

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG7/W/74

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Negotiating Group on GATT Articles

ARTICLE XXXV

Proposal from the United States

The following proposal has been received from the delegation of the United States with the request that it be circulated to members of the Group.

Introduction

Article XXXV provides that any contracting party has the right to withhold all GATT benefits, or alternatively the application of its Schedule of Concessions, from another contracting party, if this right is invoked at the time of accession, and if the two contracting parties have not entered into tariff negotiations with each other. In MTN.GNG/NG7/W/35 (16 November 1987), the United States communicated its belief that a contracting party negotiating terms of accession with an applicant country should not be denied the right to consider the full results of the negotiations before deciding whether application of the General Agreement is appropriate. The position of the United States with regard to this issue has not changed.

We outline below, for consideration by the Negotiating Group, a possible approach to this issue. We hope to resolve the problem we see with the operation of Article XXXV by means of a practical understanding of what the terms of the Article mean with regard to present day procedures for accession of countries to the GATT.

Background

In the early history of the GATT it was usual for countries to accede to the GATT during a negotiating round. Acceding countries and contracting parties participated more or less equally in the tariff reduction negotiations, exchanging tariff request lists, etc., with the clear understanding that these negotiations would lead to both GATT membership of the acceding country and binding of the tariff concessions made by that country in the course of the round.

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In 1949, the Chairman of the Contracting Parties determined that delegations had entered into the "tariff negotiations" referred to in paragraph 1(a) of that Article "when they had a first meeting scheduled by the Tariff Negotiations Working Party at which they had exchanged lists of offers" (BISD Vol. II, p. 35). However, it would seem that the 1949 ruling has no apparent relevance to the accessions process followed today, under which accessions no longer occur as part of a negotiating round but are highly structured individual actions undertaken separately from any negotiating round which may be underway.

In practical terms it seems that a contracting party should not forfeit its right under Article XXXV of the GATT if it engages in discussions pursuant to the establishment of a GATT schedule of concessions with a country that is in the process of acceding to the GATT. In the event that the schedule of concessions ultimately established is unacceptable to a contracting party, or for any other reason, that contracting party should have the right not to apply the GATT to the acceding country.

Proposal

We suggest that as a practical matter, the discussions between a contracting party and an acceding country should not be considered to be "tariff negotiations" in the sense of Article XXXV.

Proposed Text

For the purposes of paragraph 1(a) of Article XXXV of the GATT, discussions entered into by a contracting party and an acceding country prior to or pursuant to the establishment of a GATT schedule of concessions by the acceding country do not constitute "tariff negotiations" within the meaning of that paragraph.