

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG8/4
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Group of Negotiations on Goods (GATT)
Negotiating Group on MTN
Agreements and Arrangements

MEETING OF 5-6 NOVEMBER 1987

Note by the Secretariat

1. The Group held its fourth meeting on 5-6 November 1987 under the Chairmanship of Dr. Chulsu Kim (Korea). The Group adopted the agenda proposed in GATT/AIR/2498/Rev.1.

2. Before taking up agenda item A the Chairman recalled that at the previous meeting it had been agreed that he would hold informal consultations on the future organization of the Group's work. Reporting on these consultations, he stated that several delegations had informed him that they would be submitting additional proposals on different Codes. It was clear that before pronouncing on how the Group would conclude its work for the year, delegations might wish to reflect on these new proposals. In this connection it had been suggested to him that at this meeting the Group would after hearing any new proposals, request the GATT secretariat to prepare, for the December meeting, a checklist of issues which had been referred to in the different proposals. The secretariat would also be asked to prepare, where appropriate, background notes or modifications of existing background notes in connection with the proposals submitted. These background notes should be factual accounts of previous work in GATT on the issues involved. It had been stressed in the consultations that in the Group's work, flexibility would be needed in identifying the issues for negotiations in terms of timing, not least because the work of the Group should be seen as a continuous process, and also related to work being done in other fora. It had also been mentioned that once necessary clarifications had been made on issues, these issues could be automatically considered for negotiations.

3. In response to requests for clarification concerning the reference to secretariat factual background notes, the Chairman stated his understanding that information on work undertaken on an informal basis in the Code Committees would not be reflected. In response to a reference to document MTN.GNG/NG8/W/7 as an example of what background notes could or should include, the Chairman added that when official documentation existed in Code Committees, covering informal or ad hoc meetings, he could not see why such information should not be reflected when the secretariat drafted background notes. One delegation said that while notes need not reflect actual informal discussions, they should at least, where appropriate refer to issues taken up in informal meetings. The Chairman stated that he saw no problems in background notes reflecting such points.

4. One delegation, noting that in addition to background notes information had been sought from Code Committees, said that if there proved to be shortcomings in such information, the Group could always review the matter.

5. In response to another point of clarification, concerning the possibility of making further proposals on any Code after the initial phase, the Chairman reiterated that there had been a convergence of views that flexibility would be needed in terms of timing when identifying the issues for negotiations. It was therefore understood that new proposals could be made after the end of 1987.

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

6. The Chairman recalled that since the last meeting the following documents had been circulated: (i) a communication from India (tabled at the last meeting), concerning the Agreements on Government Procurement, Customs Valuation, Anti-Dumping and Technical Barriers to Trade (MTN.GNG/NG8/W/9); (ii) a communication from the Republic of Korea, explaining further its proposals concerning the Anti-Dumping Code (MTN.GNG/NG8/W/10); (iii) a communication from Japan containing proposals on the Anti-Dumping Code (MTN.GNG/NG8/W/11); (iv) a statement by the Nordic countries at the last meeting concerning the Anti-Dumping Code (MTN.GNG/NG8/W/12); and (v) a communication from the Chairman of the Committee on Technical Barriers to Trade entitled "Subjects related to the Uruguay Round in the Area of Technical Barriers to Trade" (MTN.GNG/NG8/W/13).

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

7. The representative of Finland introduced a submission on behalf of the Nordic countries.¹ A number of delegations welcomed the contribution and offered preliminary comments. One delegation noted generally that some elements were similar to suggestions it had put forward, and another stated that all elements were acceptable. With reference to the question of cumulative injury assessment some delegations noted the relevance not only of Article 3:1, to which reference had been made in the Nordic paper, but also of Article 3:4 and Article 5:3. One delegation thought that recommendations adopted by the Anti-Dumping Committee could be incorporated into the Agreement without, however, re-opening a discussion on these questions. Another noted that depending on the results of the negotiations some recommendations or understandings might have to be modified before becoming integral parts of the Agreement. Some addressed the question of whether the Group should deal with other issues discussed in the Ad Hoc Group. One view was that only points on which participants were ready to prepare new proposals should be reverted to. Different views were expressed as to whether the secretariat should be requested to undertake work along the lines suggested in the Nordic proposal, and how any such work might be presented. The secretariat, on request, explained how it could make an input given information presently available to it. The Chairman concluded that this question would be reverted to at the next meeting.

¹Subsequently issued as (MTN.GNG/NG8/W/15)

8. The representative of New Zealand formally requested that the question of third-country dumping, and in this connection, Article 12, become a subject for review in the negotiations.

9. A number of participants commented on submissions put forward previously. In the course of this discussion one participant mentioned the following issues, contained in one or more written submissions, as being of particular interest: a definition of the concepts of "like product", "introduced into commerce of another country", "domestic industry" and "threat of material injury", the problem of cumulative injury assessment, and proposals tabled in this regard; clarification of the standards for initiation of investigations; amendments to Article 6:8 concerning "facts available", and Article 7 on Price Undertakings; periodic review or other ways of limiting the duration of anti-dumping duties; cost decline by innovation; and input dumping. Problems referred to by one or more other delegations concerned constructed value, price undercuttings, and injury caused by the investigation process. The linkage between anti-dumping and subsidy/countervail areas was also mentioned. One participant considered that the objectives of the Agreement as set out in its Preamble, required clarity and common agreement and that this should be developed to prohibit cumulation-across-Codes and also in order to clarify disciplines with respect to cumulation of imports for purposes of injury determination. This delegation added in this connection that provisions of, and understandings under the Agreement, could be undermined by unilateral departures in national practices and legislations. A mechanism should be found to deter such unilateral departures from multilaterally agreed disciplines. Two other participants shared these views, one adding that any departures, but especially those which were systematic, clearly showed the weaknesses of the Agreement; the other referred to its own submission concerning measures taken by certain parties in order to avoid so-called circumvention of anti-dumping duties.

10. One delegation indicated that it expected to put forward a submission covering Articles 2:4, 4:1, 5 and 13 before the next meeting. Another delegation also intended to table proposals for the next meeting. One other delegation, which had already submitted a paper, said it would distribute a background paper regarding its proposals.

11. A number of delegations considered that the proposals made, or to be made, would form a good basis for further work. The point was also made that the listing of issues which had been addressed in the Ad Hoc Group, without necessarily taking positions on these issues, was a good approach and would help participants in identifying questions of relevance to the Group.

(ii) Agreement on Technical Barriers to Trade

12. The Chairman noted that the Nordic countries had also addressed this Code in the submission referred to above.

13. Two delegations made statements concerning this Agreement. They both welcomed document MTN.GNG/NG8/W/13 transmitted by the Chairman of the Committee on Technical Barriers to Trade.

14. Commenting on suggestions for further transparency on the work of private, local, or regional standardizing agencies in areas covered and not covered by the Agreement, one of these delegations expressed the view that this might contribute to the dismantling of existing technical barriers to trade. This delegation underlined the need to approach specific disciplines on a case-by-case basis, as well as the need to take into account the capacity of developing countries to comply with additional obligations, for instance with respect to methods of ensuring compatibility of standards issued by recognized national bodies and other standardization bodies within Parties. The other delegation questioned whether a separate independent code of good practice was necessary, given the obligations contained in Articles 4:1, 6:1 and 8:1. However, it was willing to explore variations of this proposal. Concerning the question of compatibility referred to above, while supporting the availability of information needed to remove technical barriers to trade, it noted that Article 10, and in particular its paragraph 2, contained provisions for circulating such information.

15. Concerning the question of voluntary draft standards and their status, one delegation thought that the relevant provisions of Articles 2 and 7 were adequate because they required all mandatory standards that significantly affected trade to be notified regardless of their origin.

16. One delegation agreed, in principle, to examine proposals aiming at achieving greater transparency on bilateral standards-related agreements, as well as on regional standards activities. With regard to Process and Production Methods, it believed that the Agreement's coverage would be significantly clarified through the negotiation of a consensus interpretation. Concerning testing, inspection and type approval, it considered that the international standards developed so far for test methods, reflected more the capacities of the developed countries. The need to ensure transparency and non-discrimination in this sector should continue to receive priority, it being fully recognized that developing countries were in a disadvantageous position in terms of technological infrastructure. It saw merits in efforts aimed at ensuring transparency of the operation of certification systems so as to prevent existing notification and comments from becoming an undue obstacle to international trade. However, with respect to transparency in the drafting process of standards, technical regulations, and rules of certification systems, it shared concerns already expressed, that the participation of representatives of foreign interests as suggested, might not be viable in terms of all constitutional and legal systems.

17. With respect to extension of major obligations under the Agreement to local government bodies, one delegation stated that it supported increased transparency at all levels of governments' standardization work.

18. One delegation reserved its right to submit further suggestions.

(iii) Agreement on Government Procurement

19. One delegation called attention to the fact that this Agreement had the smallest number of Parties among all MTN Agreements and that only three developing countries had become Parties. It raised the following issues, without prejudice to the possibility of submitting more detailed written proposals before the next meeting: the lack of flexibility in the implementation of Article III during developing countries' negotiations for accession, with a corresponding dilution of these provisions that took the Agreement further out of reach of countries who wished to accede to it. As a remedy, it suggested that the objectives of special and differential treatment be incorporated in Article IX:1(b). Other problems mentioned related to tendering procedures such as short response deadlines or restrictive pre-qualification requirements, which many countries might not be able to meet after accession, as well as questions relating to technical specifications. The lack of accuracy, consistency and uniformity of statistical data provided by the Parties, made it difficult for non-Parties to assess the benefits accruing from accession. Negotiations on amending Article VI:9 should aim at expanding the scope and improve statistics through more detailed breakdowns in product categories, statistical analyses and improved means of comparing Parties' presentations. It hoped that the Agreement could be improved in this Group, in order to facilitate accession, and enable the Code to gain wider acceptance as a framework for international trade in government procurement.

20. Another participant also hoped that wider acceptance of the Agreement could be possible in the Uruguay Round. It welcomed any suggestions in this connection.

21. Some delegations expressed concerns with respect to the ongoing second phase of the Article IX:6(b) negotiations, and hoped that developments on improvements, clarification, and expansion in that context would not result in taking the Agreement further out of reach of developing countries, even before accession had been facilitated. They also hoped that the provision of Article IX:6(b) which specifically provided that regard be given to Article III, be duly reflected in the ongoing negotiations.

22. One participant noted that broadening of the Agreement's coverage could also be achieved by increasing the membership. This Group could discuss how to facilitate accession of more countries for the mutual benefit of all. However, the Group was complementary to the Committee, whose work should not be hampered.

(iv) Agreement on the Implementation of Article VII (Customs Valuation Code)

23. Commenting on [the] proposal made, one participant did not consider there was a need to change this Agreement and did not believe that the issue raised had been a problem for countries actually applying it. Article 17 clearly established a right of national customs to satisfy

themselves as to the accuracy of information, and paragraph 7 of the Protocol emphasized that full co-operation was expected from importers.

24. One delegation, referring to the problem of over/under-invoicing and customs fraud, reiterated the proposal it had tabled and sought further information on discussions that might have taken place on these matters in the GATT and in the CCC. It also wished to know about examples of departures from normal transactions not involving related persons. In cases where there was conclusive evidence that the transaction value could not be relied upon, e.g. where a good shipped through a third country were cheaper than an identical good imported directly from the country of production, the burden of proof should not be placed on Customs.

25. The observer for the Customs Co-operation Council, on the request of the Chairman for factual information, informed the Group that India had submitted to the CCC a communication similar to the one before the Group concerning burden of proof when determining transaction value. A meeting of the organ determining overall CCC policy to be held on 11-17 December 1987, would examine this question as well as questions raised by developing countries at a special meeting in March 1987. The GATT would be informed in due course. The observer also noted, inter alia, that problems raised by non-Parties were partly technical. An Expert Group on Valuation Fraud, set up in 1987, had adopted a recommendation encouraging countries to exchange information on valuation and emphasizing training in developing countries as a means of improving administrations and rendering them more efficient. Problems of a more political nature, such as fiscal undervaluation, which went beyond the competence of some customs administrations, had to be raised within the GATT context. As to the specific questions raised in this Negotiating Group, the Technical Committee on Customs Valuation had adopted two advisory opinions (i) advisory opinion 2.1 concerning the acceptability of a price below prevailing market prices for identical goods, which accepted that, while different prices for identical goods might prevail at the same time on a market, the administration had the right under Article 17 of the Agreement to establish the veracity of any information; (ii) advisory opinion 10.1 on the treatment of fraudulent documents, expressing the agreed view that no administration could be required to rely on fraudulent documents, and always had the right to assess a situation and make sure whether or not information provided was acceptable.

26. The Chairman thanked the observer of the CCC for his statement and for the offer to present further information.

(v) Agreement on Implementation and Application of Articles VI, XVI and XXIII ("Subsidies Code")

27. No comments were made.

(vi) Agreement on Import Licensing Procedures

28. The representatives of the United States and of the European Economic Community introduced their submissions.¹

¹Subsequently issued as MTN.GNG/NG8/W/16 and 17, respectively.

(vii) Chairman's summing-up

29. The Chairman stated that the Group had taken note of additional proposals by the Nordic delegations on the Anti-Dumping Code, and from the EEC and the United States on import licensing, and had been informed by some other delegations that additional proposals on the Codes would be forthcoming. It had noted comments and clarification on the new and earlier proposals. He presumed from the comments made, that delegations had taken note of the result of his informal consultations and that it was agreed that the secretariat would prepare a checklist of issues already raised, and appropriate background notes, along the lines which the Group had clarified earlier. The Group had agreed to revert, at its next meeting, to the suggestion contained in the Nordic proposals on the Anti-Dumping Code for a secretariat statistical study. He urged delegations to expedite their transmission of any new proposals in order to facilitate the work of the secretariat in preparing the checklist and background notes.

Agenda item B: Negotiating techniques and modalities for the subsequent stages

30. The Chairman reported on informal consultations he had carried out with delegations on this item, and outlined some of the specific suggestions which were made in that connection.

31. Many delegations stressed the need for flexibility and pragmatism in approaching the question of negotiating techniques and modalities. Some added that an understanding had to be reached on techniques and modalities at least on an indicative basis, but that this should not put limits on consideration of issues in the subsequent stage.

32. Commenting on a suggestion made in the Chairman's consultation, that the Group should aim at arriving at consolidated negotiable texts towards the end of 1988, some considered this to be too categorical. One delegation stated that this idea had been put forward as a practical consideration only.

33. On the the idea of holding a specified number of rounds of meetings for each Code, some delegations felt that more time was needed for reflection in this suggestion. One delegation saw this idea as an example of flexibility because a first round of discussions might be needed before the precise modalities and techniques became clear with respect to individual Codes. Some mentioned that meetings of a general nature might be needed in the subsequent phase. It was also suggested that meetings had to be adequately spaced to allow work to be done in capitals.

34. Some delegations were not in favour of creating sub-groups without meeting schedules; they preferred informal meetings in conjunction with formal ones, and if possible linked to Code Committee meetings. One of these delegations stressed that informal meetings should be fixed within the agreed time-frame.

35. Among other points made, it was suggested that work in the next stage would be facilitated if the Group could benefit from the expertise of various Code Committees.

36. One delegation made the general observation that, whatever techniques and modalities were devised, they should lead to greater coherence and integration within the GATT system, and not to a further fragmentation under the Codes. The implications of all negotiating proposals should be assessed carefully so as not to call into question or infringe upon the rights and obligations of contracting parties, irrespective of whether or not they were signatories to any particular Code; this had been emphasized by the CONTRACTING PARTIES when they had acted on the results of the Tokyo Round in 1979.

37. The Group agreed to a suggestion by the Chairman that he prepare, on his own responsibility, a working paper on possible negotiating techniques and modalities, which the Group could consider at its next meeting. In drafting such a paper he would take into account the comments made at the present meeting.

Agenda item C: Other business, including arrangements for the next meeting of the Negotiating Group

(a) Responses to the Group's request for information

38. The Chairman informed the Group that Code Committees had responded to his request for information as follows:

- (i) The Committee on Technical Barriers to Trade had 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. It had also agreed that, without prejudice to the outcome of the ongoing discussions on the organization of the negotiations in the NG8, or to any action that might be taken by Parties to the Agreement under Article 15, paragraphs 9 and 10 of the Agreement, it would contribute to the negotiations by considering, at a technical level, issues before the NG8. For this purpose, it would commence its consideration of the items in the indicative and non-exhaustive list on the basis of further clarifications to be provided by individual Parties. This Committee had also prepared document MTN.GNG/NG8/W/13 on its own initiative.
- (ii) The Committee on Import Licensing had agreed to transmit to the Negotiating Group the Chairman's notes on meetings of the Committee, including meetings held in March and May 1987, and the Committee's annual reports to the CONTRACTING PARTIES. Document LIC/12, giving the text of the recommendations adopted on Part I of the Committee's work programme, would also be forwarded to the Group. Consultations would be held on the question of providing information on informal meetings. It had been stressed that a free flow of information in both directions, between the Committee and the Negotiating Group, was desirable to ensure transparency.

- (iii) The Committee on Government Procurement had agreed that the Note by the Chairman, issued in the L/- series of documents after each Committee meeting, as well as the minutes of the meetings, be made available in response to the request. Following an inconclusive discussion on what additional material, if any, should be furnished, the Chairman had suggested that this matter be remitted to the next meeting; he had undertaken to hold informal consultations prior to the next meeting with a view to achieving consensus. This had been agreed.
- (iv) The Committee on Anti-Dumping Practices had agreed, as a first step, that the L/- documents issued after each meeting, and the annual report to the CONTRACTING PARTIES, would be available to the members of the Negotiating Group. Document ADP/W/159, containing a list of issues discussed in the Ad Hoc Group on the Implementation of the Anti-Dumping Code, would also be available. Documents in the ADP/M/- and ADP/W/- series would be available to all GATT contracting parties on request. The Committee had agreed to give further consideration to this matter at a later stage.

39. The Chairman referred to document MTN.GNG/NG8/W/14, which listed documents which had so far been made available to the Group.

40. Commenting on this information, one delegation stressed the importance of having information on informal meetings, and expressed the hope that other Committees would follow the example of the Committee on Technical Barriers to Trade with respect to co-operation with the Group. Another delegation noted that some Committees were apparently reluctant to provide information on informal work, and requested the Chairman, on behalf of the Group, to urge these to provide further information, particularly with respect to work done on modifications, reviews and improvements of Code provisions, because this was relevant to the work of the Negotiating Group. Two other delegations associated themselves with this comment, one noting that the negotiating process in this Group, and any effort in Code Committees towards qualifications and improvements, had to be mutually enforced.

41. The Group took note of these comments.

(b) Next meeting

42. The Chairman recalled that the dates of 7-8 December 1987 had been set aside for the last meeting of the initial phase.