

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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Group of Negotiations on Goods (GATT)

Negotiating Group on GATT Articles

NEGOTIATING GROUP ON GATT ARTICLES

Note by the Secretariat

1. The Negotiating Group on GATT Articles held its second meeting on 18 May 1987 under the Chairmanship of Mr. John M. Weekes (Canada). The Group adopted the agenda set out in GATT/AIR/2414.

Continuation of consideration of requests by interested contracting parties for review of GATT Articles, provisions and disciplines

2. The Group continued its discussion of various GATT Articles and provisions which had been suggested by delegations for review. Certain delegations expressed the view that consideration should be given to the working methods and timetable of the Group in terms of the objectives that had been set for it in the Negotiating Plan. One suggestion made was that the Group might consider the possibility of establishing sub-groups to address particular Articles or provisions. Different views were expressed on the question whether it was desirable at this stage in the Group's work to consider certain Articles together as a group rather than individually. It was also suggested that consideration might be given to the nature of the reviews that were being undertaken and to the possibility of structuring them in terms of set headings or questions.

3. Several delegations repeated the view expressed at the Group's first meeting that contracting parties requesting reviews should provide detailed justifications of why they were seeking a review of a particular Article or provision. These delegations considered that such a justification would be useful in identifying the relevant issues for review. It was also suggested that such justifications would help in distinguishing between those situations where the implementation of rules was the issue and those where the rules themselves were regarded as deficient. Other delegations repeated their view that the Declaration did not call for justifications as a precondition for review, which should take place "on request", although it was widely recognized that explanation of the reasons for such request would prove helpful in the review process. The view was also expressed that the justification for seeking a review would emerge from the review itself.

4. During the discussion mention was made, in the context of the review exercise, of the following GATT Articles and provisions: Articles XI, XIII, XII, XIV, XV, XVIII, XXI, XXV, the Protocol of Provisional Application, Articles XVII, XXIV, XXVIII and II. The Group had before it a factual background paper from the secretariat (MTN.GNG/NG7/W/2), containing information on Articles XXVIII, XXIV and XVII. In addition, Chile had circulated a paper on Article XVII (MTN.GNG/NG7/W/1), New Zealand had circulated a paper containing observations on Articles II, XXIV, XXVIII, VI, XVI and XI (MTN.GNG/NG7/W/3), the European Communities had circulated a paper on Article XXV (MTN.GNG/NG7/W/4) and Korea had circulated a paper on Article XXVIII (MTN.GNG/NG7/W/6). The United States undertook to circulate a request for the review of Articles XII, XIV, XV and XVIII (MTN.GNG/NG7/W/7). Finally, Australia circulated a proposal (MTN.GNG/NG7/W/5) to the effect that the Group should make explicit provision to allow consideration, after the conclusion of the Initial Phase, of Articles which were being taken up in the first instance in other Negotiating Groups. The Group agreed to discuss this proposal under Other Business.

5. In regard to Article XI, the representative of New Zealand noted that his delegation had reserved its right in document MTN.GNG/NG7/W/3 to raise this Article again in this Group should it be considered appropriate. This position was supported by another delegation. One delegation stated that if the work on Article XI taking place elsewhere impinged on Article XI:1, he might wish to revert to the matter in due course. As far as Article XIII was concerned, no delegation wished to comment at the present stage.

6. The request by the United States for a review of Articles XII, XIV, XV and XVIII, formulated in writing in MTN.GNG/NG7/W/7, related both to the balance of payments provisions in these Articles and to the infant industry provisions of Article XVIII. The representative of the United States expressed the view that a review in this area had become necessary for several reasons. These included changes in the international monetary system, particularly in relation to the move from fixed to floating exchange rates and increased exchange rate volatility. The application of Article XVIII:B by developing countries had led to permanent trade restrictive measures, in part because Article XVIII:B provisions were cast in structural rather than cyclical terms. Moreover, Article XVIII:B was being used instead of the infant industry provisions of Article XVIII:C in order to avoid the issue of compensation and retaliation. In addition, the only changes to these provisions since 1955 had been in the direction of easing surveillance procedures and making more measures available for balance of payments purposes. As to the procedural aspects of the provisions, he stated the view that notification obligations had not been respected and that the Balance-of-Payments Committee had not used the limited authority available to it in order to bring pressure to bear on consulting countries to remove their balance of payments restrictions. The combination of these factors had given rise to the impression that the GATT did not apply to developing countries.

7. Certain delegations supported, in varying degrees, the position taken by the United States on these matters. One delegation was of the view that there was an important link between these issues and the work of the Negotiating Group on the Functioning of the GATT System. Some delegations considered that existing arrangements had led to an imbalance in the degree to which different contracting parties were subject to multilateral surveillance. While developing countries invoking Article XVIII were subject to regular surveillance of their total trade policies, no comparable form of surveillance applied to developed countries, which could therefore maintain measures incompatible with GATT. Another view expressed was that although the balance of payments provisions foresaw the possibility of examining the effects of the policies of trading partners on the exports of the consulting contracting party, this procedure had never led to positive results. One contracting party stated that any conclusions drawn about changed international monetary conditions would be misleading if they did not distinguish clearly between those countries which had currencies that could be used as international resources and those countries which did not. Finally, the view was expressed that the preliminary presentation made by the United States of the reasons for seeking a review of Article XII, XIV, XV and XVIII gave the impression that the issue was the application of these provisions rather than the modification of the provisions themselves.

8. In regard to Article XXI, one delegation expressed the view that this Article was in need of review since its application had led to problems of asymmetry and imbalances among contracting parties. The essential problem related to the relative powers of retaliation of large and small countries.

9. The representative of the European Communities, in introducing document MTN.GNG/NG7/W/4, stated that his authorities were concerned that, while the possibility of granting waivers under Article XXV:5 was essential to the GATT, a situation had developed where beneficiaries were enjoying virtually permanent exceptions or privileges. Moreover, contracting parties acceding to the GATT after the granting of such waivers were at a disadvantage in that they never had an opportunity to vote on them. The purpose of the proposed review would be to establish principles, modalities and criteria of economic justification for the granting of waivers in order to prevent the perpetuation or creation of virtually permanent privileged situations.

10. In regard to the Protocol of Provisional Application, one representative indicated the intention of his authorities to provide further information on why a review was being sought. The central question was whether the "grandfather clause" under paragraph 1(b) of the Protocol should still be available to contracting parties. A full examination of this question was desirable, and would require certain information which was not at present readily available.

11. With reference to Article XVII, the representative of Chile introduced the document submitted by her authorities (MTN.GNG/NG7/W/1), and indicated that they were preoccupied by a lack of clarity in the application and interpretation of the provisions of this Article. Several delegations stated that their authorities in capitals were examining the Chilean document and that they would revert to the matter in due course.

12. In discussing Article XXIV, one delegation expressed the view that regional arrangements were inherently discriminatory, to the detriment of third countries. For this reason, Article XXIV:4 should be cast in more positive terms than at present, emphasising the expansion of trade in general. With respect to Article XXIV:7 and 10, concerning the entry into force of a customs union or a free trade area, actions were sometimes taken without due regard for consultation procedures and for the right of contracting parties to examine and, if appropriate, influence these arrangements. A number of delegations referred to various problems arising in the interpretation and application of Article XXIV:5, including the need for a more adequate and generally accepted basis on which to assess the trade and commercial policy impact of regional arrangements, and a clearer understanding of what constituted a reasonable length of time with respect to the duration of an interim agreement leading to the formation of a customs union or a free trade area. It was further suggested that there was need for greater clarity in the nature of the relationship between Article XXIV:6 and Article XXVIII. Finally, one delegation stated that while a review of Article XXIV may be warranted, it should be borne in mind that Article XXIV provisions were essential to the General Agreement and had given rise to the largest trading bloc in the world. This delegation was also of the view that Article XXIV:12 should be included in the review.

13. The representative of Korea introduced the proposal of his authorities on Article XXVIII, circulated as document MTN.GNG/NG7/W/6, which concerned the redefinition of negotiating rights in a manner more favourable to smaller trading countries. In this regard, he referred in particular to Paragraph 5 of the interpretative notes to Article XXVIII:1, which foresaw the possibility of taking account of the relative importance to a supplying country of a product in terms of that country's overall foreign exchange earnings. It was also suggested that the concepts of "substantial interest" and "a significant market share" should be clarified. Finally, the Korean proposal sought a change in the definition of substantial interest to take account of potential suppliers in a market. A number of delegations expressed their support for the Korean proposals. There were, however, some differing views concerning the best criteria to use in calculating suppliers' interests for smaller exporters. The view was expressed that whatever arrangements were made with respect to suppliers' rights, it was important that they should be clear and predictable. Another question raised was whether it would be appropriate if some formula was developed for suppliers' rights which resulted in according such rights to contracting parties which had few or no tariff commitments themselves. This was a general question of the balance of rights and obligations. It was also suggested that attention should be given to the following matters: the treatment of new products in the calculation of suppliers' rights; the stability of existing bindings; the provisions relating to retaliation and compensation; the treatment of preferential trade in the establishment of negotiating rights; the question of time limits for negotiations under Article XXVIII; an adequate provision for potential trade growth when an unlimited tariff binding was replaced by a tariff quota; and the relation between Article XXVIII and Articles XIX and XXIV.

14. The representative of New Zealand said that as indicated in the document that had been circulated at the request of his authorities (MTN.GNG/NG7/W/3), New Zealand considered there was a need to clarify the operation of Article II:1(b). In particular, in the context of the establishment of schedules of concessions, it would be useful to have a common understanding of how "ordinary customs duties" were defined and what other duties could remain in force.

15. The Chairman proposed that the Group begin its review of GATT Articles and provisions at its next meeting. He suggested that the review should begin with the following Articles: Articles XVII, XXIV, XXVIII, XXV:5, XII, XIV, XV and XVIII and then proceed with the other Articles and provisions mentioned for review during the meeting. He urged delegations to make any further proposals for reviews as soon as possible, in order for the Group to be able to organise its work adequately, and said that the Group would also welcome any explanations from delegations of those aspects of GATT Articles and provisions which they considered to be in need of review. He noted that the Group's Negotiating Plan called for factual background papers by the secretariat on Articles and provisions subject to review, and also that some delegations had expressed the view that such papers would be useful. He proposed that the secretariat proceed with the preparation of factual background papers. The Group agreed with the Chairman's proposals.

#### Observer Organisations

16. The Chairman stated that following the decision of 14 April of the Group of Negotiations on Goods, each Negotiating Group was invited to make recommendations to the Group of Negotiations on Goods as to the international organisations which it considered could assist with its work and which it therefore wished to invite to its meetings. No recommendations were made by delegations at the meeting, but the United States subsequently circulated a communication on this subject (MTN.GNG/NG7/W/8).

#### Other Business

17. The representative of Australia introduced a proposal by his authorities (MTN.GNG/NG7/W/5) recommending that the Group should make explicit provision to allow consideration, after the conclusion of the Initial Phase of the Negotiating Plan, of nominated Articles which were being taken up in the first instance in other Negotiating Groups. One question raised was whether the possibility of reviewing additional Articles after the Initial Phase of the Negotiating Plan should be limited only to those Articles which were being addressed in other Negotiating Groups. After a brief discussion of the Australian proposal, which received support from several delegations, it was agreed to take a decision on this matter at the Group's next meeting.

18. The Group agreed to hold its next meeting on 14-15 September 1987.