Article XXVII
Withdrawal or Withdrawal of Concessions

Any contracting party shall at any time be free to withhold or to withdraw in whole or in part any concession, provided for in the appropriate Schedule annexed to this Agreement, in respect of which such contracting party determines that it was initially negotiated with a government which has not become, or has ceased to be, a contracting party. A contracting party taking such action shall notify the CONTRACTING PARTIES and, upon request, consult with contracting parties which have a substantial interest in the product concerned.

Bibliography


Documents


Cross References

Art. 2205 NAFTA; Art. 22 Tratado de Asunción para la Constitución de un Mercado Común (MERCOSUR); Art. 63 Tratado de Montevideo (ALADI); Art. 135 Acuerdo de Integración Subregional Andino (“Acuerdo de Cartagena”); Art. 21 Agreement on South Asian Free Trade Area (SAFTA), Art. 107 Traité Modifié de l’Union Economique et Monétaire Ouest Africaine (UEMOA).

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A. Interpretation of the Provision

Among the several GATT provisions envisaging the possibility of withdrawal of tariff concessions Art. XXVII is the most self-explanatory. According to this provision, a concession listed in the appropriate schedule annexed to the GATT can be withdrawn in whole or in part if the government with which that concession was initially negotiated (and thus holding “initial negotiating rights”) has not become or has ceased to be a Member. Since schedules are made an integral part of the GATT by Art. II:7, the concessions provided for in them are to be considered terms of the treaty; it is thus evident that a withdrawal from the treaty of the Member with which a concession was initially negotiated implies a right of the “grantor state” to withdraw that concession.
Art. XXVII is rather succinct and vague with regard to the **procedure** implementing the right of withdrawal of concessions; the only express requirements are that the Member taking such action must **notify** the Council for Trade in Goods (formerly the CONTRACTING PARTIES) and consult with Members which have a substantial interest in the product concerned.\(^1\) As regards the notions of “Member holding initial negotiating right” and “Member having a substantial interest”, they correspond to the interpretation of these terms in Art. XXVIII.\(^2\) From a procedural point of view, however, there are **at least three important differences between Arts XXVII and XXVIII**. First, it seems that Art. XXVII permits a Member to take action first while, in the case of Art. XXVIII, negotiations have to precede the withdrawal of the concession.\(^3\) Second, Art. XXVII requires mere consultations with Members having a substantial interest, whereas Art. XXVIII obliges the Member willing to withdraw a concession to negotiate an agreement with the Members primarily concerned in that concession. Third, unlike in Art. XXVIII, no reference is made in Art. XXVII to the Members having a principal supplying interest.

According to a CONTRACTING PARTIES’ decision of 1980, any change in the schedules annexed to the GATT, including a modification resulting from action under Art. XXVII, has to be testified to by means of **certifications**.\(^4\)

**B. Practice Relating to Art. XXVII**

Art. XXVII has so far been **used with moderate frequency** only.\(^5\) From time to time this practice has been engendered by problems of state succession.\(^6\)

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\(^1\) It results from this that there is no time limit for the invocation of the article.

\(^2\) See Fabbricotti, Art. XXVIII, paras 16–9 and 26–8.

\(^3\) This distinction was pointed out by the US representative during the discussion of the draft Art. XXVII at the Geneva Session: see Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Verbatim Report: Fourteenth Meeting of the Tariff Agreement Committee Held on Tuesday, 9 September 1947, at 2.30 p.m. in the Palais des Nations, Geneva, E/PC/T/TAC/PV/14, 9 September 1947, 13.

\(^4\) L/4962. According to the Decision, certifications are issued if no objection has been raised by any other contracting party to the draft of changes in the texts of schedules previously communicated to the Director-General by a contracting party acting under Art. II, XVIII, XXIV, XXVII or XXVIII. For a general evaluation of the 1980 Decision see Council for Trade in Goods, Rectifications and Modifications to Schedules of Tariff Concessions and their Certification: Note by the Secretariat, G/L/190, 6 October 1997; Nottage & Sebastian, JIEL 9 (2006) 4, 989, 999–1000.

\(^5\) For a survey see WTO, GATT Analytical Index, Vol. II, 859–862; Mavroidis, 84–86.

\(^6\) In this connection, it was noted that: “[t]he GATT Schedules tend to mirror many of GATT’s state succession problems”: see Jackson, 105.