

GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED

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MEMORANDUM BY THE EUROPEAN COMMUNITIES CONCERNING
DEFINITIVE APPLICATION OF THE GENERAL AGREEMENT

The attached memorandum by the European Communities is communicated to the Group under item 5 of the annotated provisional agenda (CG.18/W/18) for the fifth meeting of the Group, to be held on 22 and 23 September 1977.

DEFINITIVE APPLICATION OF THE GENERAL AGREEMENT

Memorandum by the European Communities

The definitive application of the General Agreement under Article XXVI is in the highest sense a question of general scope, of interest for all contracting parties.

Given the legal clarity that definitive acceptance of the General Agreement would bring in respect of operation of GATT based on equal and effective rights and obligations for the contracting parties, such acceptance should be considered as a fundamental element of international co-operation, as a proof of the contracting parties' confidence in the future of GATT, and as a confirmation of the value of GATT as an instrument for trade liberalization and for combating protectionist tendencies.

In 1965, the Executive Secretary of GATT stated: "The definitive acceptance of the General Agreement at this time would be a timely reaffirmation of their intention to do so as a permanent element of international co-operation. The psychological and political impact of such a move at this time would strengthen the standing and authority of the General Agreement and of the CONTRACTING PARTIES." In the present economic and trade environment, these remarks are more relevant than ever and the Communities subscribe to them fully.

Although the General Agreement has been in force for nearly thirty years, the contracting parties are still applying it (Part II) on a provisional basis pursuant to the Protocol of Provisional Application of the General Agreement and to the various protocols of accession. Provisional application was originally intended to be a temporary arrangement pending the GATT's entry into force definitively under Article XXVI.

Notwithstanding efforts by the contracting parties on numerous past occasions, no solution has yet been found to this question of definitive application.

The Multilateral Trade Negotiations that are now entering into their final phase no doubt represent at the same time an opportunity to settle questions of general interest. The question of definitive application of the General Agreement comes to mind quite naturally. Indeed, the MTN will probably result in the conclusion of certain multilateral agreements, in particular in the non-tariff field. The various parties would have to carry into their domestic legislation the new obligations taken on, thus achieving fuller and stricter application of the General Agreement in various fields of application of this instrument. The question arises, then, whether it would not be justified in these conditions to extend this operation to the General Agreement as a whole. Conversely, in the absence of such extension, we would find ourselves in a somewhat paradoxical situation where the General Agreement would still be applied provisionally, while certain provisions of the GATT, or those of multilateral agreements concluded in the MTN, would be carried into domestic legislation.

Furthermore, the MTN will likewise afford an opportunity for progress toward bringing into line provisions of national legislation that are inconsistent with the ordinary law of the General Agreement but that fall within the field of application of the Protocol of Provisional Application. Such progress is essential. Indeed, in these past thirty years, several contracting parties have replaced legislation that fell within the field of application of the Protocol of Provisional Application by other laws that are consistent with the rules of the General Agreement and therefore no longer give rise to any difficulties for definitive application of the General Agreement.

Other contracting parties still retain privileges acquired under their legislation existing prior to the General Agreement, even where the legislation concerned has been revised at national level; such an attitude does not meet the "reasonable expectation" of the other contracting parties which have grounds for considering that after thirty years of application of the General Agreement, all the contracting parties would have aligned themselves with the rules of ordinary law set forth in the General Agreement.

No doubt this harmonization may still encounter difficulties at internal level. In order to strengthen the political will to achieve definitive application of the General Agreement under Article XXVI, one could envisage transitional solutions allowing the contracting parties concerned the necessary time to adjust their domestic legislation to the provisions of the General Agreement, to the extent that such solutions do not delay implementation of obligations formally negotiated in the Tokyo Round.

With a view to action of this kind by the contracting parties it would no doubt be useful from the practical aspect, to establish an inventory on the basis of information that would be furnished by governments, of legislation existing prior to the General Agreement and not consistent with it (Part II), or covered by protocols of accession, and still in force today and, furthermore, to ascertain the intentions of the governments concerned regarding application of the General Agreement under Article XXVI.

The European Communities would like to learn the reactions of their partners to these ideas.