

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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COMMUNICATION FROM THE EUROPEAN ECONOMIC COMMUNITY

The following communication, dated 14 October 1987, has been received from the delegation of the European Economic Community with the request that it be circulated to members of the Group.

Protocol of Provisional Application

1. At the initial meeting of the Negotiating Group on GATT Articles, the Community requested that the Protocol of Provisional Application should be among the GATT Articles, provisions and disciplines to be reviewed by the Group. The Community now proposes that the review should concentrate on paragraph 1(b) of the P.P.A., the so-called "grandfather clause".
2. The Protocol of Provisional Application was devised as a means to enable the General Agreement to be put into effect even though certain delegations, whilst accepting Parts I and III of the General Agreement, were unable to fully commit their governments to Part II. At that time it was feared that the momentum of launching the General Agreement might be lost if application were delayed until completion of all national procedures.
3. The conditions which gave rise to the need for provisional application of the General Agreement have greatly changed and the requirements for special dispensation from certain parts of the General Agreement on the grounds of the existence of previous legislations have virtually disappeared. Therefore the Community has for some time questioned the relevance for the continued availability of paragraph 1(b) of the Protocol, exempting certain pre-1947 legislation from key GATT provisions. The Community's doubts are based on the following considerations:
  - The continued possibility to justify certain forms of trade restriction on the basis of legislation pre-dating the establishment of the General Agreement is an anachronism.
  - There is insufficient information on what "existing legislation" is, or is claimed to be, subject to paragraph 1(b). An enquiry was undertaken by the GATT secretariat in 1965 to identify legislation claimed as subject to the P.P.A. (L/2375), but there is no requirement to notify such legislation. This gives rise to uncertainty and confusion.

- In 1948, a Working Party defined the scope and limitation of paragraph 1(b): the notion was established that only legislation of a "mandatory character" which cannot be modified by executive action should be exempted. This notion gave rise to differential interpretation in the intervening years. Different presumptions resulted in a number of GATT disputes. However, a recent decision by the CONTRACTING PARTIES, following the adoption of the report of the Panel on the U.S. Manufacturing Clause (L/5609) substantially curtailed the applicability of the P.P.A., even where "mandatory" legislation was involved.
- Recourse by some contracting parties to paragraph 1(b) and not by others, has tended to distort the balance of rights and obligations in GATT.

4. In 1965 the Director-General of the GATT called for an end to the provisional application of the GATT. The Community believes the time is right to examine carefully the relevance of the provisions for provisional application and particularly paragraph 1(b).

5. As a first step, it is proposed that the GATT secretariat should be asked to conduct a new enquiry among contracting parties to have up-to-date and more complete information on measures claimed to be covered by paragraph 1(b) of the P.P.A. In pursuing this enquiry, only measures which pre-date 1948 or the date of accession of individual contracting parties, and which have not undergone any legislative change, should come into consideration. Such an enquiry should be made without prejudice to the continued justification or otherwise of the measures notified under the terms of the P.P.A. as presently understood.

6. The proposed review does not ipso facto imply that the Community considers that the Protocol of Provisional Application, or parts thereof, should be renegotiated.