MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

RESTRICTED
MTN.GNG/NG7/W/50
22 September 1988
Special Distribution

Original: Spanish

Group of Negotiations on Goods (GATT)
Negotiating Group on GATT Articles

COMMUNICATION FROM CHILE

The following communication, dated 16 September 1988, has been received from the delegation of Chile with a request that it be circulated to members of the Group.

---

1. Introduction

We are concerned to see that in the majority of cases the Articles proposed for examination and revision in the Group concern exceptions, either of a general nature or to certain basic principles of the General Agreement, such as the principle of non-discrimination or of open markets.

We are concerned that it is through exceptions that in practice the most abuses and excesses have been committed, or rules circumvented and principles infringed; for while we understand that exceptions provide a degree of flexibility required for the system's survival, they cannot become the general rule, still less constitute an open door for undermining the multilateral trading system to an ever-increasing extent.

Chile therefore believes that in its current article-by-article analysis and approach the Group should not lose sight or forego consideration of a comprehensive approach to the General Agreement and the GATT system, in order to maintain the balance between the rights and obligations of the system and the basic harmony essential to an agreement of this kind.

It appears from the various submissions and statements made in the Group by the various participating delegations that in practice some shortcomings and inadequacies exist when the disciplines and articles in question are applied, and these derive not from any specific article but rather from the set of "alternatives" open to countries when they wish to apply exceptional measures. That is to say, there are articles which are in practice substitutes, since contracting parties invoke some more frequently than others, there are articles which are currently not invoked, while others are under-used, depending on whether or not there is, for example, a right to compensation or retaliation by the affected party, or whether or not there is an obligation to notify, and thus be open to surveillance, or whether or not it is necessary to obtain the approval of the contracting parties to invoke the article in question, and so forth.

For all these reasons, we are inclined to prefer a comprehensive approach, and support the proposals for the analysis and revision of Article XXIV (exception to the principle of non-discrimination), the Protocol of Provisional Application as regards the "grandfather clause" (general exception) and Article XXV:5 allowing waivers in exceptional circumstances. This is without prejudice to what we have stated with regard to other articles not mentioned in this communication and which have been discussed in this or other Groups.

Article XXIV

It is clearly necessary to establish certain agreed criteria in order to overcome the problems of interpretation and application of Article XXIV that have arisen in practice: for example, as to whether "duties and other restrictive regulations of commerce" include fiscal charges; what happens in the case of permitted trade restrictions not explicitly referred to in paragraph 8(a)(i) and (b) of Article XXIV; what is meant by "substantially all the trade" (in Article XXIV:8(a)(i) and (b)); the interpretation of "a plan and schedule" and "within a reasonable length of time", etc.

The aim is to avoid the misuse of this Article (which often implies that other GATT articles are not being sufficiently or properly applied, such as Article XXV:5, under which many existing preferential agreements could be justified in a manner more consistent with the General Agreement, or Article XIX, which only permits non-discriminatory application of safeguards) and the violation of the principle of non-discrimination, as well as the proliferation of regionalism and bilateralism which strike at the very heart of the GATT.

3. Protocol of Provisional Application. Grandfather Clause

Under paragraph 1(b) of the Protocol of Provisional Application, legislation inconsistent with the General Agreement has been allowed to be maintained, providing it is mandatory.

While over time this exception has been losing importance, both because contracting parties have been adapting their legislation, so that much of the legislation existing in 1947 or at the time of a party's accession has disappeared, and also because some of the legislation has been partially superseded with the signing of the Codes (subsidies and countervailing measures), we consider that the existing legislation clause should be eliminated within a reasonable period for all contracting parties.

A first step in this direction would be to compile information on all mandatory legislation inconsistent with Part II of the General Agreement which countries maintain pursuant to paragraph 1(b) of the Protocol.

4. Article XXV:5

Article XXV:5 allows another major exception to the General Agreement which is being misused in practice, in that contracting parties which have obtained the waiver in question have been able to maintain it indefinitely, whereas by definition such exceptions are temporary because they must be invoked solely in "exceptional circumstances".

We therefore agree with other proposals to the effect that it is necessary to establish time-periods and review mechanisms so as to be able to end existing waivers which are not necessary, and also to set criteria to define the exceptional circumstances justifying such waivers.

5. Article XXXV

With regard to this Article, which constitutes an exception to the principle of non-discrimination, it has been proposed that the Article be revised so as to broaden the right of non-application of the General Agreement between two contracting parties, by allowing them to decide the question of non-application in the case where they conduct tariff negotiations, once the results of the negotiations have been examined.

Chile is concerned at this proposal in that it encourages and opens up a further possibility for countries with greater bargaining power to discriminate and bring pressure to bear on those with less bargaining power, which hardly contributes towards the establishment of a non-discriminatory multilateral system.