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CUSTOMS UNIONS AND FREE-TRADE AREAS, PROCEDURE

Proposal by the United States

The text of the statement delivered by the United States representative at the Council meeting of 29 May 1972 is herewith circulated. The proposal will be placed on the agenda of the next Council meeting.

The United States delegation wishes to draw the attention of the Council to what it considers a shortcoming in the present procedural rules of the GATT.

The most-favoured-nation rule of Article I is the foundation of the General Agreement. Other provisions authorize exceptions to this basic rule, but each exception is carefully circumscribed with procedural safeguards to insure that the necessary conditions have been fulfilled.

Article XXIV, relating to customs unions and free-trade areas, is one of these exceptions, and, in practice, certainly the most widely used. The rules of Article XXIV contain a number of procedural safeguards for third countries, for example, the qualifications beginning with the word "Provided" in paragraph 5 of Article XXIV, and the conditional word "if" in paragraphs 6 and 7. These procedural safeguards, however difficult their actual application may be in specific cases, are an essential part of the basic structure of the GATT, given the fact that customs unions and free-trade areas involve an exception to Article I.

We must point out, however, that these safeguard provisions are not being fully observed in practice. Discriminatory trading arrangements are being implemented without any consideration at all by the CONTRACTING PARTIES, either before or after the fact. This situation was brought rather starkly to our attention in connexion with the association arrangement between the EEC and Tanzania, Uganda, and Kenya. This arrangement was signed nearly three years ago and entered into force seventeen months ago. The CONTRACTING PARTIES have not yet discussed the case at all. Meanwhile discrimination against third countries' trade continues, without any opportunity for contracting parties to express an opinion whether or not it meets the criteria of Article XXIV.

Part of the extraordinary delay in the handling of this particular case reflects the fact that fifteen months elapsed between the submission of questions to the parties to the arrangement and the circulation of replies. While the Working Party was nominally established by the Council some twenty months ago, it still has been unable to meet.

The United States deplores the dilatory treatment of this particular case and we should like to insist that a GATT examination take place without further delay - if necessary here in the Council.

But there is a procedural issue of more general applicability posed by this case. We do not consider it reasonable that one or more contracting parties should consider themselves free to depart from the most-favoured-nation principle without prompt examination by the CONTRACTING PARTIES of the justification for this departure. We therefore invite the Council to adopt what I shall call a "rule of reason" for the procedural handling of departures from Article I other than those submitted as waivers under Article XXV. The rule I suggest is that parties to newly-established free-trade areas or customs unions should provide basic information to the GATT concerning such arrangements no later than two weeks after signature and that a first consideration of the matter be held no later than four weeks thereafter. What we are suggesting is, in essence, a six-week rule: the CONTRACTING PARTIES should at least start substantive examination of free-trade areas or customs unions within six weeks.

A rule of this kind would help restore a much-needed measure of confidence in and respect for the GATT. It would prevent a repetition of the present situation where contracting parties are denied an opportunity even to express an opinion about the unilateral withdrawal of most-favoured-nation rights some thirty months after the fact.

Now I imagine the Council may not be prepared to act on this proposal at this meeting, though I would of course welcome any comments other members may have. We suggest this proposal be put on the agenda of our next meeting. I will, meanwhile, circulate copies of my statement.