

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG7/6
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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 sixth meeting on 3 and 5 February 1988 under the Chairmanship of Ambassador John M. Weekes (Canada). In considering the agenda set out in GATT/AIR/2542, certain delegations stated that it was their understanding that the Chairman's suggestion in paragraph 2 of the airgramme that the Group begin its work on Article XXVIII in no way implied that this Article had priority over any other. The Chairman assured the Group that he did not consider this to be the case and that the suggestion had been made only to provide a basis on which to move forward with the work at the Group's first meeting in 1988. The Chairman also indicated his intention under "Other Business" to invite delegations, in accordance with the understanding reached at the Group's November meeting, to request the review of any GATT Articles, provisions and disciplines not so far taken up in the Group. The agenda was adopted.

Agenda Item A: Organisation of the Group's future work

2. In introducing this agenda item the Chairman expressed the view that in order for the Group to work efficiently, it was important to decide reasonably in advance what subject matter would be taken up at each meeting. In this way, adequate preparations could be made in capitals. The question of how often the Group should meet also needed to be considered, and the Chairman suggested that while the Group had many issues before it, there would not be any point in holding meetings for their own sake. There should be good prospects of advancing the work on these occasions.

3. Several delegations emphasized their view that the order in which Articles and provisions were taken up for consideration implied nothing about the relative importance of the issues involved. All the issues were important to one delegation or another. A pragmatic approach was required in this matter. While it was to be expected that the pace of progress could not be identical with respect to all issues before the Group, it was necessary to identify where work needed to be done most, and to structure the activities of the Group accordingly. It was suggested by one delegation that criteria should be established for examining the Articles and provisions identified in the Group. The representative of Chile considered that the Group should examine issues raised with respect to Article XVII, and requested the secretariat to make document L/5955 available to the

Group. This document, dated 29 January 1986, contained Chilean views on Article XVII and had been placed before the Council. Other delegations noted that while particular Articles or provisions might be identified for examination at a meeting of the Group, as was the case at the present meeting, there was nothing to prevent delegations from raising any other matters if they so wished.

4. A number of delegations noted that the Group would require both formal and informal meetings to accomplish its work. It was stressed by some delegations that transparency should be ensured at all times. It was also suggested that informal meetings should be open to all delegations.

Agenda Item B: Consideration of issues arising from the examination of special Articles

5. The Chairman drew the attention of delegations to document MTN.GNG/NG7/W/41, which contained a list prepared by the secretariat of all documents issued so far with respect to each of the Articles and provisions which had been raised for review in the Group. He also referred to the secretariat's document MTN.GNG/NG7/W/40, which contained information requested on the time lags that had occurred under Article XXVI:5(c) between the assumption of de facto status by a country and succession as a contracting party to the General Agreement. Finally, in regard to another request, the Chairman informed the Group that the secretariat had been unable to find any information in addition to that contained in its background note (MTN.GNG/NG7/W/30) on the drafting history and interpretation of the word "and" linking paragraphs 1(a) and 1(b) of Article XXXV.

6. In introducing the discussion on Article XXVIII, as proposed in the airgramme convening the meeting, the Chairman briefly summarized the major issues that had been raised in previous meetings and in submissions by delegations. He also suggested that consideration could be given to the inclusion in the discussion of New Zealand's proposal regarding Article II:1(b) (MTN.GNG/NG7/W/3). The representative of New Zealand indicated that he would have no objection to this approach.

7. The representative of Australia introduced a new document which had been circulated to the Group (MTN.GNG/NG7/W/42). It was a further elaboration of a proposal put forward on the reform of Article XXVIII in document MTN.GNG/NG7/W/26. She said that the proposal sought to ensure clarity and predictability with regard to the rights of substantial suppliers and also to ensure that these rights were preserved. In addition, the proposal would provide an impetus to negotiate bindings. The proposal recognised that there had been an erosion of the rights of substantial suppliers under Article XXVIII:3 owing to the application of formula tariff reductions. There was also a tendency for negotiating rights to become increasingly concentrated in the hands of larger suppliers. Moreover, fewer and fewer initial negotiating rights were being exchanged because of formula cuts. The proposal would also end a situation in which negotiating rights were merely acquired as a windfall gain consequent upon trade performance.

Contrary to the view expressed by some delegations that an excessive number of negotiating rights would be created under the proposal, it would remain the case that contracting parties would be free to choose whether or not to enter into negotiations with respect to these rights. As regards the proposed cut-off point for small traders, the suggested figure of US\$ 100,000 was merely indicative, but behind the suggestion was the idea that negotiations on the basis of potential interest in trade in particular products might be facilitated. Finally, as far as the relation between Article XXVIII and Articles XIX and XXIV was concerned, the suggested changes to Article XXVIII would contribute to a better observance of Article XIX and to greater clarity, predictability and equity in Article XXIV:6 negotiations.

8. Many delegations expressed their appreciation for Australia's additional explanations of its original proposal. Several of these delegations stated that they required more time to examine the issues involved. A question raised by a number of delegations was whether in practice the proposal would be workable, or whether it would lead to confusion and a certain instability arising from continuing negotiations. A delegation expressed the view that the proposal was attractive in that it subscribed to the principle that rights should be paid for rather than simply acquired, but suggest that the proposal could result in a kind of "double payment" under Article XXVIII. Moreover, it risked compromising the value and significance of bindings. It was also suggested that the means envisaged for acquiring negotiating rights could undermine the recognition of commercial realities, which had in the past ensured that Article XXVIII was workable.

9. Referring more generally to proposals that had been presented to the Group, a number of delegations emphasized the importance which they attached to the search for improvements in the interpretation of Article XXVIII. In present circumstances, small suppliers did not have a chance to protect their interests in tariff renegotiations affecting their interests, and this in turn diminished the value for them of tariff commitments by their trading partners. Other delegations said that while they were not opposed to an examination of the issues, they were of the view that Article XXVIII had worked well on the whole, and had been resorted to with restraint. It had provided a vital safety valve, which had made it possible for some contracting parties to accept high levels of obligation in the field of tariffs. Furthermore, the distribution of negotiating rights among contracting parties often reflected the degree of commitment that had been accepted. Any proposals to change the criteria for according negotiating rights should take account of relative levels of tariff bindings among contracting parties. Such proposals should also avoid compromising the effectiveness of Article XXVIII by making its procedures more complicated. Certain delegations also suggested that Article XXVIII should be examined in the context of the wider issue of structural adjustment. Another view expressed was that it was important to view Article XXVIII in conjunction with various other relevant Articles, including Articles II, XII, XVIII and XIX.

10. Delegations made reference to several issues which had been discussed at earlier meetings of the Group, and to which they attached importance. One such issue was the need to improve the method of calculating compensation upon the introduction of tariff rate quotas. Another matter concerned the identification of negotiating rights and calculation of compensation in situations where there was both preferential and mfn trade. It was suggested that this matter might be studied further by the secretariat. Reference was also made to the complicated nature of some of the procedures surrounding Article XXVIII, and it was suggested that these might be partly responsible for the regular invocation by contracting parties of the three-year period, or so-called "open season" provisions.

11. A number of delegations referred to the question of new products and the problem of pre-emptive increases in tariffs on these products, which in their view created a problem in regard to the appropriate level of compensation due. A related problem was the manipulation of tariff classifications for protectionist ends. A delegation requested information on what the Customs Cooperation Council Nomenclature Committee was doing. A delegation expressed the view that Article XXVIII had not foreseen the difficulties arising in respect of new products, and there was therefore a need for new international rules in this area. The absence of such rules inhibited the development of new products by engendering uncertainty in the market. It was to be noted, however, that it was not so much the right to raise tariffs to protect new industries or products that was at issue, but rather the manner in which compensation was to be calculated. The suggestion was made that this matter could be the subject of a decision by the Council, taking into account such factors as production estimates, existing production facilities, estimates of future exports and exports of substitutes, and the level of investment undertaken. Account should also be taken of potential growth. Such a determination by the Council could be made on the basis of the guidelines adopted on 10 November 1980 in regard to procedures for negotiations under Article XXVIII. Finally, it was suggested that if actual trends were different from those forecast, appropriate adjustments could be made subsequently. Several delegations expressed interest in these proposals, but indicated that more time was required to consider them. It was suggested that the kind of calculation of compensation envisaged could prove complicated. A delegation also expressed doubts about the basic approach to the issue, suggesting that the essential purpose of Article XXVIII was to compensate trading partners for the trade they had lost and not the trade they might lose in the future.

12. The delegation of Japan circulated a communication on Article XXVI:5(c) in document MTN.GNG/NG7/W/43. While recognising that there had not been time for delegations to study this document, the representative of Japan noted that there were presently some 29 countries which could succeed to GATT under Article XXVI:5(c). He considered that this justified an examination of the Article by the Group. In view of the time lag which frequently occurred between the acquisition of de facto status and succession to the General Agreement, the question was at what stage the rights and obligations of the General Agreement should apply in respect of these countries.

13. The representative of Argentina informed the Group that his authorities had submitted a communication on Article XXI to the secretariat for circulation. The communication would appear shortly as MTN.GNG/NG7/W/44. He indicated that the proposal examined ways of providing better legal protection against invocation of Article XXI for developing countries and countries with limited economic weight. Several delegations expressed appreciation and support for Argentina's initiative, and indicated that they would study the proposal and comment upon it in due course.

14. The Chairman informed the Group that he had held informal consultations on the question of factual background material requested from the secretariat. Although a number of requests had been made, it had not been possible to reach agreement in regard to the circulation of a secretariat study on the impact of different proposals by delegations on suppliers' rights under Article XXVIII. Neither had it been possible to reach agreement on the preparation of material requested in regard to consultations held under Articles XII and XVIII in the Balance-of-Payments Committee. A delegation requesting the latter material indicated that what was sought was purely factual information on consultations held since 1974, outlining the plan of discussion used, indicating the measures applied, describing the information upon which the consultations were based and summarising the discussions, conclusions and recommendations emerging from the consultations. Instances where Articles XII and XVIII had been disinvoked could be listed and a summary provided of simplified consultations during the period. Although agreement had been reached in principle on an enquiry into the application of paragraph 1(b) of the Protocol of Provisional Application, the modalities of such an enquiry had yet to be worked out. The Chairman undertook to continue consultations on all these matters in the coming weeks.

Agenda Item C: Other business

15. The Chairman proposed that the Group hold its next meeting in the week 11-15 April 1988. It was understood that the Group would hold at least one additional meeting before the summer break. He also proposed that at its next meeting the Group take up any further issues under Article XXVIII and then take up issues under Article XVII and Article XXIV. It was understood, however, that delegations remained free to raise for discussion any other issues.