

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Group of Negotiations on Goods (GATT)

Negotiating Group on GATT Articles

GRANDFATHER CLAUSES IN THE PROTOCOL OF PROVISIONAL APPLICATION
AND IN ACCESSION PROTOCOLS

Note by the Secretariat

At its meeting of 29-30 March the Negotiating Group discussed the proposal by the European Communities (in MTN.GNG/NG7/W/70) that the derogation provided in paragraph 1(b) of the Protocol of Provisional Application and in the equivalent provisions of Accession Protocols for mandatory legislation inconsistent with Part II of the General Agreement should be terminated. The effect of this proposal, if enacted, would be that after an agreed period such legislation would cease to have the legal cover provided by these "grandfather clauses".

The secretariat was asked to advise on the legal distinction between legislation covered by the general grandfather clause, in Accession Protocols, and other derogations contained in such Protocols. The question was asked whether a valid and operationally secure distinction could be drawn between these two classes of derogations.

As is made clear by the draft decision circulated with the Chairman's informal note dated 27 April, the secretariat's view is that there is no difficulty in distinguishing the provisions in Accession Protocols which correspond to paragraph 1(b) of the PPA. All Accession Protocols contain such a provision, in language identical to that of the PPA. The effect of the provision is the same - that the acceding country may apply Part II of the General Agreement to the fullest extent not inconsistent with existing legislation.

If it were agreed that the derogations provided in these "grandfather clauses" should expire on a given date, the effect would simply be that these provisions could not thereafter be put forward as providing legal cover for inconsistent legislation. This would have no effect on any other provisions in Accession Protocols. Some of these contain exemptions from specified GATT obligations which have been negotiated during the accession process; since the relevant parts of the Accession Protocols would remain in force the legal status of these exemptions would be unchanged. In the secretariat's view there would be no difficulty for contracting parties or for panels, in the event of a dispute, in determining which inconsistent legislation was covered by a specific exemption and was therefore not affected by the termination of the "grandfather clause".

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Different considerations may be said to apply to legislation subject to a specific exemption as compared with that covered by a general "grandfather clause". It might be argued that the former is a specifically bargained condition for entry to the GATT, whereas the latter is automatically accorded to all parties to the General Agreement and applies only to mandatory legislation. These differences may be important from a negotiating or policy standpoint. However, from the strictly legal point of view the status of both kinds of derogation is the same, in that they form part of an agreed protocol which cannot be modified without the consent of the parties thereto. This is equally true of the PPA and of Accession Protocols.

In summary, the secretariat's view is that it would be possible to give effect to the proposal of the European Communities without calling into question the status of specific exemptions in Accession Protocols and without danger of creating subsequent difficulties of interpretation of the decision.