

MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND

RESTRICTED  
MTN.GNG/NG8/5  
15 December 1987  
Special Distribution

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 Group held its fifth meeting on 7 December 1987 under the Chairmanship of Dr. Chulsu Kim (Korea). The agenda proposed in GATT/AIR/2524 was adopted.

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

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

2. The Chairman noted that a revised secretariat background note had been circulated as MTN.GNG/NG8/W/7/Rev.1.

3. The representative of the United States introduced a communication containing suggestions for examination and clarification of Code remedies and disciplines.<sup>1</sup> This was welcomed by a number of delegations which nevertheless reserved the right to revert to it after more careful examination.

4. In preliminary comments one delegation, referring to the concept of recidivist dumping, enquired whether sales by subsidiaries, incidents of dumping in other markets and previous dumping of entirely different products would count. It also wondered how many instances the United States considered sufficient to qualify as "deliberately repeated" dumping, and had reservations if the notion covered companies which had been engaged in anti-dumping actions only once. The representative of the United States stated that his delegation was still in the process of refining this proposal, but that it was concerned about repeated dumping by some companies across a broad range of products amounting to a possible deliberate strategy which undercut the Code.

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<sup>1</sup>Subsequently issued as MTN.GNG/NG8/W/22.

5. The representative of Finland, speaking for the Nordic countries, made a modification to its proposal in MTN.GNG/NG8/W/15<sup>2</sup>, noting that this did not prejudice their views of the corresponding issue within the field of countervailing duties. Two delegations referred to ideas put forward in that proposal concerning price undercutting.<sup>2</sup> They did not agree that this definition should be reassessed. One of these delegations added that the ideas put forward by Korea in MTN.GNG/NG8/W/7 and W/10 seemed to suggest another approach, i.e. that only practices and procedures relating to price undercutting should be changed. Concerning duration of anti-dumping duties, one delegation, supported by another, continued to believe that the only reasonable approach was for anti-dumping duties to remain in force as long as the injurious dumping occurred. A review, if any, prior to a proposed expiry date should be made on the initiative of the investigating authorities, which in any event should be able to maintain anti-dumping duties after the time limit if the review showed continued dumping and injury. One delegation agreed that it might be useful to incorporate the work done by the Anti-Dumping Committee and its Ad Hoc Group, taking into account the discussion in the Group itself. In response to these points the representative of Finland explained that for the time being the issue of price "adaptation" had been highlighted and was one which merited attention and fresh thinking. Technical or legal remedies had to be reverted to later.

6. One delegation stated that the linkage between this area and the subsidies/countervailing area had to be recognized and dealt with at some point to avoid unnecessary duplication of work; close co-ordination of subsequent negotiations would therefore be required. Examples of issues which were the same in both areas were: the concept of "introduced into commerce of another country"; definition of sale, of industry and of like products; the principles of "de minimis", of cumulation, and of causation; the treatment of components; "sunset provisions"; undertakings; domestic procedures; and dispute settlement. Examples of issues which were exclusively anti-dumping were: comparison of normal value and export price; price undercutting; the treatment of high-technology products, perishable products and commodities with cycles longer than one year; as well as disciplines on the use of constructed value.

7. Concerning the Checklist of Issues Raised, which had been circulated by the secretariat in response to a request at the previous meeting (MTN.GNG/NG8/4, paragraph 29), one delegation suggested that the secretariat cross-reference issues identified in this list with issues in the Checklist of Issues in the Negotiating Group on Subsidies and Countervailing Measures (MTN.GNG/NG8/10/W/10/Rev.1). The Chairman stated that this could be done.

8. The Group reverted to the previous proposal by Finland on behalf of the Nordic countries, concerning a secretariat study of the half-year reports to the Anti-Dumping Committee. The representative of Finland modified this proposal by withdrawing the suggestion that it also cover the length of time measures had been in force.

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<sup>2</sup>The modification is being circulated as MTN.GNG/NG8/W/15/Corr.1.

9. A number of delegations supported the proposals whilst a number of others did not. Among the points mentioned by the latter were a strong belief that it would be imbalanced for instance as between large, open markets and other markets; the problem of a heterogeneous and narrow data base, e.g. the lack of data on actions by Signatories against dumping by companies from non-Signatory countries, and the non-existence of data on actions by non-Signatories. Some wondered how a study as proposed could move negotiations forward, since the results were likely to lead to different interpretations.

10. One delegation held the view that Parties were obliged to report actions against companies from non-Parties. This should be improved upon in the semi-annual reviews. The Nordic countries explained that the proposed study was aimed at achieving a more precise picture of problems involved and the functioning of the Code system in the real world. It was not clear how difficult it would really be to compile, with the assistance of participants in the negotiations, some information about non-Signatories, either on actions they had taken, or actions by others concerning their companies.

11. The Chairman suggested that this matter be reverted to later.

12. One delegation reserved the right to make a written contribution to the Group on anti-dumping.

(ii) Agreement on Technical Barriers to Trade

13. One delegation stated that it supported in principle the proposal for incorporation of past recommendations and decisions into the Code. These included issues such as timing of notifications; time period for comments on notifications; and questions that enquiry points should be prepared to answer. Before agreeing on this proposal a definitive list of decisions and recommendations had to be examined, as well as how these would fit in with other improvements.

14. The representative of Japan referred to a proposal his delegation had made for providing transparency in the drafting process of standards and certification systems (MTN.GNG/NG8/W/6). Following comments made at previous meetings, it understood that the legal system concerning these matters differed from country to country, and that the involvement of foreigners could create constitutional problems. However, short of full participation, related foreign persons might participate, for instance, by expressing opinions and this had been the intention behind the proposal.

(iii) Agreement on Government Procurement

15. The Chairman noted that a secretariat background note had been circulated as MTN.GNG/NG8/W/18 and Corr.1. The representative of Korea introduced his delegation's proposal contained in document MTN.GNG/NG8/W/21.

16. One participant welcomed the contribution which would be considered carefully. It considered that it raised important problems, in particular the small membership of this Code which warranted further discussion in the context of improvements.

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

17. The Chairman noted that a secretariat background note had been circulated as MTN.GNG/NG8/W/19. He also informed the Group that the Committee on Customs Valuation had met and agreed to transmit to this Group the Notes by the Chairman issued in the L/- series of documents after each Committee meeting. It had agreed to revert at the next meeting to various suggestions concerning ways in which the Committee might contribute to the discussion of issues relating to customs valuation in this Group and ensure transparency on particular aspects of its work.

18. No further statements were made.

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

19. The representative of Colombia recalled that his delegation had presented a proposal in MTN.GNG/NG8/W/5. He stated that whatever work this Group undertook concerning Article 14.5, had to take into account Article 19.9 of the Code.

20. One delegation stated that it considered it preferable for the sake of efficiency, to deal with this Code in the Negotiating Group on Subsidies and Countervailing Measures. The delegation of Colombia, while recognizing the close relationship between the two Groups, preferred for the time-being to keep its proposal on the table for both Groups, because the other forum might concentrate on general, conceptual problems, thus sidelining the question it had raised in this Group.

(vi) Agreement on Import Licensing Procedures

21. The Chairman noted that the secretariat background note was contained in MTN.GNG/NG8/W/20.

22. One delegation commented on the proposal made in MTN.GNG/NG8/W/16. It concurred with the thrust of the introductory part of that paper and with the views expressed on existing deficiencies. With respect to a possible new Licensing Agreement it sought clarification on the following: whether the idea was to draft a new Code or whether the substantial changes which had been proposed equated to a new Code; whether guidelines on products that might be subject to licensing referred to general product categories or specific items; whether the suggested guidelines on duration referred to individually held licences or licences more generally; whether the proposed limits on the amount of trade that could be covered by licences referred to specific products subject to other proposed guidelines, and whether the limit referred to a nominal value or a percentage of trade, to previous licence amounts, domestic consumption patterns, GNP, or any other

criterion. This delegation expressed interest in the suggestion for future discipline on discretionary licensing and for review of the relationship between quantitative restrictions, safeguards and licensing.

23. One delegation considered that the suggestions in MTN.GNG/NG8/W/16 amounted to suggesting a change in the nature of the Code, whose purpose and scope was only to ensure that licensing procedures did not represent additional trade restrictions. It was not clear what was meant by sanctions on unlimited use of licences, because quantitative restrictions could not be administered without licences and the question could not be separated from the policy question of whether to have a restriction or not, a matter which went beyond the scope of the Code. Another delegation sought a clarification concerning what was meant by "reviewing the extent and nature of licensing régimes".

24. The representative of the United States stated that comments would be taken into account in the preparation of a further text.

25. Commenting on the proposals in MTN.GNG/NG8/W/17, one delegation supported a review of the definition of import licensing formalities to determine if other documentation currently in use should be subject to Code coverage. Some documentation had been discussed in the Committee on Import Licensing but other types of documents used as prior conditions for importation also warranted consideration. It sought a further elaboration of the proposal to expand the Code to include procedures used to administer export restrictions.

26. One delegation supported by another delegation, considered that an extension of the rules to cover export licences went beyond the Negotiating Plan in that the Code only dealt with import licensing; it was not realistic to deal with export licensing in the context of import licensing because these, when adopted for very different purposes, differed from country to country.

27. In reply the representative of the European Economic Community explained that the idea had been to extend the provisions of the Code to export licences, i.e. where these dealt with type of documentation, and provided greater transparency or certain terms and conditions which, generally, ensured the user a minimum guarantee of non-discrimination. The proposal was limited to formalities, and had nothing to do with motivations or justifications for export licences.

28. One delegation added that if the aim was merely to seek greater transparency in export licensing procedures, this could be better achieved, inter alia, by an understanding under Article X. Whether the desiderata on which the Code was based could be applied to export licensing procedures might usefully be discussed further. Another delegation thought it was premature to address the question of export licensing procedures since the Group had not yet a common perception as to what kind of modifications or clarifications might be appropriate in regard to import licensing.

(vii) Checklist of Issues Raised

29. Two delegations stated that they would revert to some of the points in the Checklist, inter alia, concerning import licensing. The Chairman suggested that if any delegation wished to suggest changes to the Checklist these should be submitted to the secretariat not later than two weeks before the Group's next meeting. He also stated that new proposals would have to be added to the Checklist (see also paragraph 7).

(viii) Chairman's summing-up

30. The Group agreed to the following summing-up by the Chairman:

"The Group has considered suggestions by participants indicating issues that they wish to raise with respect to the following individual MTN Agreements: the Agreement on Implementation of Article VI, the Agreement on Implementation and Application of Articles VI, XVI and XXIII, the Agreement on Implementation of Article VII, the Agreement on Government Procurement, the Agreement on Import Licensing Procedures, and the Agreement on Technical Barriers to Trade. In this connection the Group has also had before it factual secretariat background papers. The Group recognized the need for flexibility in identifying additional issues for negotiations, and for further detailed examination that would help in clarifying the issues for negotiations, as the negotiating process evolves.

The Group has discussed negotiating techniques and modalities in the light of the above. It recognized that in the subsequent negotiating process pragmatism and flexibility will also be needed in respect of such techniques and modalities. There is nevertheless a broad agreement on certain guidelines concerning the Group's work in the subsequent negotiating process. These points are reflected fully in a separate annex to the note on the fifth meeting of the Group, held on 7 December 1987.<sup>3</sup>

The Chairman expressed the hope that the Committees of MTN Agreements and Arrangements respond positively and as soon as possible to the request for information on their work, and that they would also give information on informal meetings they held, if any."

31. In response to a clarification sought by one delegation concerning the last paragraph in the summing-up, the Chairman explained that this reflected language used at the meeting of 17 September 1987 (MTN.GNG/NG8/3, paragraph 2).

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<sup>3</sup>See Annex I.

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

32. The Group agreed on the text presented by the Chairman which is reproduced in Annex I to this Note.

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

33. The Chairman stated that the week of 29 February 1988 was likely to be set aside for the Group by the GNG. In view of the desirability of co-ordination between meetings of this Group and meetings of relevant bodies, he suggested that the secretariat look into the various dates that might be appropriate in the light of the GNG decisions and the need to make the best use of experts from capitals. Further, he suggested that the secretariat propose the draft agenda for the next meeting, in consultation with delegations.

34. After a short exchange of views of possible agenda items and other organizational questions, the Group agreed to the Chairman's proposals.

ANNEX 1

Negotiating Techniques and Modalities for the  
Subsequent Stages of Negotiations  
(referred to in paragraph 32)

The Group recognizes that in the subsequent negotiating process there will have to be pragmatism and flexibility in approaching the question of negotiating techniques and modalities. The following are guidelines for work in the subsequent negotiating process:

1. The length of time scheduled for meetings as well as the intervals between meetings should take account of the complexity of issues proposed for discussion, as well as the overall schedule of meetings to be approved by the GNG.
2. In order to make the best use of experts from capitals, it would be desirable for meetings of relevant bodies to be scheduled in a co-ordinated manner, bearing in mind that duplication of work and overlapping of meetings should be avoided.
3. Specific issues should be designated for discussions at each meeting. In principle, while no Code proposed for discussion would be covered less than twice in 1988, time devoted to different issues should adequately reflect their complexity. For practical reasons more than one Code could be designated for discussion at each meeting but this should not preclude other Codes from being taken up at any meeting.
4. Specific texts on issues identified for negotiations should be submitted and distributed by interested participants well in advance of the meetings at which they are to be discussed. Members of the Group are encouraged to table specific texts as far as possible by the end of 1988 without prejudice to the tabling of additional specific proposals after that time.
5. The Chairman will convene informal meetings as necessary. These meetings will be scheduled within the usual agreed programme of meetings.
6. Given the inter-relationship of the work of the Code Committees and this Negotiating Group, it would be necessary to facilitate the exchange of information on relevant developments in the work of these fora. In this connection, Code Committees have been requested to provide the Negotiating Group on a regular basis with information on their activities which will assist the Group's deliberation.