

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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COMMUNICATION FROM THE DELEGATION OF INDIA

The following communication, dated 17 November 1987, has been received from the delegation of India with the request that it be circulated to members of the Group.

PROPOSAL FOR REVIEW OF ARTICLE XXIV

1. When GATT came into being it was not perceived that the customs union exception to the MFN obligation would ever cover a substantial proportion of world trade, as at that time only a few integration arrangements were in sight. However, subsequent developments have led to economic integration involving important trading entities. Of late, there has been a tendency for the proliferation of free trade area agreements between important trading partners and even sometimes on grounds which are mainly political.

2. There has been a general relaxation in the observance of conditions laid down for such integration arrangements. As pointed out by the GATT secretariat, it is significant that "Starting with the examination of the Treaty of Rome almost no examination of agreements notified under Article XXIV has led to a unanimous conclusion or specific endorsement by the Contracting Parties that all the legal requirements of Article XXIV have been met."

3. Customs unions and free trade areas have formed a fertile ground for trade conflicts. Article XXIV is replete with concepts about which there are conflicting interpretations. Even in regard to the major question of conformity with GATT of notified arrangements, the absence of recommendations by CPs has been interpreted differently. Some contracting parties believe that in the absence of recommendations, conformity with GATT can be presumed; others have held the view that in the absence of a final recommendation by the CPs on the conformity of a particular agreement with the provisions of Article XXIV, the legal status of such an agreement remains open. Apart from this general point, conflicting interpretations have been given inter alia in respect of the following provisions:

- (a) coverage of the term "duties and other restrictive regulations of commerce" - are revenue duties covered;

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- (b) application of the phrase "except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV, and XX" - what is the implication of Article XIX not being mentioned;
- (c) interpretation of the term "substantially all trade" - if agriculture is excluded or if only one group of countries eliminates the trade restrictions can it be deemed to cover substantially all trade;
- (d) interpretation of the term "substantially the same duties and other regulations of commerce" - is it necessary to have common quotas;
- (e) interpretation of the term "general incidence of duties";
- (f) whether Article XXIV:12 limits the applicability of other provisions of GATT or merely limits the obligation of federal states to secure the implementation of these provisions; and
- (g) in the renegotiations following infringement of tariff commitments in a customs union, how far should account be taken of tariff reductions by the members of the customs union on other items.

4. Article XXIV has provided the route to contracting parties to depart from the norm of non-discriminatory trade in respect of a large proportion of world trade. At the time of the preparatory conference on GATT, the full economic implications of a customs union or free trade area were dimly understood. The draftsmen of GATT seem to have been influenced by the belief then prevalent among economists that customs union was a step towards global free trade - a belief which is now disputed.

5. For these reasons we support the proposal to take up Article XXIV as a whole for review and re-examination for negotiations on the basis of specific proposals.