

MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND

RESTRICTED  
MTN.GNG/NG8/3  
7 October 1987  
Special Distribution

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Group of Negotiations on Goods (GATT)

Negotiating Group on MTN  
Agreements and Arrangements

NEGOTIATING GROUP ON MTN AGREEMENTS AND ARRANGEMENTS

Note by the Secretariat

1. The Negotiating Group on MTN Agreements and Arrangements held its third meeting on 17 September 1987 under the Chairmanship of Dr. Chulsu Kim (Korea). The Group adopted the agenda set out in GATT/AIR/2457.
2. The Chairman recalled that he had undertaken to conduct informal consultations on the relationship between the work of this Group and that of the Committees of the MTN Agreements and Arrangements (MTN.GNG/NG8/2, paragraph 11). He informed the Group that the attention of the Chairpersons of these Committees had been drawn to the request that these Committees provide the Group with information on their work. It was his understanding that subject to the necessary clearance, such information would be made available in due course. The Committee on Technical Barriers to Trade had already authorized its Chairman to transmit to this Group the notes by the Chairman issued in the L/- series of documents after each meeting of the Committee. (The note on the meeting of 22 June 1987 (document L/6206) was available at this meeting). As Chairman, and following the consultations held, he would reiterate the request for information and express the hope that the other Code Committees also respond positively and as soon as possible, and that they would also give information on informal meetings they held, if any. The Chairman invited comments on this point before commencing on the agenda.
3. No comments were made. However, under agenda item A, one delegation reverted to the matter, stating that the Group ought to be informed on a regular basis of issues under review or discussed in Code Committees and their respective working or expert groups, which might result in improvements, extensions, or modifications of existing Code provisions. These should take the form of reports, circulated as official documents of this Negotiating Group, on progress in any work undertaken in this regard. A number of delegations supported this statement, some mentioning the areas of anti-dumping and subsidies as particularly important in their view.

Agenda Item A: Continuation of consideration of suggestions by participants indicating the issues that they wish to raise with respect to individual agreements and arrangements

(a) Agreement on Technical Barriers to Trade

4. The Chairman noted that suggestions concerning certain aspects of this Agreement had been submitted in writing by the United States (MTN.GNG/NG8/W/1) and since the last meeting by Japan (MTN.GNG/NG8/W/6) and the European Economic Community (MGN.GNG/NG8/W/8). A recent submission by India was also available.<sup>1</sup>

5. The representatives of the European Economic Community, India and Japan provided brief introductory remarks concerning their respective submissions. One delegation agreed on the importance which had been attached in one of these documents, to improving transparency under this Agreement. Another delegation, while sharing such concerns noted that the participation of foreign interests in the drafting of standards and certification systems, as suggested in certain proposals, might not be viable in terms of all constitutional and legal systems. Addressing another submission, this delegation endorsed suggestions made in matters such as improved transparency in bilateral agreements, a clarification of the situation with regard to processes and production methods and a strengthening of provisions dealing with testing inspection and certification systems so as to avoid discrimination and ensure national treatment. In this connection it was pointed out that a measure which was in conformity with the Agreement on these points might nevertheless have discriminatory effects in practice; inspection at port of destination instead of port of shipment was a case in point.

6. Some delegations reserved comments on submissions made. One delegation stated that its authorities had considered this Agreement to be of limited value but that recent developments had heightened their interest in it. One delegation stated that it intended to present written suggestions in the near future. Others stated that they might do so in due course, possibly in response to documents presented by other participants in the Group or by way of complementing suggestions they had made themselves in the Committee on Technical Barriers to Trade. It was noted that the Chairman of that Committee would issue a non-exhaustive list of issues raised in that body for the benefit of the Group.

(b) Agreement on Interpretation and Application of Articles VI, XVI and XXIII ("Subsidies Code")

7. The Chairman noted that a proposal by Colombia had been circulated in document MTN.GNG/NG8/W/5 and that, in addition, a reference paper for the Negotiating Group on Subsidies and Countervailing Measures was available in document MTN.GNG/NG10/W/4.

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<sup>1</sup>Subsequently issued as MTN.GNG/NG8/W/9.

8. A number of delegations stated that for reasons of efficiency, but also because the Ministerial Decision had created a special Group, questions in this area should, as far as possible, be treated in the Negotiating Group on Subsidies and Countervailing Measures. Some added that questions of a horizontal nature affecting many MTN Codes were another matter. One delegation requested that these views be noted for the record, to ensure that it would not be said later that the Agreement on Subsidies and Countervailing Measures could not be discussed in the Subsidies Group. One delegation stated that matters raised in the present Group, ought to be discussed by it; another matter was where actual negotiations were to be conducted. Another delegation noted that the time had not yet come to decide on the appropriateness or otherwise of negotiating on specific subjects. If the need arose later, the possibility of holding joint meetings, as mentioned in the Negotiation Plan, might be examined.

(c) Agreement on Implementation of Article VI ("Anti-Dumping Code")

9. The Chairman recalled that many delegations had stated their intention to revert to the paper circulated by the delegation of Korea (MTN.GNG/NG8/W/3). A secretariat background document (MTN.GNG/NG8/W/7) had been circulated since the last meeting. The delegation of India had also recently put forward suggestions.<sup>1</sup>

10. The representative of India introduced his delegation's contribution. The representative of the Republic of Korea announced that his delegation would submit a further written elaboration on its selection of the fifteen issues dealt with in MTN.GNG/NG8/W/3.<sup>2</sup> The representative of Finland, on behalf of the Nordic countries, drew attention to problems which they considered should be solved in an appropriate negotiating forum in the context of the Uruguay Round.<sup>3</sup> The representative of Japan gave a brief summary of a paper that his delegation would shortly submit in writing.<sup>4</sup>

11. Some of these participants as well as others commented on submissions presented so far to the Group, in particular the detailed suggestions offered by the Republic of Korea, which were welcomed by many in the discussion. Some delegations announced that they themselves would, or might, table written submissions in due course. Among a number of matters stated to be of particular concern, were the determination of injury including cumulative injury assessment, definition of domestic industry, method of calculation of constructed value, loss for exporters and the creation of uncertainty due to initiations of anti-dumping procedures, the definition of like product. Problems caused by lack of uniform interpretation and application were referred to in a number of statements.

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<sup>1</sup>Incorporated in MTN.GNG/NG8/W/9

<sup>2</sup>Subsequently issued as MTN.GNG/NG8/W/10

<sup>3</sup>The statement has subsequently been issued as MTN.GNG/NG8/W/12

<sup>4</sup>Subsequently issued as MTN.GNG/NG8/W/11

The point was made that imprecise terms had given rise to national legislation going beyond the objectives of the Agreement and sometimes to actions inconsistent with it.

12. One delegation reiterated his Government's strong concern with respect to draft anti-dumping (and countervailing duty) legislation or regulations currently under consideration in some countries, and added that the Standstill Commitment required that each participant reconfirm that it would take no measures inconsistent with the provisions of the existing Codes. Other delegations held that the Agreement had, in practice, functioned as an instrument of increased protectionism on the part of industrialized countries, and that developing countries had faced numerous actions, many of which had been unfounded. Some added that Article 13 of the Agreement had been of little practical significance and that this was one reason why many developing countries had not acceded to it. The limited number of Signatories was the main problem in the view of one delegation, together with what was conceived as a serious erosion of main GATT principles throughout the Agreement.

13. Some developed country delegations noted that they were subject to anti-dumping measures and that this area was of particular interest to them. One delegation considered this Agreement to be a matter of priority. Some stressed the very close linkages between this area and that of subsidies/countervailing duties. One delegation noted that problems concerning the determination of injury also occurred in other fields such as safeguards and textiles.

(d) Agreement on Government Procurement

14. The representative of India introduced suggestions concerning this Agreement<sup>1</sup>. A number of participants referred to the requirement in Article III of the Agreement, to take account of development, financial, and trade needs of developing countries. One of these referred to problems it had experienced in becoming a Party to this Agreement due to difficulties in obtaining acceptance of entity offers it had made. Some delegations stated that they might present further comments in due course.

(e) Agreement on Implementation of Article VII (Customs Valuation Code)

15. The representative of India introduced the suggestions contained in MTN.GNG/NG8/W/9, concerning burden of proof regarding transaction value.

(f) Agreement on Import Licensing Procedures

16. The Chairman recalled that some suggestions had been incorporated in document MTN.GNG/NG8/W/1. The secretariat had been in contact with the delegations which had expressed particular interest in import licensing and it had been considered premature to draft a factual background paper on this issue in the absence of more concrete suggestions.

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<sup>1</sup> Subsequently issued as MTN.GNG/NG8/W/9

17. One delegation offered additional suggestions pending further exploration of possible improved disciplines in this area, and the possible submission of written proposals. These related to the possible prohibition or limits on discretionary licensing, the development of stricter criteria for and disciplines on the use of non-automatic licensing, the establishment of more specific dispute settlement procedures in this Agreement, the introduction of language that would allow standard implementation of terms, and the insertion of interpretations adopted in the Committee on Import Licensing into the text of Agreement. Questions concerning improved disciplines in the licensing field might also lend themselves to discussion in other Negotiating Groups.

(g) Chairman's summing-up

18. The Chairman summed up this agenda item by stating that the Group had taken note of the many suggestions on the Agreements mentioned above. It was also noted that a number of suggestions or background papers regarding some Agreements would be communicated shortly. He urged delegations to make any written proposals they might have well in advance of the next meeting, so that the Group would be in a position to begin discussions on the appropriateness or otherwise of negotiating on issues suggested.

Agenda Item B: Other Business, including arrangements for the next meeting of the Negotiating Group

(a) Further organization of work

19. The Chairman stated that he had consulted on the question of further organization of work. He felt that the participants would need more time for reflection and that further informal consultations would be useful in this regard. Among points that the Group would have to return to were those specifically mentioned in its mandate for the initial phase, i.e.: (i) identification of issues on which it would be appropriate to negotiate; and (ii) agreement on the negotiating techniques and modalities for the subsequent stages. As Chairman, he hoped that at its next meeting the Group would be in a position to agree, without prejudice to further items to be included in the negotiations, on specific issues in the respective fields that were appropriate for subsequent negotiations. He also reiterated the hope that additional proposals be submitted at an early stage, given the mandate for the initial phase of the Group's work.

20. One delegation stated that in its opinion some Agreements and Arrangements worked properly but that the question of appropriateness or otherwise of negotiating on different subjects could be taken up after the Chairman had held his consultations. It was also suggested for consideration that, as work progressed, the Group could designate certain issues for discussion at each meeting. This would permit the maximum use of the presence of experts from capitals.

(b) Date of the next meeting

21. The Chairman recalled that the Group of Negotiations on Goods had decided to ask the Negotiating Groups to evaluate the number of days, both formal and informal, needed to carry out the initial phase of the negotiating plans, and to indicate their wishes as to the timing of these meetings. Preliminary dates mentioned were 4-5 November and 7-8 December 1987.

22. The Group agreed to leave the question of dates to the consideration of the Group of Negotiations on Goods.