

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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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 15 June 1987

Note by the Secretariat

1. The Group held its second meeting on 15 June 1987. The agenda set out in GATT/AIR/2427 was adopted. New documents available to the Group for this meeting were: submissions from the United States and the Nordic countries (contained in MTN.GNG/NG12/W/4 and 6); a note by the Secretariat on past discussions in GATT relevant to the question of the trade restrictive and distorting effects of investment measures (MTN.GNG/NG12/W/3); and a proposal by the United States on the participation of international organizations as observers at the Group's meetings (MTN.GNG/NG12/W/5). The texts of submissions from Japan and the European Communities, to be circulated as MTN.GNG/NG12/W/7 and 8, were distributed in English in the course of the meeting.

Examination of national submissions, including discussion on the further processing of these submissions

2. The Chairman recalled his summing up of the discussion at the Group's first meeting in which he had invited participants to prepare submissions as a basis for the Group's work. Four submissions had been received, but not in sufficient time before the meeting for the Secretariat to formulate suggestions on how the material might usefully be organized. He invited those delegations that had made submissions to introduce them, and other delegations to comment on them and on their further processing as well as on the Secretariat paper dealing with relevant past discussions in GATT. The Chairman urged other participants to make submissions, if possible before end-July so that they could be made available well in advance of the next meeting. He also proposed that participants consider whether the Secretariat should be asked to prepare a synthesis of the points raised in submissions by delegations, both written and oral, that could be added to on an evolving basis and serve the Group as a basic working document.

3. The representatives of the United States, Sweden (on behalf of the Nordic countries), Japan and the European Communities introduced their submissions. It was widely noted in the Group that the submissions had arrived too late for reflection by participants before the meeting, but certain preliminary comments were made.

4. Several delegations felt that some of the submissions went beyond the coverage of investment measures that Ministers had intended should form the focus of the Group's work. Incentives to attract direct foreign investment were valuable tools for promoting industrialization in developing countries, and although they might divert trade flows this could not be equated with trade distortion. Some delegations noted a clear parallel here with trade and industrial policy measures which were recognized as being a legitimate means of developing comparative advantage. Certain other investment measures, such as technology transfer requirements, equity requirements, and remittance restrictions were necessary to regulate the activities of foreign investors and to promote national development objectives in an uncertain international economic climate. In the view of these delegations, it should be recognized that the trade effects of such investment measures were of secondary importance and were not pertinent to the Group's negotiating mandate.

5. Another view was that measures having direct trade effects should be the starting point for the Group's work. Local content and export performance requirements could have evident direct trade effects by influencing where an investor purchased inputs and sold output, and they appeared to be particularly relevant in examining the operation of GATT Articles. One delegation stressed the importance of avoiding any distinction based on whether the measures applied to foreign or domestic investors; it was the trade effects that mattered in GATT, regardless of the nationality of the investor.

6. Several delegations emphasized that the organization of the Group's work should be arranged in strict conformity with the Ministerial mandate. This required a sequential approach, beginning with an examination of the operation of GATT Articles. Only if lacunae in the GATT Articles were identified should the Group proceed to consider what further provisions might be necessary. These delegations felt that the sequence called for in the Ministerial mandate had not been reflected in the submissions received to date, even though it was acknowledged that delegations were at liberty to structure their submissions as they saw fit. While some delegations considered that a sequential approach was compatible with an examination of how adequately the Articles had coped with concerns over the trade effects of investment measures that had been raised in GATT in the past, a number of others felt that the Group should also address new areas of concern which until now had not been discussed from the point of view of their relevance to GATT obligations; in this respect they questioned the practicability of distinguishing too rigidly the Group's examination of GATT Articles from its examination of the trade effects of investment measures.

7. Some delegations stated that the negotiating mandate called for the Group to focus on the operation of GATT Articles alone, and not on the principles or objectives of the General Agreement nor on the Codes. A number of delegations recognized that Articles III, XI and XVII which had featured in the report of the FIRA Panel were of relevance. Some

delegations considered that the operation of these Articles warranted closer inspection than the Panel had been able to undertake. Several delegations felt that an examination of the operation of Article XVI could be relevant to the trade effects of export performance requirements. In the view of a number of delegations, Article VI provided adequate protection against these trade effects, but one delegation felt that something more than the remedy of anti-dumping duties was called for when government measures could provoke private sector dumping practices. The transparency provisions of Article X were considered pertinent to the Group's discussions by several delegations, and one delegation pointed out the possible relevance of Article XXIV provisions relating to sub-national entities.

8. Many delegations called attention to the possible relevance of Article XVIII to the Group's work, both as regards restrictions to safeguard the balance of payments and government assistance to economic development. Some considered that an examination of the operation of this and other Articles dealing with exceptions to the disciplines of the General Agreement should only be taken up after the Group had established the extent to which GATT Articles provided adequate protection against the adverse trade effects of investment measures. Others felt that no sequence of this nature was called for in the negotiating mandate, and that the provisions of Article XVIII and Part IV of the General Agreement were of immediate importance.

9. A number of suggestions were made on what documentation the Secretariat might be invited to prepare for the Group's next meeting. Several delegations supported the Chairman's proposal that the Secretariat prepare an evolving synthesis of the points raised in submissions and oral statements on the relationship between GATT Articles and the trade restrictive and distorting effects of investment measures. Some others felt it was premature to consider the preparation of such a document, at least until all delegations had had an opportunity to thoroughly examine and comment on the submissions that had been received to date. Some delegations suggested that the Secretariat review how the broad link between trade, investment and economic development had been treated in the Havana Charter and in the 1955 Resolution of the CONTRACTING PARTIES on "International Investment for Economic Development". Certain other delegations felt that a further Secretariat document dealing with past instances in which investment measures had been examined in GATT would be helpful. No agreement was reached for the Secretariat to prepare further documentation at this juncture.

Invitations to international organizations

10. No consensus was reached on the question of the participation of international organizations as observers in the Group's work.

Other Business

11. The Chairman informed the Group that its next meeting was scheduled to take place in the week beginning 28 September, with the precise dates to be finalized in the course of the next GNG meeting.