

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE II:1(b) OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

1. It is agreed that in order to ensure transparency of the legal rights and obligations deriving from Article II:1(b), the nature and level of any "other duties or charges" levied on bound tariff items, as referred to in that provision, shall be recorded in the Schedules of tariff concessions against the tariff item to which they apply. It is understood that such recording does not change the legal character of "other duties or charges".

2. The date as of which "other duties or charges" are bound, for the purposes of Article II, shall be the date of entry into force of the Agreement Establishing the MTO. "Other duties or charges" shall therefore be recorded in the Schedules of concessions at the levels applying on this date. At each subsequent renegotiation of a concession or negotiation of a new concession the applicable date for the tariff item in question shall become the date of the incorporation of the new concession in the Schedules of concessions. However, the date of the instrument by which a concession on any particular tariff item was first incorporated into the GATT 1947 or GATT 1994 shall also continue to be recorded in column 6 of the Loose-Leaf Schedules.

3. "Other duties or charges" shall be recorded in respect of all tariff bindings.

4. Where a tariff item has previously been the subject of a concession, the level of "other duties or charges" recorded in the Schedules of concessions shall not be higher than the level obtaining at the time of the first incorporation of the concession in the Schedules. It will be open to any Member to challenge the existence of an "other duty or charge", on the ground that no such "other duty or charge" existed at the time of the original binding of the item in question, as well as the consistency of the recorded level of any "other duty or charge" with the previously bound level, for a period of three years after the date of entry into force of the Agreement Establishing the MTO or three years after the date of deposit of the Schedule in question with the Director-General of the MTO, if that is a later date.

5. It is agreed that the recording of "other duties or charges" in the Schedules of concessions is without prejudice to their consistency with rights and obligations under the GATT 1994 other than those affected by paragraph 4 above. All Members retain the right to challenge, at any time, the consistency of any "other duty or charge" with such obligations.

6. For the purposes of this Understanding, the provisions of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes will apply.

7. It is agreed that "other duties or charges" omitted from a Schedule at the time of its deposit with, until the entry into force of the Agreement Establishing the MTO, the Director-General to the CONTRACTING PARTIES to the GATT or, thereafter, with the Director-General of the MTO shall not subsequently be added to it and that any "other duty or charge" recorded at a level lower than that prevailing on the applicable date shall not be restored to that level unless such additions or changes are made within six months of the deposit of the Schedule.

8. The decision in paragraph 2 above regarding the date applicable to each concession for the purposes of Article II:1(b) supersedes the decision regarding the applicable date taken by the GATT 1947 Council on 26 March 1980 (BISD 27S/22).