

MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND

RESTRICTED

MTN.GNG/NG7/4  
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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 fourth meeting on 22 and 23 October 1987 under the Chairmanship of Ambassador John M. Weekes (Canada). The Group adopted the agenda contained in GATT/AIR/2490.

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

2. The representative of the United States requested a review of Article XXXV and Article XXVI:5(c). As far as Article XXXV was concerned, the proposal was to extend the possibility of the non-application of the General Agreement to those situations where tariff negotiations had been entered into but not completed in the context of the accession to the General Agreement of one of the parties to such negotiations. In regard to Article XXVI:5(c), the United States proposed that the terms of accession to the General Agreement under this provision be made more clear and that these terms should include the possibility of the establishment of a schedule of concessions under Article II. The United States representative said that his authorities would provide further information on these requests for review in written form and it was agreed that the secretariat would provide factual background notes on the provisions in question.

Review of GATT Articles and provisions

3. As agreed at the previous meeting, the Group first took up Article II:1(b) for review. The discussion was based on a submission by New Zealand (MTN.GNG/NG7/W/3) and a factual background note by the secretariat (MTN.GNG/NG7/W/12). The representative of New Zealand explained his concern at the lack of clarity under Article II:1(b) as to the precise nature of the duties and charges on imports subject to a binding. This lack of clarity made it impossible in some cases to establish the absolute level of a binding. This was a problem not only at the time a country acceded to the GATT, but also every time a new tariff binding was accepted by a contracting party. He indicated that this problem was independent of the fees and other charges contemplated in Article II:2, and proposed that a way be found to clarify the issue and to ensure the transparency of binding levels. Several delegations expressed support for New Zealand's proposal, although it was suggested that an attempt should be made to establish the extent of the problem.

4. In view of the fact that at least one delegation had indicated an intention to make a written submission on the request for a review of Article XXI, it was agreed that this review would be postponed until the Group's next meeting.

5. For its review of the Protocol of Provisional Application, the Group had before it a submission by the European Communities (MTN.GNG/NG7/W/27) and a factual background note by the Secretariat (MTN.GNG/NG7/W/17). The representative of the EEC said that his authorities had identified the Protocol of Provisional Application as a possible source of imbalance in rights and obligations among contracting parties under the General Agreement, and also as a factor which could upset the balance of benefits among contracting parties. The need for a review of the Protocol, specifically in respect of its paragraph 1(b), arose in the first instance from the paucity of information available on this matter. A previous attempt by the secretariat to establish to what extent contracting parties resorted to the "grandfather clause" under the Protocol had met with limited success. Although it might be assumed that this provision was falling increasingly into disuse with the passage of time, the desirability or otherwise of negotiations on the matter could only be established on the basis of full information from all contracting parties concerned, including those which had acceded on comparable terms since the original Protocol came into effect. A number of delegations expressed their support for a more thorough examination of this issue. It was agreed that the secretariat would hold informal consultations prior to the Group's next meeting on what information was required to assess the manner of application of the Protocol and how such information might be gathered.

6. Referring back to GATT Articles and provisions which had been reviewed at the Group's previous meetings, certain delegations reiterated their view that an examination of Article XXIV arrangements and of the provisions themselves was necessary. The proliferation of regional trading arrangements increasingly made trade on a most-favoured-nation basis the exception rather than the rule. These arrangements had not benefitted non-member countries and appropriate methods needed to be found in order to enable such countries to enjoy some of the benefits of regional integration on a most-favoured-nation basis. Another view was that Article XXIV had played a central rôle over the years in achieving trade liberalization and had not been an instrument for raising trade barriers against third parties. In any review of Article XXIV provisions, there should be no question of retrospective judgement on agreements already in place, nor any attempt to reverse decisions already taken. Reference was also made to Article XXIV:12, and it was suggested that the provisions relating to regional authorities within federated states should also be subject to review.

7. In the continuation of the review of Articles XII, XIV, XV and XVIII, the representative of Egypt made a statement which he requested to be circulated as a working document of the Group (MTN.GNG/NG7/W/29). The statement reviewed the arguments which had been put forward in justification of the request for a review of the balance-of-payments Articles and briefly

recalled some of the earlier discussions on this issue, including those leading to the adoption of the 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes. It was suggested that trade restrictions were the result of balance-of-payments problems and were not generally seen as an efficient way to solve these problems. It was further argued that the introduction of flexible exchange rates did not obviate the need for developing countries to take trade restrictions to protect their balance-of-payments; on the contrary, this had added to pressures on the balance-of-payments. It was also to be borne in mind that provisions in this area were a vital part of the special and differential treatment available to developing countries under the GATT. Finally, it was suggested that proposals for the reform of Article XVIII itself were inappropriate to the extent that problems identified related to the question whether the rules were being adhered to, or to procedural questions.

8. In responding to the statement by Egypt, the view was expressed by certain delegations that a lack of adherence to, or implementation of, rules concerning the balance-of-payments was a reflection of multiple interpretations and a lack of clarity in the rules themselves. Moreover, the issue was not simply whether conditions had changed after 1979, nor whether they had changed before that date, but rather how the relevant provisions had been applied and to what effect. There was also a need to examine the relationship between Article XVIII:B and Article XVIII:C. These views were not shared by several delegations, who maintained that no convincing case had been made as to why provisions in this area needed to be reviewed, and by extension, why negotiations might be thought necessary. There was also some discussion of the suggestion of a delegation that studies be undertaken on the operation of the Committee on Balance-of-Payments Restrictions since 1975 and on the relation between quantitative restrictions and balance-of-payments problems. Copies of a note by the Balance-of-Payments Committee reviewing its work from 1970 to 1974 (L/4200 of 18 July 1975) were made available to the Group.

9. For its discussion on Article XXVIII, the Group had before it a note by the secretariat (MTN.GNG/NG7/W/26) summarising the proposals which had been put forward by delegations for the redefinition of the suppliers' negotiating rights and providing an illustrative calculation, using hypothetical figures, of what certain of these proposals would imply for the designation of suppliers' rights. Some delegations were of the view that calculations should now be made on a range of past Article XXVIII negotiations in order for a more complete picture to be drawn of the consequences of the proposals made. There was also a request for an effort to be made to secure the necessary data in order to include in the calculations the proposals relying on export statistics. Finally, it was suggested that further indications of data sources used for the calculations would be helpful. It was agreed that further consultations would be held prior to the Group's next meeting on the feasibility of using export statistics where required in calculations of the effects of proposals on the definition of suppliers' rights.

10. Certain reservations were expressed in regard to the proposals on suppliers' rights. These concerned the fear that some of the proposals could lead to an unmanageable proliferation of suppliers' rights and to the possibility that the balance of rights and obligations could be upset. A delegation observed that while there may be a problem of balance arising from the varying coverage of tariff bindings among contracting parties, it remained the case that under present circumstances small suppliers were at a disadvantage when it came to the acquisition of suppliers' rights. Several delegations also recalled that a number of other issues had been raised in regard to Article XXVIII. These included the manner in which compensation was calculated when unlimited bound tariff concessions were replaced by tariff rate quotas, the treatment of preferential trade in the establishment of negotiating rights, and the frequency with which contracting parties modified their tariff schedules under the terms of Article XXVIII.

11. Several delegations commented on the proposal on negotiating rights tabled by Australia at the Group's last meeting (MTN.GNG/NG7/W/26). A number of these delegations indicated that they required more time to reflect on the proposal, since it was complex and raised some basic issues. It was to be welcomed, however, particularly in its aim to encourage contracting parties to accept more tariff bindings. The following matters were raised in regard to the proposal: whether it was to apply to the Uruguay Round negotiations; how the proposal would work in the case of a formula involving across-the-board bindings or tariff cuts; whether the removal of the right to acquire principal negotiating rights on the basis of trade share would lead in some cases to situations where changes in trade patterns resulted in the diminution of liability to compensation under Article XXVIII negotiations, thus making the adjustment or cancellation of bindings too easy; whether suppliers of over 10 per cent of an existing market would enjoy full negotiating rights to the extent of their trade, and if so, what consequences this would have in terms of the number of contracting parties which would have negotiating rights at a given point in time; the extent to which the proposal would encourage contracting parties to make greater use of the already existing right to seek out bilateral bindings and corresponding negotiating rights; and whether the suggested cut-off point for compensation would lead to an improvement for small suppliers. Several delegations were of the view that the relevance of this proposal to Article XIX and Article XXIV needed to be clarified. It was agreed that the representative of Australia would respond to the above points at the Group's next meeting.

#### Other business

12. The Group agreed to hold its next meeting on 16-17 November 1987.