ARTICLE XXVIII

MODIFICATION OF SCHEDULES

I. TEXT OF ARTICLE XXVIII AND INTERPRETATIVE NOTE AD ARTICLE XXVIII 934

II. INTERPRETATION AND APPLICATION OF ARTICLE XXVIII 937
A. SCOPE AND APPLICATION OF ARTICLE XXVIII 937
1. General 937
2. Paragraph 1 938
(1) "On the first day of each three-year period ..." 938
(2) "by negotiation and agreement" 938
(3) "any contracting party with which such concession was initially negotiated" 938
(a) Initial negotiating rights (INRs) 938
(b) Floating initial negotiating rights 939
(c) INRs and initial negotiating rights in compensatory concessions 940
(4) "with any contracting party determined by the CONTRACTING PARTIES to have a principal supplyipa

IV. RELEVANT DOCUMENTS 964

V. TABLES ON INVOCATION OF ARTICLE XXVIII 965
A. USE OF ARTICLE XXVIII:1, 4, AND 5: SUMMARY TABLE 965
B. INVOCATION OF ARTICLE XXVIII:5 BY CONTRACTING PARTIES SINCE 1958 966
C. RENEGOTIATIONS UNDER ARTICLE XXVIII:1 967
D. RENEGOTIATIONS UNDER THE "SYMPATHETIC CONSIDERATION" PROCEDURE AND ARTICLE XXVIII:4 972
E. RENEGOTIATIONS UNDER ARTICLE XXVIII:5 977

I. TEXT OF ARTICLE XXVIII AND INTERPRETATIVE NOTE AD ARTICLE XXVIII

Article XXVIII*

Modification of Schedules

1. On the first day of each three-year period, th

(*c*) If agreement between the contracting parties primarily concerned is not reached within a period of sixty days* after negotiations have been authorized, or within such longer period as the CONTRACTING PARTIES may have prescribed, the applicant contracting party may refer the matter to the CONTRACTING PARTIES.

(*d*) Upon such reference, the CONTRACTING PARTIES

determine that more than one contracting party, or in those exceptional cases where there is near equality more than two contracting parties, had a principal supplying interest.

5. Notwithstanding the definition of a principal supplying interest in note 4 to paragraph 1, the CONTRACTING PARTIES

into account if the trade in question has ceased to benefit from such preferential treatment, thus becoming MFN trade, at the time of the negotiation for the modification or withdrawal of the concession, or will do so by the conclusion of that negotiation.

2. Paragraph 1

(1) "On the first day of each three-year period ..."

The Report of the Review Working Party on "Schedules and Customs Administration" provides that

"... the revised text of paragraph 1 of the Article should be considered with particular reference to [paragraphs] 1 to 5 [of the Interpretative Notes to Article XXVIII]. The new paragraph 1 of the revised

Articles II:4, XVIII:7, XVIII:18 and XXVII also refer to concessions initially negotiated, or to contracting parties with which concessions were initially negotiated.

(b) Floating initial negotiating rights

During the Kennedy Round, tariff cuts were for the first time negotiated on the basis of a general formula applied to tariff rates.[7] During the closing days of the Kennedy Round, the Trade Negotiations Committee approved a proposal, responding to the issue posed for INRs by the use of a general tariff-cutting formula, providing that "for

(a) Submission of claims of interest

See the "Procedures for Negotiations under Article XXVIII" adopted on 10 November 1980, cited *in extenso* at page 960-961.

(b) "substantial interest"

No precise definition for "substantial interest" has ever been agreed. During the meeting of the Committee on Tariff Concessions in July 1985, it was stated that the "10 per cent share" rule had been generally applied for the definition of "substantial supplier".[16]

(c) Principal supplier rights where a concession affects a major part of a contracting party's exports

Note 5 *Ad* Article XXVIII:1 provides that the CONTRACTING PARTIES "may exceptionally determine that a contracting party has a principal supplying interest if the concession in question affects trade which constitutes a major part of the total exports of such contracting party."

In 1985-86, discussions took place in the Committee on Tariff Concessions on a Swiss proposal that a test be carried out in the context of the negotiations linked to introduction of the Harmonized System, by offering a negotiating right to "the exporter for which trade in a specific product has the most importance".[17]

At the September 1992 Council meeting, Argentina noted its request for recognition of its principal supplying interest with respect to

consensus whereby the Council determined that Argentina had principal supplier rights in the products concerned. ...".[19]

The Director-General, in support of the Chairman, said that

"... for the sake of having the Council take appropriate action to conclude this item, he would quote paragraph 4 of the 1980 Procedures for Negotiations under Article XXVIII, which read as follows: 'If the contracting party referred to in paragraph 1 [which intends to negotiate for the modification or withdrawal of concessions under Article XXVIII:1] recognizes the claim [of principal or substantial supplying interest], the recognition will constitute a determination by the CONTRACTING PARTIES of interest in the sense of Article XXVIII:1'. In other words, it was enough for the two parties concerned to have agreed on this matter for it to constitute a 'determination by the CONTRACTING PARTIES'. Therefore, the Chairman was correct in proposing that the Council should take note that the matter referred to it had been satisfactorily resolved between the two parties, and nothing more".[20]

The Council took note of the statements, and also that the matter referred to it had been satisfactorily resolved between Argentina and the European Community.

Paragraphs 1 and 2 of the Uruguay Round Understanding on the Interpretation of Article XXVIII of the GATT 1994 provide as follows:

"1. For the purposes of modification or withdrawal of a concession, the Member which has the highest ratio of exports affected by the concession (i.e. exports of the product to the market of the Member modifying or withdrawing the concession) to its total exports shall be deemed to have a principal supplying interest if it does not already have an initial negotiating right or a principal supplying interest as provided for in paragraph 1 of Article XXVIII. It is however agreed that this paragraph will be reviewed by the Council for Trade in Goods five years from the date of entry into force of the WTO Agreement with a view to deciding whether this criterion has worked satisfactorily in securing a redistribution of negotiating rights in favour of small and medium-sized exporting Members. If this is not the case, consideration will be given to possible improvements, including, in the light of the availability of adequate data, the adoption of a criterion based on the ratio of exports affected by the concession to exports to all markets of the product in question.

"2. Where a Member considers that it has a principal supplying interest in terms of paragraph 1, it should communicate its claim in writing, with supporting evidence, to the Member proposing to modify or withdraw a concession, and at the same time inform the Secretariat. Paragraph 4 of the 'Procedures for Negotiations under Article XXVIII' adopted on 10 November 1980 (BISD 27S/26-28) shall apply in these cases."

(6) Negotiating rights and trade in new products

Paragraphs 4 and 5 of the Uruguay Round Understanding on the Interpretation of Article XXVIII of the GATT 1994 provide as follows:

> "4. When a tariff concession is modified or withdrawn on a new product (i.e. a product for which three years' trade statistics are not available) the Member possessing initial negotiating rights on the tariff line where the product is or was formerly classified shall be deemed to have an initial negotiating right in the concession in question. The determination of principal supplying and substantial interests and the calculation of compensation shall take into account, *inter alia,* production capacity and investment in the affected product in the exporting Member and estimates of export growth, as well as forecasts of demand for the product in the importing Member. For the purposes of this paragraph, 'new product' is understood to include a tariff item created by means of a breakout from an existing tariff line.
>
> "5. Where a Member considers that it has a principal supplying or a substantial interest in terms of paragraph 4, it should communicate its claim in writing, with supporting evidence, to the Member

See also the material in the chapter on Article XXVIII*bis* on measurement of value of concessions in the context of trade negotiating rounds. See also a Secretariat technical note of 1988 on methodology for evaluating equivalence of concessions in another context.[25]

(a) Base period for determination of value of tariff concessions

In 1963, a Panel was established to render an advisory opinion to the EC and the United States in relation to the renegotiation by the EC under Article XXIV:6 of certain bound tariff concessions on poultry. The Panel examined the value to be ascribed to United States exports of poultry to the Federal Republic of Germany, on the basis of the definition of poultry provided in item 02.02 of the EEC Common Customs Tariff and the rules and practices of the GATT, and in the context of the unbindings concerning this product.

"The Panel recognized that the matter before it fell

the negotiations) for the first ten or eleven months of 1974 became available (except for Ireland) for both lead and zinc. The offer of the Community in the negotiations on both lead and zinc, submitted to Canada in late June 1975, should therefore, in the Panel's view, have taken account of trade figures for 1974. The Panel came to the conclusion that a correct and reas

of the concession justifies the EC engaging in renegotiations under Article XXVIII, in accordance with the customary procedures and practices for such negotiations, with the objective of achieving some reduction in the size of the tariff quota. In the view of the Panel, such a reduction would, in a case like the one before the Panel where the increased value of the concession derives from an action by the EC to grant duty-free access to newsprint imports from the EFTA countries, be without payment of compensation. In this connection, the Panel found that although the statistical data before it did not differentiate between imports entering duty-free under the GATT quota and those under the autonomous régime, the fact that the GATT quota was filled while total Canadian exports never exceeded half that quota is evidence that the EFTA countries did participate in the GATT quota up until the end of 1983.

"The Panel carefully noted and examined the statement by the EC that, should the Panel consider the action taken by the EC as not being in conformity with the GATT, they might proceed to option (b) under which the tariff quota would be maintained at 1.5 million tonnes but that imports from all sources, including the EFTA countries, would be recorded against that quota; once the latter had been filled, the Community's formal contractual obligations would have been met. While the Panel could find no specific GATT provision forbidding such action and no precedents to guide it, it considered that this would not be an appropriate solution to the problem and would create an unfortunate precedent. It is in the nature of a duty-free tariff quota to allow specified quantities of imports into a country duty-free which would otherwise be dutiable, which is not the case for EFTA imports by virtue of the free-trade agreements. Imports which are already duty-free, due to a preferential agreement, cannot by their very nature participate in an m.f.n. duty-free quota. The situation in this respect could only change if the free-trade agreements with the EFTA countries were to be discontinued; in this case these countries would be entitled to fall back on their GATT rights vis-à-vis the EC, which rights continue to exist.

"On the basis of the findings and conclusions reached above, the Panel suggests that the CONTRACTING PARTIES recommend that the European Communities engage promptly in renegotiations under the procedures of Article XXVIII of the GATT with regard to the tariff quota on newsprint in Schedule LXXII. Further, the Panel suggests that the CONTRACTING PARTIES recommend to the European Communities that, pending the termination of such negotiations, the duty-free tariff quota of 1.5 million tonnes for m.f.n. suppliers be maintained".[32]

4. Paragraph 3

(1) "shall be free ... to withdraw ... substantially equivalent concessions"

(a) Basis and consequences of withdrawals under paragraph 3

During discussions on the provisions which became the present Article XXVIII, in the Tariff Agreement

See also Note 6 *Ad* Article XXVIII:1, which provides that the applicant contracting party should not "have to pay compensation or suffer retaliation greater than the withdrawal or modification sought, judged in the light of the conditions of trade at the time of the proposed withdrawal or modification, making allowance for any discriminatory quantitative restrictions maintained by the applicant contracting party".

In 1963, a Panel was established to render an advisory opinion to the EC and the United States in relation to the renegotiation by the EC under Article XXIV:6 of certain bound tariff concessions on poultry; concerning the reference period used, see above at page 944. The Panel examined the value to be ascribed to United States exports of poultry to the Federal Republic of Germany, on the basis of the definition of poultry provided in item 02.02 of the EEC Common Customs Tariff and the rules and practices of the GATT, and in the context of the unbindings concerning this product.

> "The Panel recognized that the matter before it fell to be dealt with in the context of the Article XXIV:6 negotiations. This was relevant both to the choice of the reference period ... and to the manner in which this determination [of the value of such poultry exports as of 1 September 1960] was to be made. ...
>
> "The Panel was satisfied that it was in accordance with the normal practice of the GATT for a

"The representative of Jamaica noted that paragraphs 1 and 3 of Article XXVIII required prior action by the CONTRACTING PARTIES acting jointly if a contracting party sought to withdraw concessions in terms of ensuring compensation, while paragraph 2 did not require a prior determination by the CONTRACTING PARTIES. With this in view, he pointed out that paragraph 1 in each of two of the draft decisions referred to negotiations and consultations with interested contracting parties pursuant to paragraphs 1, 2 and 3 of Article XXVIII, while paragraph 3 of the draft decisions merely stated that other contracting parties would be free to suspend concessions initially negotiated to the extent that they considered that adequate compensation was not offered by the government seeking the waiver. He asked for clarification on this point.

"... the Legal Adviser to the Director-General said that paragraph 3 of the two draft decisions only foresaw a temporary situation before the negotiations were actually terminated and the results entered into force. The final corresponding situation was covered by paragraph 3(a) of Article XXVIII, which did not provide for any approval by the CONTRACTING PARTIES. The only requirement was that contracting parties which had negotiating rights under Article XXVIII had to notify the CONTRACTING PARTIES that they intended to withdraw substantially equivalent concessions. They did not have to ask for permission to do so".[46]

(d) Time-limits for invocation of Article XXVIII:3 (including application in the context of Article XXIV:6)

During the Review Session of 1954-55, in a discussion of the Declaration on Continued Application of the Schedules, the Executive Secretary observed that the notice period provided in the Declaration for modifications or withdrawals referred to "the date on which the change affected the Schedule of the contracting party rather than the date on which the duty was formally altered by internal action of the contracting party".[47]

At the Council meeting of 26 April 1974, "The representative of the United States stated that the United States and the European Communities had not yet concluded their negotiations under Article XXIV:6 under the applicable procedures of Article XXVIII. He pointed out that the United Kingdom, Denmark and Ireland had been applying import treatment in accordance with their Accession agreements with the European Communities, rather than in accordance with their Schedules referred to in Article II. This raised the question of whether the concessions should be considered withdrawn or modified as of 1 January 1974. He felt that if this were the case, Article XXVIII:3 could be interpreted as requiring notification to the CONTRACTING PARTIES of any compensatory withdrawals on or before 31 May 1974". The representative of the EC stated that it "did not consider that the time-limit laid down in Article XXVIII:3 posed a problem at the present time, because the renegotiations were still in progress and the six-month period mentioned in that Article would run only as from the end of the renegotiations". In response to a joint request made by the US and the EC, "the Council decided that without prejudice to the interpretation of Article XXVIII:3 the six-month period referred to in Article XXVIII:3 would not be considered to expire prior to 31 August 1974".[48]

At the Council meeting of 19 July 1974, the EC representative stated that the Communities considered the renegotiations under Article XXIV:6 to be terminated, and intended as of 31 July to withdraw the schedules of concessions of the Six and of Denmark, Ireland, and the United Kingdom and replace them with two new schedules for the Community of Nine, one relating to the EEC and one to the ECSC. The representatives of the United States and of Australia each stated that the negotiations pursuant to Article XXIV:6 had not achieved satisfactory results with respect to compensation for certain specific concessions. The United States and Australia each reserved the right under Article XXVIII:3 to withdraw substantially equivalent concessions: with respect to those concessions; with respect to any modification made by the EC to its schedules pursuant to its reservation mentioned below; with respect to any modification by the EC to its schedules referred to in the Report filed by that country and the EC on the Article XXIV:6 negotiations; and with respect to any failure by the EC to implement the concessions in these new schedules on or before 31 July 1974. The EC representative stated that the EC considered that the concessions in its new schedules provided full compensation for the withdrawals in question, and noted that the EC had inserted in those schedules a reservation reserving the right to make counter-withdrawals in the event of withdrawals by its trading partners after the Article XXIV:6 negotiations. The Council agreed that the six-month period referred to in Article XXVIII:3 would not apply to actions pursuant to these reservations and

[46]C/M/222, p. 5.
[47]SR.9/47 p. 2.
[48]C/M/95, p. 1-2; see also request to Council at L/4019.

that such actions could be taken at any time upon expiration of thirty days from the day that written notice is given to the CONTRACTING PARTIES.[49]

At the Council meeting of 24 March 1975, Canada and the EC gave notice of: a Joint Declaration which stated that they had been able to reach agreement in their Article XXIV:6 negotiations except for certain cereal items; a statement by the EC regarding inclusion in its Schedules of the reservation above regarding counter-withdrawals; and a statement by Canada that its adherence to the Declaration "in no way implies acceptance by Canada of General Note 1 in the draft new Schedules LXXII and LXXII*bis*, nor limits Canada's right to request the CONTRACTING PARTIES to examine whether the reservation of rights envisaged in this General Note is consistent with the European Communities' obligations under the provisions of the General Agreement". The Council agreed to the joint request by Canada and the European Communities to extend the time-limit under Article XVIII:3 insofar as certain cereal items were concerned.[50]

The 1990 Award by the Arbitrator on "Canada/European Communities - Article XXVIII Rights" finds, concerning the Agreement on Quality Wheat concluded by Canada with the Community on 29 March 1962:

> "Given the fact that wheat exports to the European Economic Community are of great importance to Canada, given the fact that it was not known in 1962 what the import restrictions on wheat would be under the CAP, and given the fact that the parties were under considerable pressure to conclude the XXIV:6 negotiations, given these facts and the safe assumption that the parties were fully versed and competent in GATT matters and were acting in good faith, on the basis of these considerations I reach the conclusion that the purpose of these agreem

reached on compensation under Articles XXIV:6 and XXVIII, the United States had notified in May 1986 the suspension of certain concessions in Schedule XX[54], but that these concessions had been restored subject to the provisions of an agreement between the United States and the EC under Article XXIV:6 concluded 29 January 1987, which set forth certain compensatory measures, provided for a review, and "reserved full GATT rights including those which would otherwise be time-limited".[55] The Communication notified suspension of certain concessions in Schedule XX to take effect midnight 31 December 1990, and stated:

> "Where a contracting party to the GATT has withdrawn a concession in the expansion of a customs union, Article XXIV entitles other contracting parties to negotiated compensation, or, in the absence of a successful negotiation, to use Article XXVIII to 'withdraw substantially equivalent concessions'. The Article XXVIII right is time-limited to six months. The agreed 'review of the situation' began in July and has not resulted in a negotiated continuation of compensation to the United States. If negotiations to continue compensation to the United States are not successful, then compensation under the 1987 agreement will expire at midnight on December 31, 1990. Moreover, the time-limited Article XXVIII right could be construed, in this case, to expire on December 31, 1990 unless exercised".[56]

that several countries have public procedures for preparations for tariff negotiations and that the Regulation is not intended to disturb or prevent the continued use of such procedures".[90]

B. RELATIONSHIP BETWEEN ARTICLE XXVIII AND OTHER GATT PROVISIONS

1. Article II

See material on "maintenance of 'treatment' versus modification of a concession" under Article II.

2. Article XVIII:A

The present text of Article XVIII:7 (Section A of Article XVIII) was drafted during the Review Session in 1954-55 in the same Review Working Party on Schedules and Administration which drafted the present text of Article XXVIII. The proviso in Article XVIII:7 permitting the applicant contracting party to modify or withdraw concessions where it cannot, for good reasons, provide adequate compensation corresponds to Article XXVIII:4(d) including the right of other contracting parties to withdraw substantially equivalent concessions initially negotiated with that contracting party.[91]

3. Article XIX

In a number of instances, contracting parties which have suspended a concession under Article XIX have ceased to invoke Article XIX as a result of a modification or withdrawal of the concession under Article XXVIII. See the table of Article XIX actions following the chapter on Article XIX.

4. Article XXIII (including arbitration, conciliation and good offices)

See the references above at page 947 to the discussions in 1947 concerning the relationship between the basis and extent of action under Article XXVIII and the basis and extent of action under Article XXIII:2.

In 1974, when Article XXIV:6 negotiations between Canada and the European Communities did not produce a mutually satisfactory result, Canada referred the matter to the CONTRACTING PARTIES pursuant to paragraph 1(c) and 2 of Article XXIII and requested that a panel of experts be appointed to investigate whether the new Schedules LXXII and LXXIIbis maintained a general level of reciprocal and mutually advantageous concessions between Canada and the European Communities, not less favourable to trade than that provided for in Schedules XL, XLbis, XIX, XXII and LXI.[92] The representative of the European Communities recalled "that the negotiations that had led to this new Schedule covered practically the whole of the customs tariffs in question and a difficult assessment of both a quantitative and qualitative character was therefore called for. The Community could not accept the proposal. The conciliation procedures of the GATT had hitherto mostly been used in cases of violations of the General Agreement; in the present case, a number of factors made this procedure inappropriate. Such an exercise would involve highly sophisticated assessments in complex trade fields where the criteria for reaching judgements were exceedingly imprecise".[93] At the following Council meeting, the Chairman "concluded that it was the wish of the Council, with the exception of the European Communities, to establish such a panel and that he should, in due course, discuss the question of the panel in consultation with the parties most concerned".[94] The two parties reached a bilateraities rb2(se).3(a)]TJ2,(e)1.3(a)-4.7(.1(ed).3(a)dhdr)4(v)31.8(ent3T

fundamental importance of the security and predictability of GATT tariff bindings, a principle which constitutes a central obligation in the system of the General Agreement.

"... the Panel found that the EC action constituted a *prima facie* case of nullification or impairment of benefits which Canada was entitled to expect from the General Agreement. ...

"On the basis of the findings and conclusions reached above, the Panel suggests that the CONTRACTING PARTIES recommend that the European Communities engage promptly in renegotiations under the procedures of Article XXVIII of the GATT with regard to the tariff quota on newsprint in Schedule LXXII. Further, the Panel suggests that the CONTRACTING PARTIES recommend to the European Communities that, pending the termination of such negotiations, the duty-free tariff quota of 1.5 million tonnes for m.f.n. suppliers be maintained.

"In the light of the suggested recommendations contained in paragraph 56 above, the Panel saw no need to express itself on the request by Canada that it be authorized to suspend the application of appropriate concessions or other obligations under the GATT".[95]

At the special meeting of the Council in October 1988 to review developments in the trading system, the Director-General informed the Council that in April 1988, Canada and the EC had asked him, with reference to paragraph 8 of the 1979 "Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance",[96] to render an advisory opinion on whether a tariff concession granted by Portugal to Canada in 1961 was applicable to wet salted cod. This issue had arisen in tariff negotiations between Canada and the EC under Article XXIV:6. He had agreed on 15 April to render such an opinion and on 15 July had made it available to the two parties concerned.[97]

The 1992 Report of the Members of the Reconvened Oilseeds Panel on "Follow-up on the Panel Report 'EEC - Payments and Subsidies paid to Processors and Producers of Oilseeds and Related Animal-Feed Proteins'" notes as follows:

"... the Panel found that benefits accruing to the United States under Article II of the General Agreement in respect of the zero tariff bindings for oilseeds in the Community Schedule of Concessions continued to be impaired as a result of the production subsidy scheme provided for in Regulation 3766/91 ...

"The Panel noted that over two years had passed since the Oilseeds Panel Report had been adopted by the CONTRACTING PARTIES. While the Community Regulations had been modified, the impairment of the tariff concessions had not been eliminated. Under these circumstances, the Panel can see no reason for the CONTRACTING PARTIES to continue to defer consideration of further action in relation to the impairment of the tariff concessions.

"The Panel therefore recommends that the Community should act expeditiously to eliminate the impairment of the tariff concessions -- either by modifying its new support system for oilseeds or by renegotiating its tariff concessions for oilseeds under Article XXVIII. In the event that the dispute is not resolved expeditiously in either of these ways, the CONTRACTING PARTIES should, if so requested by the United States, consider further action under Article XXIII:2 of the General Agreement".[98]

In June 1992 the EEC requested and was granted authorization to renegotiate its tariff concessions for oilseeds and oilcake under Article XXVIII:4 (see above at page 953). In August 1992, the EEC referred certain issues to the CONTRACTING PARTIES under Article XXVIII:4(c) and (d), including the following.

[95]L/5680, adopted on 20 November 1984, 31S/114, 132-133, paras. 52-53, 56-57.
[96]L/4907, adopted on 28 November 1979, 26S/210, 211, para. 7.
[97]C/M/225, p. 2.
[98]DS28/R, dated 31 March 1992, paras. 85-88.

1. Procedures for negotiations under Article XXVIII

On 31 May 1957 the Executive Secretary, in compliance with instructions given to him by the CONTRACTING PARTIES[102], issued a Note concerning arrangements for negotiations under Article XXVIII in 1957.[103] This note served as a procedural guideline for Article XXVIII negotiations until 1978.

In June and September 1978, the Director-General issued Notes with revised procedural guidelines for renegotiations under Article XXVIII.[104] These guidelines were replaced by Procedures for Negotiations under Article XXVIII[105], adopted by the Council on 10 November 1980 on the recommendation of the Committee on Tariff Concessions. All renegotiations under Article XXVIII are now being conducted under these Procedures, which provide as follows:

both parties. To this letter shall be attached a report on the lines of the model in Annex B attached hereto. The report should be initialled by both parties. The secretariat will distribute the letter and the report to all contracting parties as a secret document.

"6. Upon completion of all the negotiations the contracting party referred to in paragraph 1 above should send to the secretariat, for distribution in a secret document, a final report on the lines of the model in Annex C attached hereto.

"7. Contracting parties will be free to give effect to the changes agreed upon in the negotiations as from the first day of the period referred to in Article XXVIII:1, or, in the case of negotiations under paragraph 4 or 5 of Article XXVIII, as from the date on which the conclusion of all the negotiations have been notified as set out in paragraph 6 above. A notification shall be submitted to the secretariat, for circulation to contracting parties, of the date on which these changes will come into force.

"8. Formal effect will be given to the changes in the schedules by means of Certifications in accordance with the Decision of the CONTRACTING PARTIES of 26 March 1980.

"9. The secretariat will be available at all times to assist the governments involved in the negotiations and consultations.

"10. These procedures are in relevant parts also valid for renegotiations under Article XVIII, paragraph 7, and Article XXIV, paragraph 6."[108]

In discussion of these Procedures during the 3 November 1980 meeting of the Committee on Tariff Concessions, "the Chairman took up the question of the character of the document and recalled the comments made by the representative of Finland that the terms used in the text and particularly the word 'should' meant that the document should be interpreted as guidelines and that contracting parties entering into Article XXVIII negotiations were invited to follow those guidelines but should not consider them as binding obligations".[109]

2. Procedures for negotiations in connection with implementation of the Harmonized System

On 12 July 1983, the Council adopted a Decision on "GATT Concessions under the Harmonized Commodity Description and Coding System" setting out "basic principles" and "proposed special procedures" for renegotiations under Article XXVIII in order to facilitate the application of the Harmonized System with effect from 1 January 1987.

"3.2 The guidelines relating to procedures for negotiations under Article XXVIII ... will be the basis for

"4.2 When contracting parties consider it unavoidable to combine headings or parts of headings in implementing the Harmonized System they may have to modify certain of their existing concessions. Possible ways of arriving at new rates include:

"4.2.1 Applying the lowest rate of any previous heading to the whole of the new heading.

"4.2.2 Applying the rate previously applied to the heading or headings with the majority of trade.

"4.2.3 Applying the trade weighted average rate of duty for the new heading.

Article XXVII or Article XXVIII shall be certified by means of Certifications". The text of the Decision of 26 March 1980 appears *in extenso* in the chapter on Article II, which also discusses practice regarding Certifications. See also under Article XXX concerning the former practice of issuing protocols of rectification or modification of Schedules.

III. PREPARATORY WORK AND SUBSEQUENT MODIFICATIONS

Concerning the preparatory work associated with the schedule provisions of the General Agreement, and the relationship between the Havana Charter and Schedules under the General Agreement, see generally Section III under Article II. Since the Charter did not directly provide for schedules of concessions, it also did not provide for the renegotiation of concessions nor for modification of schedules. The text of Article XXVIII emerged from discussions of the Tariff Agreement Committee and a draft by an ad-hoc sub-committee, during September and October 1947 at the Geneva session of the Preparatory Committee.[118]

The text of Article XXVIII of the General Agreement as agreed 30 October 1947 provided that concessions could be renegotiated only after 1 January 1951; moreover, Article XXXI did not permit withdrawal prior to 1 January 1951. The sole general "escape clause" from the general obligation to maintain tariff concessions was Article XIX. During the negotiation of the text at Geneva one delegate summarized the legal situation as: "the obligation that we are accepting here in respect of a tariff item is initially to bind the item at the rates set out in the Schedule for three years ...".[119] Paragraph 1 of Article XXVIII provided for renegotiation after 1 January 1951 "by negotiation and agreement" with INR holders and "subject to consultation with such other contracting parties as the CONTRACTING PARTIES determine to have a substantial interest in such treatment".

By a Resolution of 1 April 1950, the CONTRACTING PARTIES recommended prolongation of the assured life of the schedules negotiated at Geneva in 1947 and Annecy in 1949.[120] One year later, paragraph 6(a) of the Torquay Protocol of 21 April 1951 amended the date in paragraph 1 to substitute "January 1, 1954" for "January 1, 1951"[121] and in a Declaration the CONTRACTING PARTIES agreed that "they will not invoke prior to 1 January 1954, the provisions of Article XXVIII, paragraph 1, of the General Agreement to modify or cease to apply the treatment which they have agreed to accord under Article II of the General Agreement to any product

"There is no reason to believe that contracting parties will be less ready in the future than they have been in the past to consider requests of this kind and to join in granting authority for the necessary negotiations,

V. TABLES

A. USE OF ARTICLE XXVIII:1, 4, AND 5: SUMMARY TABLE: STATUS AS OF 1 JANUARY 1995

NOTE:The figures below indicate requests to renegotiate one or more concessions under Article XXVIII:1, 4 or 5 (including "sympathetic consideration" procedures) and are based on Tables C, D and E below. Each such request may range from one tariff item to an entire Schedule. The column on Article XXVIII:5 refers to req

Contracting party	Notification	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
	14.8.1972	SECRET/207	---	Cornsacks	n.a.	Converted into XXVIII/5 negotiations as from 1.7.1973 - see SECRET/214
	21.8.1972	SECRET/208	---	Floor coverings	$ (c.d.v.) 275,981	id.
	26.9.1972	SECRET/209	---	Fittings for loose-leaf binders	£NZ 92,954	id.
	5.10.1972	SECRET/210	---	Polyester	1,017,003	id.
NICARAGUA	8.3.1955	SECRET/32 + Add.1-9	France, Czechoslovakia, Norway, Benelux, Italy, United Kingdom, Chile, Canada, United States	Complete Annecy list	n.a.	
NORWAY	13.9.1957	SECRET/88 + Add.1-7	Germany, Czechoslovakia Sweden, Finland, United Kingdom	Handbags, Glass and glassware. Trunks.	NOK 6,490,300	
	4.8.1960	SECRET/122 + Add. 1-7	Italy, Germany, Czechoslovakia, Benelux	Lilac. Sausages. Felt hats. Wires of iron or steel. Hydro- electric conduits of steel	NOK 41,328,000	
	25.9.1969	SECRET/196 + Add. 1-4	EEC, United States	Rice. Dry yeast. Natural yeast	NOK 11,535,000	

Contracting party Notification

Contracting party	Notification	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
ZAIRE	12.7.1990	SECRET/332 + Add.1	L/7170	Whole schedule	See Add.1 of SECRET/332	Renegotiation of schedule under waivers and transposition into HS nomenclature

D. RENEGOTIATIONS UNDER THE "SYMPATHETIC CONSIDERATION" PROCEDURE AND ARTICLE XXVIII:4

Country	Decision of CPs	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Reason for invocation
AUSTRALIA	16.10.1953	SECRET/1, SECRET/6	Czechoslovakia, Germany, United States	Lathes	£A 110,900	Tariff reclassification
	28.10.1955	SECRET/53 + Add.1-2	France and Germany	Sulphate of magnesia	£A 8,467,300	Domestic industry at severe disadvantage with certain overseas production
	26.7.1956	SECRET/69 + Add.1-6	United States	Taximetres	n.a.	Protection for infant industry
	28.6.1957	GATT/AIR/114 SECRET/94 + Add.1	Italy and France	Slide fastener tape	n.a.	Need for increased protection
AUSTRALIA	10.7.1958	GATT/AIR/135 SECRET/98 + Add.1-2	United Kingdom	Cotton yarns	£A 1,335,009	Tariff Board recommendations
	26.9.1958	SECRET/99 + Add.1-13	Czechoslovakia, Italy, United Kingdom (Hong Kong), United Kingdom, India			

Country	Decision of CPs	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Reason for invocation

Country	Decision of CPs	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Reason for invocation
	20.6.1949	GATT/CP.3/45 GATT/CP.3SR/28	Canada and United States	Table potatoes	n.a.	Need for protection
DENMARK	2.5.1958	SECRET/96 + Add.1 + Corr.1	Australia, Canada, France, United States	Corn products, wheat, rye, barley and oats. Mushrooms. Dates.	DKr 433,583	Protection of farm incomes
	14.11.1958	SECRET/100 + Add.1-12	Finland, Norway, Czechoslovakia, Switzerland, Italy, Benelux, Germany, United Kingdom, United States, Japan	Straight cast pipes. Staves for coopers. Stones. cardboard. Chandeliers. Buttons. Iron and steel. Wines. Insulating glass. Boots. Shoes. Cameras. Telescopes, etc.	DKr 11,111,600	Conversion of specific into ad valorem duties on enacting new tariff (Brussels Nomenclature)
	14.11.1958	SECRET/109 + Add.1-9	Czechoslovakia, Sweden, Germany, Benelux, United States and United Kingdom, Japan	Sundry products (about 25)	DKr 47,939,700	As above

Country	Decision of CPs	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Reason for invocation

Country	Decision of CPs	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Reason for invocation
UNITED STATES	5.1.1961	SECRET/136 + Add.1-7 GATT/AIR/214 SECRET/129 Add.1	Austria, Benelux, Germany, United Kingdom, Sweden, Denmark	Bicycles and spring clothespins	US$ 16,506,366	Renegotiation of items after Article XIX action
	24.5.1962	Spec(62)3, Spec(65)1, Spec(66)5, L/2042, L/2058	See L/2592	For products, see documents quoted	n.a.	Nomenclature revision. Dried figs and toweling of flax, hemp or ramie originally Article XIX actions.

E. RENEGOTIATIONS UNDER ARTICLE XXVIII:5

Country	Request notified	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
AUSTRALIA	17.11.1967	SECRET/174 + Add.1-6	United States, EEC, India, Japan	Blankets. Knitted piece-goods. Lace. Valves. Hyposulphite. Cinema films. Photographic plates and films, paper	$A 10,046,000	
	6.6.1968	SECRET/177	United States	Vehicles	$A 2,963,000	
	15.8.1968	SECRET/178	EEC	Butchers' knives. Cooks' knives	$A 222,500	
	17.9.1968	SECRET/179	Sweden	Spring rollers for blinds - wooden rollers	$A 562,000	
	28.11.1969	SECRET/199 + Add.1-2	Czechoslovakia, EEC, Japan	Iron and steel products	$A 17,019,000	
	19.12.1969	L/3299 SECRET/204 + Add.1	Japan	Shot and angular grit of iron or steel	$A 411,000	
	30.1.1974	SECRET/218 +Add.1-3	United States, Japan	Photographic or cinematographic cameras. Tripods. Projectors	$A 9,497,000	
	20.1.1982	SECRET/279/ Add.2-12	Norway, Sri Lanka, India, Sweden, South Africa, Chile, Czechoslovakia, Austria, Finland, Cuba, Pakistan	Whole Schedule	No statistics	
	8.2.1982	SECRET/285/Add.1-2	---	Prepared/preserved meat (canned ham)	$A 1,369,000	
	19.9.1983	SECRET/302	---	Refrigerators	$A 1,954,000	
	3.10.1984	SECRET/309/Rev.1	---	Champagne, sparkling wine, still wine, vermouths	$A 31,622,000	

Country	Request notified	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
AUSTRALIA	3.3.1987	SECRET/324	---	Chemical products	$A 60,972,000	
	24.9.1987	SECRET/326	---	Vegetables	$A 29,011,000	
	8.9.1992	SECRET/337 + Add.1	---	uit juice and alcoholic beverage	$A 73,944,000	Conversion of specific into ad valorem rates
AUSTRIA	9.1.1975	SECRET/226 + Add.1	EEC	Macaroni, spaghetti, etc.	S 22,638,000	
	1.12.1975	SECRET/229 + Corr.1	---	TV picture tubes	S 357,371,000	
	26.2.1976	SECRET/231 + Add.1	EEC, Switzerland	Cheese	S 71,816,000	

Country	Request notified	Documents	Negotiations with
EEC	23.12.1974	SECRET/224 + Add.1-4	Australia, Canada
	1.10.1979	SECRET/259 + Add.1-7	Indonesia, Brazil, Thailand
	16.1.1981	SECRET/270 + Add.1	Switzerland
	24.2.1983	SECRET/296 + Add.	---
	12.4.1984	SECRET/310	---
	6.8.1984	SECRET/311	---
	6.11.1984	SECRET/312 + Add.1-2	Canada
	12.8.1985	SECRET/317 + Add.1	Japan
	16.3.1987	SECRET/325 + Add.1	Thailand
	14.8.1990	SECRET/333	---
	26.10.1993	SECRET/343	---
	20.12.1994	SECRET/347	---
EGYPT	24.5.1994	SECRET/345	Australia, Canada, New Zealand, Norway, Sweden, Switzerland, United States
FINLAND	7.6.1972	SECRET/206 + Add.1-2	Renegotiations not pursued. Request with in 1978
	13.3.1980	SECRET/261 + Add.1-2	---
	11.6.1980	SECRET/266	---
	18.10.1985	SECRET/320 + Add.1	---
	18.6.1986	SECRET/321	---

Country	Request notified	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
	8.5.1970	L/3297 SECRET/200 + Add.1-15	Finland, Sweden, Austria, Sri Lanka, Norway, see SECRET/200 Spain, Switzerland, United Kingdom, Greece, United States		R 429,545,609	

Country	Request notified	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
	31.8.1982	SECRET/292	---	Polyme articles	R 3,513,995	
	2.9.1982	SECRET/293	---	icke balls	R 151,373	
	17.11.1982	SECRET/295	---	oil Tall fatty acids	R 535,412	
	5.7.1983	SECRET/301	---	Lab rat material	R 218,412	
	23.9.1983	SECRET/303	---	Spark plugs (Part II)	R 402,252	
	24.9.1984	SECRET/306/Rev.1	---	of Wire carbon steel	R 166,909	
	22.7.1985	SECRET/315	United States	Items listed in document SECRET/315	No statistics	Results of negotiations related to notifications in SECRET/277, 288, 292, 293, 295, 301
	22.8.1985	SECRET/318	EEC	Items listed in document SECRET/318	No statistics	Results of negotiations related to notifications in SECRET/254, 258, 260, 264, 268, 271, 272, 277, 283, 284, 287, 288, 292, 293
SPAIN	3.4.1984	SECRET/308+Add.1-2	Canada, Sweden	Pentaerythrit	Million Pesetas 303.8	
SWEDEN	19.7.1979	SECRET/257 + Add.1	EEC	Horticultural products	SEK 68,838,000	
	12.5.1980	SECRET/265+Add.1-4	Poland, United States, Austria, EEC	Fruit and vegetable preparations	SEK 213,218,000	
SWEDEN	27.8.1981	SECRET/278	---			

Country	Request notified	Documents	Negotiations with	Products modified or withdrawn	Trade involved (yearly average)	Remarks
				Unalloyed, unwrought zinc	$409,160	
	22.4.1981	SECRET/273	---	Ethyl alcohol Ethanol	(av. 1977-79) $19,618,000 (1980) $71,423,000	
	22.4.1981	SECRET/274	---	Wire of iron or steel	$18,891,000	See doc. SECRET/314
	11.6.1985	SECRET/314 + Add.1-2	Canada	Orange juice		