

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG12/1
9 April 1987

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Group of Negotiations on Goods (GATT)
Negotiating Group on Trade-Related
Investment Measures

NEGOTIATING GROUP ON TRADE-RELATED
INVESTMENT MEASURES

Meeting of 2 April 1987

Note by the Secretariat

1. The Group held its first meeting on 2 April 1987. Ambassador T. Kobayashi (Japan) was appointed Chairman of the Group for the initial phase. The agenda, set out in GATT/AIR/2376 dated 16 February 1987, was adopted.

2. The Group had before it document MTN.GNG/5 containing the Negotiating Plan for Trade-Related Investment Measures, adopted by the Group of Negotiations on Goods (GNG) on 28 January 1987, and two documents submitted by the United States: MTN.GNG/NG12/W/1 containing a proposal for the work programme of the Group, and MTN.GNG/NG12/W/2 containing the initial views of the United States on matters of substance for negotiation by the Group.

First exchange of views, including proposals by participants for organizing the work of the Group.

3. The Chairman recalled from the Negotiating Plan that the initial task for the Group was to undertake the identification and examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, based on submissions by participants. He invited participants to outline the approaches that they intended to take to this task, and encouraged the Group to consider what background documentation the secretariat might be asked to prepare.

4. The representative of the United States noted that in MTN.GNG/NG12/W/1 it was suggested that participants prepare national submissions covering four points: the identification of the types of trade restricting and distorting effects resulting from investment measures; a description of investment measures having such effects; information, as appropriate, on trade measures having comparable trade-distorting effects to investment measures; and the identification of relevant GATT Articles. This document also suggested that the secretariat should compile these submissions so that they could be reviewed by the Group at its next meeting, and prepare a background paper examining the experience with investment measures in the context of GATT Articles. He added that his delegation did not see the

work of the Group as infringing in any way the GATT provisions for special and differential treatment of developing countries, but that the Group needed to examine first whether existing GATT Articles dealt adequately with the potential trade restricting and distorting effects of investment measures before it began to consider how the general exceptions to GATT Articles might be related to the subject.

5. Several delegations affirmed the importance they attached to the negotiations on trade-related investment measures as part of the balanced package of negotiations agreed to by Ministers at Punta del Este. The objectives of the negotiations should be neither too narrow nor too ambitious. A number of delegations stressed that the Group did not have a mandate to carry out a rule-making exercise on the broad subject of investment flows. The focus of the Group's discussions should lie on investment measures which have a direct and significant restrictive or distorting effect on trade, and which have a direct link to existing GATT Articles. Some delegations considered that local-content and export performance requirements were of particular importance in this respect.

6. The point was made that many countries valued the contribution that direct foreign investment could make, in particular to augmenting domestic savings and transferring technology, and they needed to be able to apply policies to attract it. Several delegations considered that certain kinds of investment measures were warranted to channel investment along the lines dictated by national development objectives, and, in some instances, to address the restrictive business practices engaged in by transnational corporations which, they felt, could themselves distort trade patterns and restrict trade flows. All governmental and non-governmental investment measures, including the investment policies of transnational corporations, should, in their view, have a place in the Group's discussions. Some other delegations stated that, since there had been no agreement in Punta del Este to treat restrictive business practices as a separate subject in the Uruguay Round, this question would have to be brought up first in the GNG. These delegations saw no place at present for the discussion of restrictive business practices in the Group.

7. Some delegations stressed the need to take account of the GATT provisions on special and differential treatment for developing countries in the Group's discussions, and pointed also to the possible relevance to the examination of the trade effects of investment measures of GATT Articles dealing with policies to safeguard balance-of-payments positions and to promote economic development. Some other delegations considered that it would not be fruitful for the Group to consider the subject from a north/south perspective; both capital importers and capital exporters had a stake in the success of the negotiations. A number of delegations stressed the need for a careful approach to this item of the Uruguay Round negotiations which was particularly sensitive, complex, and ill-defined.

8. Several delegations stated that they would need time to reflect fully on the United States submissions, particularly MTN.GNG/NG12/W/2. However,

many supported the idea that participants should be invited to prepare national submissions addressing the relationship between GATT Articles and the trade restrictive and distorting effects of investment measures, and welcomed the specific suggestions contained in MTN.GNG/NG12/W/1 on how national submissions might be structured. Some delegations felt that the timing foreseen in this document for the presentation of national submissions was ambitious, but they did not question the need for a sense of urgency in the Group. It was stressed that, for the time being, national submissions should deal with investment measures generically and that no inventory of investment measures maintained by individual participants was being called for.

9. Many delegations felt that the format for national submissions should be left flexible and that no significance need be attached to the order in which the issues were addressed. Some considered that a natural sequence would be to identify the investment measures that needed to be examined by the Group, describing their trade-restrictive and distorting effects, and then to identify and comment on the relevance and adequacy of GATT Articles. Several delegations, while acknowledging that the Group's examination of the adequacy of GATT Articles could not take place in a vacuum and that an initial identification of trade-related investment measures would be necessary, nevertheless stressed that a definite sequence for discussion and negotiation was set out in the Punta del Este Declaration on this item, and that the review of national submissions should start with the examination of the operation of GATT Articles. Only if the Group could satisfy itself that there were lacunae in GATT Articles with respect to trade-related investment measures should it then turn to consider whether further provisions were necessary and what these should be. A number of delegations expressed the initial view that GATT provisions on national treatment, dumping, and subsidies seemed to cover adequately all the relevant investment measures that they could, for the time being, visualise. However some delegations felt that, while local content performance requirements may be adequately covered by GATT Articles, export performance requirements might be covered only tangentially.

10. The Chairman, summing up the discussions, noted that there was general agreement that participants should be invited to make national submissions which should address the relationship between GATT Articles and the trade restrictive and distorting effects of investment measures. It should be possible for participants to take up GATT Articles and see how adequately they cover the trade restrictive and distorting effects of investment measures, or to identify trade-related investment measures having such effects and discuss how these are dealt with in GATT Articles. The process involved a certain simultaneity of approach. It had also been agreed that the secretariat should prepare a note for the next meeting on past discussions in GATT relevant to the question of the trade restrictive or distorting effects of investment measures. The secretariat was also invited to make suggestions, in the light of the national submissions received, as to how the material might usefully be organized. One

delegation suggested that the note on past discussions be restricted to a factual account taken from Council reports and Panel decisions.

Observer Organizations

11. It was noted that the issue of observer organizations was on the agenda of the forthcoming meeting of the GNG. The Group was informed of those organizations that had sought observer status in the negotiations. One delegation considered that if invitations were to be issued to observers at all, it should be sufficient to issue an invitation to the United Nations without specifying to it which of its various organs could attend the meetings of particular Negotiating Groups.

Record of Meetings

12. It was agreed that the secretariat would prepare a short factual note on the main points raised at each meeting of the Group.

Date of Next Meeting

13. The Chairman noted that if the normal calendar sequence of meetings of the Negotiating Groups were adhered to, the second meeting of this Group could be expected to held in the week of 15 June. One delegation asked whether it would prove possible to move it forward to the previous week. While some delegations foresaw no difficulties in doing so, it was noted that the Group on Trade-Related Aspects of Intellectual Property, scheduled provisionally for the week of 8 June, was envisaging the possibility of a three day meeting. It was agreed to leave the decision on timing to the next GNG meeting.