

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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DRAFT COMMUNICATION FROM THE EUROPEAN COMMUNITIES

Protocol of Provisional Application

In a previous communication (MTN.GNG/NG7/W/27, the Community proposed a review of the Protocol of Provisional Application. As a first step, the Group agreed that information be requested from governments on the legislation which they consider to be covered by the terms of paragraph 1(b) of the PPA, the so-called "grandfather clause".

The European Community considers that the question of the provisional status of the GATT is an important systemic issue which needs to be tackled in the Uruguay Round. A number of considerations suggest that the opportunity should not be missed to reach a collective decision to put the General Agreement on a firmer legal basis:

- As a global undertaking, the Uruguay Round aims at strengthening the role of GATT and improving the multilateral trading system. The work of the FOGS Group is particularly relevant in this respect, since a number of decisions have been taken or are being considered to enhance the institutional status of the GATT. A decision to put an end to the special derogations allowed under the PPA and Protocols of Accession would constitute a timely signal of commitment to the multilateral trading system, whose value greatly exceeds any residual practical significance of the PPA.
- The PPA was never conceived as a permanent derogation from Part II of the GATT. The aim was rather to allow for the rapid entry into force of the General Agreement pending an expected decision to bring about its definitive application. After more than 40 years, "provisional application" constitutes an anachronism. Moreover, it appears - even in the absence of a comprehensive and up to date study - that in most cases governments have effected the necessary legislative changes, so that the number of concrete legal provisions covered by the grandfather clause (paragraph 1(b) of the PPA) may be rather limited in number. Apart from the grandfather clause the PPA has only one other provision of note: governments can cease to apply the PPA after only 60 days notice, whereas withdrawal from the General Agreement if definitively applied would require 6 months' advance notice. But this is a secondary issue, and it seems clear that over time the main *raison d'être* of the PPA has been eroded.

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- Even if limited in scope, the PPA continues to be a source of uncertainty and imbalance in the rights and obligations of contracting parties. It is fundamentally inequitable for countries which have never claimed PPA cover or that have brought their legislation into conformity with GATT obligations to accept a situation of permanent exception from GATT obligations.
- On the basis of the above considerations, the Community proposes that a decision be taken in the Uruguay Round to phase-out the derogation for existing legislation contained in paragraph 1(b) of the PPA and equivalent provisions in Protocols of Accession. In order to facilitate the acceptance of such a commitment by all contracting parties a short transitional period (of X years) could be established during which legislation covered by the terms of the PPA could still be protected against claims of GATT illegality. This transitional period should be the same for all contracting parties and not include any form of reserve for specific pieces of legislation. If a country considers that it would not be possible to amend certain legislation within the time-limit envisaged, a request could be made for a waiver that would be subject to specific time-limits and conditions. It goes without saying that if a particular measure which a government considered to be PPA covered is subject to commitments undertaken in other other Negotiating Groups, the phase-out period would be superseded by these specific commitments.

The solution suggested here has the merit of simplicity. There would be no need to establish a full inventory of PPA covered legislation since governments would be given sufficient flexibility to make their own judgement as to the consequences of the expiry of PPA cover for their domestic legislation. Thus, during the transitional period the legal status would remain unchanged and, in case of dispute, a country could continue to invoke the PPA as a defence to claims of GATT illegality. Obviously, at the end of such period the legality of domestic legislation would only be judged in conformity with the substantive obligations under Part II of the General Agreement.