

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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Group of Negotiations on Goods (GATT)
Negotiating Group on Trade-Related
Aspects of Intellectual Property Rights
including Trade in Counterfeit Goods

MEETING OF NEGOTIATING GROUP OF 27 AND 28 JUNE 1991

Chairman: Ambassador Lars E.R. Anell (Sweden)

Note by the Secretariat

1. The Group adopted the agenda proposed in GATT/AIR/3200. The Chairman explained that in his view the main purposes of the meeting were: first, to enable participants to learn each other's views as to the state of the TRIPS negotiations in the light of the state of play in the Uruguay Round as a whole; secondly, to re-establish the Group as a functioning negotiating unit; and thirdly, to take some procedural decisions about further work.
2. The Group met in formal session in the morning of 27 June and the afternoon of 28 June, leaving the period in between for informal consultations.

State of Negotiations on TRIPS

3. A participant said that his delegation entered this important negotiating phase with an open mind and ready to engage in constructive dialogue to overcome the existing differences among participants with a view to achieving a balanced result in the TRIPS negotiations. However, since the Brussels meeting was not able to settle any of the outstanding issues, his delegation had the same preoccupations with respect to the existing draft text in document MTN.TNC/W/35/Rev.1 as had been expressed by the developing countries before the Brussels Meeting in their statement to the TRIPS meeting held on 1 November 1990. His delegation continued to believe that the situation of the negotiations fell far short of addressing the special needs and problems of developing countries. The drive towards uniformity of IPR regimes, which the text sought to achieve, was in conflict with the need to provide adequate flexibility to these countries in recognition of their greater and pressing technological and developmental requirements. One was yet to see a serious effort in these negotiations to ensure that genuine development objectives of developing countries were not being compromised. The public policy objectives of national IP systems including developmental and technological objectives had to be secured through striking a balance between the rights of IPR owners and the public interest. In the existing text the accent had been on the rights of IPR owners and not on their obligations. Transitional periods alone were not adequate to meet development concerns. Concrete and meaningful provisions were needed which would respond to the economic and

technological needs of developing countries and which would provide the needed flexibility to these countries, taking into account their economic and social circumstances and needs. He believed that developing countries had shown considerable flexibility in the negotiations and that the time had come for others to do likewise. In a later intervention, in reaction to one of the other statements, he emphasised that his delegation continued to believe that the TRIPS draft should contain greater recognition of the constraints on the administrative and financial resources and capabilities of certain participants.

4. Referring to the Special 301 provisions of the existing United States Trade Law, which empower the United States Trade Representative to take retaliatory actions against "offending" countries, a participant expressed his delegation's grave concern about this type of unilateral action and their impact on his country's position in these negotiations on TRIPS. In his delegation's view the nomination of "priority foreign countries" was in itself a violation of the commitments under the Punta del Este Declaration on standstill and rollback, which required participants not to take any measures that would improve their negotiating positions. The implementation of the United States Trade Law against other countries, either at the stage of merely identifying priority countries or of actual retaliation, would surely improve or strengthen the positions of the United States and weaken the position of other countries. Regarding the status of the negotiations, he expressed the view that since some progress had been made in Brussels, his delegation would like to base the future work on the text that the Group had been working on in Brussels.

5. Some participants expressed support for this statement. One said that in the Uruguay Round negotiations participants were trying to resolve certain contentious issues in a multilateral forum and had agreed not to take any unilateral action with a view to altering the balance of negotiations in the Round. Such actions would not correspond in the spirit in which participants were negotiating and should not be allowed to cause any impediments in these smooth negotiations. Another participant emphasised that his country attached great importance to the protection of IPRs, and had achieved many legislative changes in this field in a period of less than ten years. A copyright law and a regulation on protection of the computer software had been adopted and had entered into force only a few weeks ago. A trademark law and a patent law including detailed rules and regulations had previously been implemented, from which foreigners had also largely benefited. However, despite the positive attitude and quick pace his country had shown in respect of the protection of IPRs, it had nevertheless been identified as one of the "Special 301" priority foreign countries. He objected to this unilateral measure saying that it violated the understanding of participants at the beginning of the Uruguay Round. His delegation also shared the view of other developing countries that their interests had not yet been fully and seriously taken into consideration in the TRIPS negotiations, and was ready to engage in a constructive dialogue to solve the remaining issues with a view to reaching a balanced result. A participant said that unilateral actions, which were still being taken in order to create pressure on countries to change their negotiating position, should not be condoned. Participants in the Uruguay Round should consider seriously the necessity of abolishing this practice.

As to the text contained in document MTN.TNC/W/35/Rev.1, it was a very ambitious draft which in consequence contained many outstanding issues. The negotiations on TRIPS could, in his delegation's view, proceed with the same spirit of ambition, but could only be successful as part of a balanced result in the Uruguay Round as a whole. In this context, he would expect the same ambitious approach in other areas of the negotiations. His delegation was open-minded as regards the future work of the Group, and was ready for informal discussions about that. Another participant said that unilateral actions as taken by the United States under "Special 301" confirmed his delegation's apprehension of what would happen if a balanced outcome of the TRIPS negotiations was not achieved. A participant expressed his delegation's desire that the Group would complete its work as expeditiously as possible. While supporting the view that document MTN.TNC/W/35/Rev.1 should form the basis for the further work of the Group, he emphasised that negotiations should be picked up from where they were left at Brussels, and that there should not be any backsliding. In this context he reminded the Group of his delegation's submission on behalf of the least developed countries regarding the special treatment to be given to them in any framework on TRIPS.

6. Another participant emphasised that his delegation had been and would continue to be supportive of the inclusion of a framework within the GATT. It believed that such a framework was necessary to bring about enhanced protection of intellectual property worldwide, and to provide a mechanism for deriving multilateral solutions to IPR problems and disputes. This would be far more desirable than a bilateral approach. His delegation recognised, however, that certain obstacles remained to be overcome in order to reach a satisfactory accord in this final stage of the TRIPS negotiations. He believed that some participants still appeared to have overly ambitious goals, and that all should work towards an agreement which each party would be able to call a successful compromise. Furthermore, his delegation believed that the draft TRIPS agreement as contained in document MTN.TNC/W/35/Rev.1 failed to take full account of the need of developing countries for technology transfer. In this context he reminded the Group of his delegation's proposal for a pre-clearance or dispute prevention system as a means to minimise anti-competitive practices and provide objective standards to govern technology transfer. This, and other devices, might be helpful in balancing within the TRIPS agreement the need to provide an effective protection of IPRs and the need to guard against abusive practices of right holders. He also said that most of the provisions on TRIPS contained in MTN.TNC/W/35/Rev.1 were acceptable to his delegation, as they were either compatible with the existing laws and regulations in his country or, at least, consistent with the direction in which his country's IPR system was moving. However, there still remained a number of items on which his delegation had to reserve its position. In this respect, he believed that, since there were many substantive issues to be discussed and negotiated, the Group should concentrate its future work on matters where brackets still remained, leaving such political matters as GATTability to discussions at ministerial level. Finally, he said that a new intellectual property regime under the GATT should ultimately aim at achieving a balance between the policies that promote global diffusion of new science and technology, and those that emphasise the proprietary interests of researchers, companies and nations.

7. As to the TRIPS negotiations in the context of the Uruguay Round as a whole, a participant said that his delegation remained very firmly attached to the notion of the globality of the overall results. In this respect document MTN.TNC/W/85 of 24 June 1991, containing letters from the Chairmen of the Negotiating Groups on Services, Agriculture and Market Access to the Chairman of the TNC, should not be taken as implying in any way that the TRIPS negotiations were not viewed as constituting one of the most important issues for the negotiations. In fact this document demonstrated that the work of the Group had been constructed in such a manner and with such results as not to necessitate the transmission of a letter as contained therein. His delegation was encouraged by the determination expressed by other speakers to pick up the negotiations where they were left at Brussels.

8. Continuing, he gave his delegation's appreciation of the discussions that took place in Brussels on the outstanding issues in the TRIPS negotiations as summarised in the Chairman's commentary preceding the TRIPS text in MTN.TNC/W/35/Rev.1, and which in his delegation's view had been extremely useful. First of all, he had not identified a single instance of backsliding on any issue, neither in terms of anybody going back on texts which had already been discussed during the preceding months, nor in terms of any participant actually creating any further divergences or difficulties. Secondly, he believed that there had been a very useful exercise in terms of further clarification of issues where conflicting views remained. The third and only negative point had been the lack of progress on some key issues, where the options had been clarified but the issues clearly would need a political decision. Fourthly, there had been progress on a number of quite important issues. Finally, there had been a quasi-consensus on several important issues, including those related to enforcement, most of those related to the section on lay-out designs of integrated circuits, and virtually all of those related to the sections on trademarks and industrial designs. He then highlighted some of these important questions of substance where either some progress had been made or, indeed, where none had been achieved. He added that the intention of this was, implicitly, to suggest a certain focus for the Group's future work. In this respect, he referred to the commentary on page 193, last paragraph, of document MTN.TNC/W/35/Rev.1, and said that, although his delegation believed that with respect to the relevant issues one could still say that they could "be settled only in the light of the decision on the institutional aspects of the international implementation of the results", it would be perfectly prepared to discuss some of the specific issues mentioned in the paragraph if the Chairman and other participants wished to do so. Referring to the same commentary, page 194, concerning the major outstanding issues as they appeared at the end of November 1990, he mentioned computer programs and rental rights as areas where his delegation thought that the discussions in Brussels had allowed for some progress, not in terms of drafting, but in terms of better understanding of the options available. Another area that had allowed either for some progress in terms of drafting or, at least, in terms of some reduction of the remaining divergences, was that of geographical indications, but unfortunately only certain limited aspects thereof. In this area a considerable amount of work remained to be done. He mentioned that a very

extensive discussion had taken place on non-voluntary licensing and government use of patents which had brought participants quite far. He also believed that some conceptual progress had been made with respect to the question of non-discrimination in the patent section, not only as regards the question of non-discrimination as to the place of invention but also concerning non-discrimination in the area of non-voluntary licences. Mentioning that a very long and detailed discussion had taken place on the question of control of abusive or anti-competitive practices, he thought that it would be useful to pick up the issue again and to see how far and how fast one could go on this extremely important issue. His delegation thought that there had been a much greater meeting of the minds on this matter than had ever been seen before or, at least, a better understanding of respective positions. He also said that there had appeared to emerge agreement, subject to the general reservation explained in the commentary mentioned earlier, with respect to the manner in which one would refer to the question of the administrative capacity of developing countries, at least in the context of the enforcement chapter, since at the end of a very long discussion nobody had been objecting strenuously any more to what had been developing during the discussions. He mentioned the question of mfn as an area that one had not been able to address before the negotiations had been terminated. Referring to the copyright chapter, he said that there had been no progress on the question of the protection of performers. The questions relating to patentable subject matter his delegation believed had rightly been left for Ministerial discretion and decision, and should not be re-discussed by the Group before the end of the negotiations. He said that quite a lot of discussion had taken place, but no progress had been made on the questions related to undisclosed information. The last matter of substance he referred to was Article 73, which still included very complex and technical legal issues, and on which an attempt at redrafting at Brussels had not been successful. While reiterating that the discussions at Brussels had been very useful and that negotiations should be picked up where they were left, he added that his delegation would like to resume substantive negotiations as soon as a suitable date could be arranged. They could be counted on to contribute as much, if not more, to them as in the past.

9. When the Group reconvened on 28 June, the Chairman reported to the Group on the informal consultations he had held with a large number of delegations. These consultations had been very useful and in general encouraging. All concerned had shown a co-operation and positive spirit. He said that it had become clear that progress in other areas of the negotiations (in particular, Agriculture, Services and Market Access) would continue to affect the speed with which this Group could do its work. Therefore, the work that the Group would be able to undertake next September would to some extent be conditioned by considerations of globality; at this moment therefore no absolute certainty could be given about what the Group might be able to do in September. Nevertheless, all participants he had consulted had agreed that if in July and in the autumn there was evidence of progress in the Round as a whole, this Group must ensure that it would not lag behind other groups. All necessary preparations must be made for the decisions that would have to be taken at the end of the Round. There had also been general agreement that the text

sent to Brussels should be the basis for the Group's further work, and that the Group should take into account as appropriate the work done in Brussels. In this respect, he reminded the Group of the closing speech of the Chairman of the Ministerial Conference, in which this had been called for. He said that a number of delegations had expressed their wish to be informed in greater detail of what had transpired in Brussels, while some had said that the Group should try to arrive at a common understanding of what had been done there. He said that, in this respect, he had made the suggestion that, together with the secretariat and on the basis of the fairly comprehensive notes available, he might inform delegations in some detail of the work done in Brussels, indicating the subjects discussed, any new ideas or proposals that had emerged and, where possible, any convergence of views or apparent common understanding or agreement. In his view, it was preferable that he would present this orally, in order to avoid even the impression that this kind of information might imply a common position. The idea was to provide information about what happened in Brussels, after which the Group collectively, and each individual participant, could decide to make whatever use it wished of this information. If the Group when discussing a particular issue would like to have information in writing, for example certain drafting proposals, these would, of course, be made available.

10. He said that, in his view, the most practical way would be to give the relevant information issue by issue. In this respect, he said that it seemed reasonable to start with those issues which were signalled as outstanding, before finalising the work by going through the whole text. Reiterating that the Group's work in September was conditional on developments in other areas of the Uruguay Round, he said that it seemed most appropriate to put on a tentative agenda issues which were not of an entirely political nature but still included technical aspects. As such, two issues had been mentioned with some frequency during the consultations: one was Article 73 and the other dispute settlement. Of course, both of these were only in part technical issues, since they also contained very important political issues. However, useful technical work was still to be done on, for example, the draft of Article 73, so that its meaning and the options included could be clarified. With regard to dispute settlement, it had been pointed out by many that not all participants in this Group were necessarily familiar with how, for example, the dispute settlement system in GATT worked. It might also be useful to have clarification concerning other possible dispute settlement mechanisms. Thus, if the three options contained in the present draft were to remain on the table for later negotiations, he would suggest discussion of these three options in order to improve understanding of what they entailed. Apart from these two issues, he said that he would like to seek the Group's agreement on retaining a certain flexibility with regard to the order in which other issues would be dealt with. His intention would be to wait for the outcome of the TNC meeting in July and also to take the opportunity of consulting delegations later on, before deciding what he would propose to the Group as an order of business. It did not seem of crucial importance to deal with the outstanding issues in a particular order. It should only be taken care of that this would be done in the most practical fashion.

11. The Chairman suggested to reserve the week beginning 16 September 1991 for the next meeting of the Group. He also suggested that this meeting would be of the kind that the Group had held during the autumn of 1990, i.e. a brief formal meeting at the beginning and at the end of the week, with different kinds of informal meetings and informal consultations in between.