

GENERAL AGREEMENT ON

RESTRICTED

TARIFFS AND TRADE

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UNITED STATES - WITHDRAWAL OF CHILE FROM GENERALIZED SYSTEM OF PREFERENCES

Request for Article XXII:1 Consultations by Chile

The following communication, dated 8 January 1988, has been received from the Permanent Delegation of Chile with the request that it be circulated to the contracting parties.

As you know, by a letter dated December 1987 (reference No. 087), this Delegation made a request to the Delegation of the United States of America for consultations under Article XXII:1 of the General Agreement on Tariffs and Trade in connection with the discriminatory withdrawal of Chile from the coverage of the United States' GSP scheme.

The United States action is causing injury to Chile's export interests.

Chile observes the provisions of the GATT and applies a policy consistent with the principles of free trade, most-favoured-nation treatment and non-discrimination.

It cannot accept that the United States should decide to take an arbitrary and discriminatory measure in respect of a developing country which in matters of international trade has always observed in full the provisions of the General Agreement. By this action, the United States is establishing a dangerous precedent which, in conjunction with others, could ultimately lead to serious politization of the organization of which you are Director-General.

An decision to withdraw Chile from the coverage of the GSP scheme of the United States is furthermore technically and legally unjustified. Part IV of the General Agreement lays down a set of provisions in favour of developing countries and a set of obligations for developed countries. Chile considers that the United States has violated those obligations and provisions and accordingly, under Article XXXVII:5 of the General Agreement, we have requested from the Government of the United States of America full and prompt opportunity for consultations under the normal procedures of the GATT. In this regard, it is our understanding that such procedures are initially those laid down in Articles XXII and XXIII of the General Agreement.

The withdrawal measure announced by the United States is, however, also in breach of the Decision of the CONTRACTING PARTIES of 28 November 1979 (GATT document L/4903) on "differential and more favourable treatment, reciprocity and fuller participation of developing countries". Indeed, that Decision lays down the two basic characteristics required of GSP schemes, namely:

- (a) They must be unilateral, in other words, developed countries have full liberty to grant or not grant them, as they wish.
- (b) They must be non-discriminatory, in other words, once a developed country decides to establish a GSP scheme, it may not apply the preferences in a discriminatory manner among developing countries.

The two characteristics mentioned above can be stated briefly as follows: GSP schemes are subject to the basic principle of "non-discriminatory unilateralism".

It is logical that this should be so, it is logical and consistent with the GATT principles that a GSP scheme, while unilateral in its initial adoption, must be non-discriminatory in its application to developing countries. Indeed, as is well-known, the most-favoured-nation clause and the principle of non-discrimination constitute the basic premise of the GATT, its fundamental binding material. Exceptions to that principle were specifically established in the General Agreement, and no new exceptions may be devised without a legal text to that effect. In respect of the GSP, and as regards countries which have acceded to the General Agreement, the legal text authorizing an exception is precisely the above-mentioned Decision of the CONTRACTING PARTIES of 28 November 1979 which requires non-discriminatory application of GSP schemes. Furthermore, it is a well-known principle of legal interpretation that exceptions from a legal norm must be interpreted restrictively, and accordingly one cannot see how, from the legal aspect, a developed contracting party can apply the GSP scheme in a discriminatory manner.

In view of the foregoing, a developed contracting party should not withdraw GSP coverage from some developing countries while continuing to apply it to others. In consequence, by withdrawing its GSP scheme from a developing contracting party such as Chile, the United States of America has infringed the basic principles of the GATT, and likewise the Decision mentioned above.

On numerous occasions we have expressed the view in GATT that the rule of law must prevail in GATT if we really wish to carry forward its activities in a serious framework. What would be gained by negotiating important instruments in the Uruguay Round today, if tomorrow those instruments are infringed on any pretext? We believe that the United

States would be paying best possible tribute to the GATT, and would make its support of trade liberalization really convincing, by observing the GATT principles mentioned above and re-integrating Chile in its GSP scheme, and likewise any other developing contracting party that might be excluded from its coverage.

Having regard to the importance that my country attaches to this matter, I would appreciate your circulating this letter, and also letter No. 087 already referred to, to the other contracting parties.

Letter from the Delegation of Chile to the Delegation of the United States
of America

No. 087

Geneva, 29 December 1987

Sir,

As you know, Part IV of the General Agreement on Tariffs and Trade establishes a set of provisions in favour of developing countries and a set of obligations for developed countries. In particular, those obligations are set forth in Article XXXVII, paragraph 5 of which stipulates that each contracting party shall afford to any other interested contracting party or contracting parties full and prompt opportunity for consultations under the normal procedures of the General Agreement with respect to any matter or difficulty which may arise.

While GSP schemes are unilateral - in the sense that developed countries may or may not grant them, as they wish - such schemes cannot and may not be discriminatory in any way. In other words, once a developed country decides to establish a GSP scheme - a unilateral decision - it may not apply it in a discriminatory manner. For this reason, it may not withdraw its GSP scheme from some developing countries while continuing to apply it to others.

This basic principle of "non-discriminatory unilateralism" has its legal basis in the Decision of the CONTRACTING PARTIES of 28 November 1979 (GATT document L/4903) on "differential and most favourable treatment, reciprocity, and fuller participation of developing countries", which, in referring to the GSP in paragraph 2(a), states in a footnote: "As described in the Decision of the CONTRACTING PARTIES of 25 June 1971, relating to the establishment of 'generalized, non-reciprocal and non-discriminatory preferences beneficial to the developing countries' (BISD 18S/24)."

Accordingly, withdrawal of Chile from the coverage of the GSP scheme of the United States of America is in breach both of the provisions of Part IV of the General Agreement and of the aforementioned Decision of the CONTRACTING PARTIES to GATT.

In pursuance of Article XXXVII:5 of the General Agreement and in accordance with Article XXII:1 of that General Agreement, I am hereby making representations regarding the withdrawal measure which the United States has decided to apply to Chile in respect of the United States GSP scheme and requesting consultations on the matter under Article XXII:1 of the General Agreement.

In view of the importance of these consultations for our exports, I would greatly appreciate it if they could take place promptly.

Accept, Sir, the renewed assurances of my highest consideration.

(Signed) Fernando Morales Barria
Chargé d'affaires, a.i.