

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Implementation Issues: Paragraph 3 of GATT 1994

*Communication from the Dominican Republic, Guatemala, the European Communities,
Hong Kong, China and Japan*

The following communication, dated 23 November 1999, has been received from the Permanent Delegation of the European Commission.

Proposal

1. Ministers instruct the General Council to complete by 31 December 2000, an in depth review of paragraphs 3 (a) and (b) of the GATT 1994.

Background

2. Paragraph 3(a) of GATT 1994 provides an exemption from Part II of GATT 1994 for specific mandatory legislation that prohibits the use, sale or lease of foreign built or foreign reconstructed vessels in commercial applications between points in national waters or waters of an exclusive economic zone.

3. On 20 December 1994, one delegation notified certain legislation as meeting the conditions set forth in paragraph 3(a) of the GATT 1994. No review or assessment of that legislation was undertaken at that time.

4. Paragraph 3(b) GATT 1994 requires that the exemption provided under paragraph 3(a) shall be reviewed "not later than five years after the date of entry into force of the WTO agreement ... for the purpose of determining whether the conditions which created the exemptions still prevail. The General Council discussed the issue on 15 July 1999, 6 October 1999 and 4 November 1999. On these occasions, no consensus could be reached on whether the standard of review foreseen in paragraph 3(b) GATT 1994 should include a full analysis of the legislation notified, and of all the aspects of the conditions which prevailed in 1994 when the exemption was claimed, and five years later at the time of the first review.

5. An in-depth review of paragraphs 3(a) and 3(b) of GATT 1994, including the objective of reaching a clear understanding of its standard of review, would increase the possible compliance of all Members with GATT 1994. The delegations associated with these proposals therefore believe that Ministers should instruct the General Council to resolve the issue by 31 December 2000.
