

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXVIII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

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 Article XXVIII:1. It is however agreed that this paragraph will be reviewed by the Council for Trade in Goods five years from the date of the entry into force of the Agreement Establishing the MTO 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 above, 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 MTO Secretariat. Paragraph 4 of the "Procedures for Negotiations under Article XXVIII" (BISD 27S/26) shall apply in these cases.

3. In the determination of Members with a principal supplying interest (whether as provided for in paragraph 1 above or in Article XXVIII:1) or substantial interest, it is agreed that only trade in the affected product which has taken place on an m.f.n. basis shall be taken into consideration. However, trade in the affected product which has taken place under non-contractual preferences shall also be taken into account if the trade in question has ceased to benefit from such preferential treatment, thus becoming MFN trade, at the time of the renegotiation or will do so by its conclusion.

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 When a tariff concession is modified or withdrawn on a new product (i.e., a product for which three years' trade statistics are not available) the Member possessing initial negotiating rights on the tariff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 above, 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 MTO Secretariat. Paragraph 4 of the "Procedures for Negotiations under Article XXVIII" (BISD 27S/26) shall apply in these cases.

6. When an unlimited tariff concession is replaced by a tariff rate quota, the amount of compensation provided should exceed the amount of the trade actually affected by the modification of the concession. The basis for the calculation of compensation should be the amount by which future trade prospects exceed the level of the quota. It is understood that the calculation of future trade prospects should be based on the greater of:

(i) the average annual trade in the most recent representative three year period, increased by the average annual growth rate of imports in that same period, or by ten per cent, whichever is the greater; or

(ii) trade in the most recent year increased by ten per cent.

In no case shall the liability for compensation exceed that which would be entailed by complete withdrawal of the concession.

7. Any Member having a principal supplying interest, whether as provided for in paragraph 1 above or in Article XXVIII:1, in a concession which is modified or withdrawn shall be accorded an initial negotiating right in the compensatory concessions, unless another form of compensation is agreed by the Members concerned.