

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

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Group of Negotiations on Goods (GATT)  
Negotiating Group on GATT Articles

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COMMUNICATION FROM THE EUROPEAN ECONOMIC COMMUNITY

The following communication, dated 18 May 1987, has been received from the delegation of the European Economic Community with the request that it be circulated to members of the Group.

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In the context of the exercise in which the Group is engaged, the Community has proposed a review of Article XXV:5 regarding the grant of waivers.

The possibility, in exceptional circumstances not elsewhere provided for in the General Agreement, of waiving an obligation imposed upon a contracting party by the said Agreement, is undoubtedly one of the most important prerogatives of the CONTRACTING PARTIES.

The General Agreement is an individual and collective contract, and any decision granting a waiver clearly has an impact on the balance of rights and obligations of the contracting parties.

This is all the more true where waivers under Article XXV:5 have been granted without any time limitation, thus creating virtually permanent privileged situations for the beneficiary, even vis-à-vis new contracting parties which have never had an opportunity to vote on such waivers.

Already in 1956, the question of the grant of waivers under Article XXV:5 had given rise to concern and had led the CONTRACTING PARTIES to adopt guiding principles for the consideration of applications for waivers from Part I of the General Agreement or from other important obligations under that Agreement. That procedure (cf. BISD, 5S) envisages, inter alia, that any decision granting a waiver should also provide for an annual report and, where appropriate, for an annual review of the operation of the waiver.

One can also see that in recent times, the consideration of applications for waivers under Article XXV:5 has led to the inclusion, in the text of decisions, of additional conditions such as a fixed period of validity for the waiver concerned, special consultation procedures, or specific reference to the right of contracting parties which consider themselves adversely affected to invoke Articles XXII and XXIII.

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In line with the 1956 Decision, and in the light of a review of the various waivers granted, one could draw up a set of principles and modalities together with criteria of economic justification for the grant of waivers under Article XXV:5. Where appropriate, waivers already granted should be aligned with such new general principles and modalities as the CONTRACTING PARTIES might adopt.

The aim of such an exercise is not to remove the flexibility now existing in this area, but rather to prevent the perpetuation of, or to forestall, virtually permanent privileged situations.