

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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ARTICLE XXVI:5(c)

Communication from Japan

The following communication, dated 3 February 1988, has been received from the delegation of Japan with the request that it be circulated to members of the Group.

1. With respect to Article XXVI:5(c), the recent report prepared by the Secretariat (MTN.GNG/NG7/W/31) points out that at least 29 countries may accede to GATT under this Article.
2. Japan believes that this fact presents sufficient reason to bring this Article under review in this group. In addition to the points for discussion already tabled by the United States (MTN.GNG/NG7/W/36), we would like to raise the following points:
3. In most cases, countries acceding to the GATT under the provisions of Article XXVI:5(c) have required a considerable period of time after independence before they could establish their commercial policy and express their intention to join the GATT.
4. However, under the current GATT practices, rights and obligations acquired by those countries under the GATT will be applied retroactively from the time of their independence when accession is certified by the Director-General (BISD 12S/33 and L/6296). Such practices, we consider, not only impair the legal stability of contracting parties under the GATT, but also engender requirements difficult to meet in reality.
5. In concrete terms, when a newly independent country tries to accede to the General Agreement under Article XXVI:5(c), recommendation of de facto application is made.
6. However, since the recommendation does not legally obligate the contracting parties to apply all the rights and obligations under the GATT to the de facto regime, there could be a case in which certain contracting parties do not apply all the rights and obligations under the General Agreement to the de facto regime. (For example, certain contracting parties convinced of the incompleteness of the de facto regime may not apply all the rights and obligations of the General Agreement with respect to the country under the de facto regime, based on the reciprocity provided for in the recommendation).

7. In this sort of situation, we consider it unreasonable to apply the General Agreement to the acceding country in a retroactive manner to the date of its independence, and to obligate her to redress the measures already in place.

8. Retroactive system could cause problems to the newly acceding country as well. For example, in cases where the acceding country has raised or introduced tariffs or import surcharges after its independence, the retroactive application of the General Agreement dating back to the date of independence brings about violation of the obligation set forth in Article II:1(b). We doubt if it is realistic to obligate the country concerned to abolish the tariff schedule or surcharges existing.

9. We therefore, would like to propose that the contracting parties study whether it is realistic to apply the General Agreement from the date of certification by the Director-General to countries acceding under Article XXVI:5(c).

10. We would like to remind all the parties concerned that the proposal is a preliminary one, without any prejudice to Japan's future position in negotiation.