

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG7/W/69

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Negotiating Group on GATT Articles

ARTICLE XXV:5

Communication from the European Economic Community

The following communication, dated 22 February 1990, has been received from the delegation of the European Economic Community with the request that it be circulated to members of the Group.

In its communication to the Negotiating Group on GATT Articles of 18 May 1987 (MTN.GNG/NG7/W/4) the Community drew attention to the need for applying certain principles to the granting of waivers from GATT obligations under Article XXV:5. In the great majority of cases the need for continued application of a waiver lapses over time; in other instances many waivers already incorporate their own time limit. A small number of waivers have however become an almost permanent feature of the GATT system. As the Community document of 1987 made clear, the objective is not to remove the flexibility offered by the provisions of Article XXV:5 but to prevent the perpetuation of, or to forestall virtually permanent privileged situations.

The European Community therefore proposes that CONTRACTING PARTIES agree that the following principles be applied to the grant of waivers under Article XXV:5

PRINCIPLE No. 1 - MAXIMUM TIME LIMIT

A specific maximum time limit should be set for the application of a waiver. Such a time limit need not be identical in all cases, since quite different circumstances and considerations may obtain. The appropriate time limit should however be fixed at the time the waiver is granted.

PRINCIPLE No. 2 - CLEAR CRITERIA OF ECONOMIC JUSTIFICATION

Grant of a waiver should be clearly and precisely linked to a given set of criteria of economic justification and its continued application up to the maximum time limit should depend on the extent to which those criteria continue to remain in force.

PRINCIPLE No. 3 - NO FEASIBLE ALTERNATIVE

Any contracting party seeking a waiver from its GATT obligations under Article XXV:5 shall state the reasons why it is not using other provisions of the General Agreement as a basis for the policy objectives being pursued.

PRINCIPLE No. 4 - ANNUAL REVIEW

The Council shall review annually the application of all waivers currently in force and shall make a determination in particular on whether the criteria which justified the granting of the waiver continue to be met, whether the country benefitting from the waiver continues to respect the conditions laid down by the CONTRACTING PARTIES, and whether or not the waiver should continue in force or be replaced by alternative measures consistent with the General Agreement.

PRINCIPLE No. 5 - PHASING OUT OF EXISTING WAIVERS

Existing waivers should be terminated after X years, or be replaced by alternative measures consistent with the General Agreement.

PRINCIPLE No.6 - DISPUTE SETTLEMENT

The existence of a waiver shall not affect the right of any contracting party to invoke the dispute settlement procedures of the General Agreement where it considers that benefits accruing to it under the General Agreement are nullified or impaired.