations.²⁵ The Report of the Review Session Working Party on "Schedules and Customs Administration," which drafted Article XXVIII bis

The Rules and Procedures for the 1956 tariff conference held in Geneva note with respect to “the binding against increase of low duties” that “This rule takes account inter alia, of the position of countries which, whilst maintaining low or moderate duties on all or most of the products imported from their principal suppliers, find their exports or potential exports generally impeded by high rates of duty”.²⁷

(4) *Tariff negotiating rules, the “principal supplier rule”, and the use of formulas*

Rounds of tariff negotiations before the Kennedy Round provided for the use of the “principal supplier rule”, which typically stated that “Participating countries may request concessions on products of which they individually, or collectively, are the principal suppliers to the countries from which the concessions are asked. This rule shall not apply to prevent a country not a principal supplier from making a request, but the country concerned may invoke the principal supplier rule if the principal supplier of the product is not participating in the negotiations or is not a contracting party to the General Agreement”.²⁸

However, the use of general tariff-cutting formulas was debated since the earliest years of the GATT, as a means of reducing disparities in tariffs.²⁹ The first linear tariff offer was by the EEC in the Dillon Round.³⁰ In the Ministerial Conclusions adopted on 30 November 1961 during the Dillon Round, at the Nineteenth Session,

“The Ministers agreed that the reduction of tariff barriers on a most-favoured-nation basis in accordance with the terms of the General Agreement should be continued. They recognized, however, that while the traditional GATT techniques for tariff negotiations on a commodity-by-commodity and country-by-country basis had produced substantial results, both in the past and during the present tariff conference, they were no longer adequate to meet the changing conditions of world trade. Consideration should, therefore, be given to the adoption of new techniques, in particular some form of linear tariff reduction. The Ministers agreed to request the CONTRACTING PARTIES to establish machinery to examine this question in the light of the views and proposals put forward during the Ministers’ discussions”.³¹

The 1963 Report of the subsequently established Working Party on Procedures for Tariff Reductions recorded agreement on some basic principles in the Resolution of 21 May 1963 on “Arrangements for the Reduction or Elimination of Tariffs and other Barriers to Trade and Related Matters,” which launched the Kennedy Round, the Ministers agreed inter alia on the principle

“That, in view of the limited results obtained in recent years from item-by-item negotiations, the tariff negotiations ... shall be based upon a plan of substantial linear tariff reductions with a bare minimum of exceptions which shall be subject to confrontation and justification. The linear reductions shall be equal. In those cases where there are significant disparities in tariff levels, the tariff reductions will be based upon special rules of general and automatic application”.³²

A Resolution of 6 May 1964 adopted by the Trade Negotiations Committee meeting at Ministerial Level noted that “The rate of 50 per cent has been agreed as a working hypothesis for the determination of the general rate of linear reduction ... The ultimate agreement on tariff reductions in accordance with the application of this

²⁷Report adopted 18 November 1955, 4S/74, 81, para. 11(c). The same statement appears in the Dillon Round procedures at 8S/118.

²⁸See Dillon Round rules at 8S/114, 115-116, para. II(b)(i); identical statement in Rules for the Geneva tariff conference of 1955 at 4S/79, 80, para. II.3. See also statement of “principal supplier rule” in the Procedures for the round of trade negotiations held in Geneva in 1948, in Annexure 10 of the London Report (p. 49), and paragraph 1 of the Procedures adopted for the Torquay Tariff Conference, I/104.

²⁹See, e.g., proceedings of the First Special Session of the CONTRACTING PARTIES (convened at Torquay in order to discuss proposals for reduction of disparities in European tariffs); Report of the Work

hypothesis is linked with the solution of other problems arising in the negotiations, for example, tariff disparities, agricultural problems, exceptions and non-tariff problems, and, in general, with the achievement of reciprocity...³⁴ It was necessary to specify the rates to which this hypothesis would apply and it was therefore agreed that participants would notify the base date, the base level of duties and (since the linear cut only applied to industrial products) which products would be excluded. A number of exceptions to the rule were made.³⁵

The Tokyo Ministerial Declaration of 14 September 1973, which launched the Tokyo Round negotiations, stated that "negotiations should aim, *inter alia*, to ... conduct negotiations on tariffs by employment of appropriate formulae of as general application as possible³⁶...".

3. Paragraph 3: "fiscal needs"