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CANADA - ARTICLE XXIV:6 RENEGOTIATIONS
WITH THE EUROPEAN COMMUNITIES

Statement by the Representative of the European Communities
at the Council Meeting of 8 November 1974

The Canadian delegation has put forward a proposal consisting of two elements which are closely linked together: seeking first to invoke GATT conciliation procedures, and second to extend the six months period provided for in Article XXVIII:3 to a date six months after the completion of these procedures.

The first part of this proposal calls for the following comments. The conciliation procedures are a feature typical of the GATT which have been tried and tested and to which we attach considerable value. In the present case the Canadian proposal is to apply this procedure to the withdrawal of four Schedules of tariff concessions (including some which are preferential rate concessions in Part II Schedules), and to the introduction in place of these withdrawals of a single Schedule of new tariff concessions for the enlarged Community. The negotiation involved, which also enables the Community to take over the negotiating rights vis-à-vis third countries of the three new member states, covers practically the whole of the customs tariffs in question and a wide-ranging and difficult assessment of both a quantitative and qualitative character is called for.

The Community cannot accept this proposal. We of course recognize the validity of the question whether it is wise to oppose any request for the application of conciliation procedures - which have been used in a number of cases in the past, mostly cases of breaches of GATT. Nevertheless we consider that in the present case there are factors which make this procedure inappropriate, for the reasons given below.

The question which, on this proposal, would be referred to the conciliation procedure covers, as I have stated, the withdrawals of several tariffs in their totality and as a balance to these withdrawals the grant of new tariff concessions in a Schedule which runs to more than 300 pages. Thus the exercise involves a highly sophisticated assessment relating to a very wide range of trade exchanges, in a field where the criteria for reaching judgments are exceedingly imprecise. It therefore seems to us to be rather unwise to attempt to tackle this job by an arbitration procedure, and incidentally it is worth commenting that such a wide-ranging issue arising from such a complex question has never, since GATT was set up, been submitted to the conciliation procedure for solution.

In this present case it is certainly not a question of whether the compensation offered by the Community is or is not consistent with the provisions of GATT; it is a matter of arriving at a complex and difficult assessment of the issues which, at the stage of concluding negotiations, is a matter for the parties directly concerned to decide. It is not just a matter of chance that the conciliation procedures have hitherto been confined only to cases where the issues were precise and limited in scope.

But if the Contracting Parties should nevertheless adopt this course, they would create a precedent which will certainly be a temptation to negotiators in the future, since they would thus be able to escape their job by referring the task of taking final decisions to someone else, a course which would encourage them not to reach a negotiated settlement. Ultimately, instead of protecting the conciliation procedure -- which as I have said we feel to be of great value -- we would place the whole procedure in danger by using it incorrectly to examine questions which are quite obviously beyond its capacities to resolve.

For these reasons we firmly reject this part of the Canadian proposal.

The second aspect of the Canadian proposal is to extend the six months period provided for in Article XXVIII:3. The Community has already stated in accordance with the rights it possesses under this Article, that the XXIV:6 negotiations were ended on 31 July. Virtually all the countries with whom serious negotiations took place have concluded them with us and it would not be just or equitable for us to introduce new measures at this stage which would alter the conditions on which these other countries have already agreed to conclude with us.

One might, with some justice perhaps object that the Community in taking this attitude only leaves one course open to Canada, that is for her to exercise her right to withdraw equivalent concessions in accordance with Article XXVIII:3, thus risking the start of a cumulative process of withdrawals and counter-retaliations which would affect other contracting parties.

On this point I must make it clear that the Community is not thrusting this lack of choice on Canada. It has merely put forward a proposition, based in fact on a clear statement by the Canadian delegation in May this year to the effect that if the Community could take satisfactory steps to preserve Canada's negotiating rights on cereals, then it would have paid off the debit owed to Canada in the Article XXIV:6 negotiations.

Our proposal was for a formal statement that Canada, on the one hand, considers that it has not obtained satisfactory compensation and therefore wishes to maintain its negotiating rights as regards cereals, while the Community for its part considers that the concessions offered represent full payment for all the concessions withdrawn. The Community declared at the same time that it was ready to accept an extension of the time period laid down in Article XXVIII:3 so far as this area of disagreement was concerned. It follows that on the basis of this proposal the negotiating rights on which Canada considers it has not been fully paid would be carried forward, as would the consequential rights for Canada to make equivalent withdrawals. The six months period would not affect the carry-over of these rights and so one cannot argue that the Community is forcing Canada into a position where it must make withdrawals in order to avoid forfeiture of its rights. Of course it is self-evident that the Community must also reserve its own rights in this situation, given its overall assessment of the outcome of the negotiations.

In other words, the formula on offer was precisely the same as the one which the GATT Council took note of in July and which was then accepted by the United States and Australia. Clearly, the reservations on both sides represent last resort measures and the Community - and we hope Canada shares this view - simply wishes to arrive at a final solution of these negotiations which is acceptable to both sides.

These are the facts of the matter which is now before us, as we see them. We believe that the attitude we have taken is a reasonable one, fully in line with the traditions of doing business in the GATT.