

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG8/6

2 May 1988

Special Distribution

Group of Negotiations on Goods (GATT)
Negotiating Group on MTN
Agreements and Arrangements

MEETING OF 7-9 MARCH 1988

Note by the Secretariat

1. The Group held its sixth meeting on 7-9 March 1988 under the Chairmanship of Dr. Chulsu Kim (Korea). The Group adopted the agenda proposed in GATT/AIR/2549.

Agenda item A: Further examination and clarification of issues for negotiations

2. This item provided an opportunity for delegations to avail themselves of the agreed 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" (MTN.GNG/NG8/5, paragraph 30).

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

3. The European Economic Community tabled the communication which was subsequently issued as MTN.GNG/NG8/W/28.

4. One delegation, considering that anti-dumping practices often created unjustified obstacles to international trade, and not least exports of developing countries new-comers to a market, generally shared the views expressed in MTN.GNG/NG8/W/3. It emphasized in particular problems regarding certain terms and questions such as "introduced into the commerce of another country", "like product", the use of constructed value, including the question of price adaptation, "cumulation" of imports, and definition of industry. One delegation reserved its right to revert to this Code later.

5. A number of delegations addressed the question of a possible secretariat input in the area of anti-dumping, originally suggested in MTN.GNG/NG8/W/15, item 8. In the absence of consensus the Chairman pursued this question in informal consultations. Following these consultations, the Group agreed to his proposal that delegations be invited to indicate to the secretariat, by 15 May 1988, what additional elements a possible secretariat factual compilation of information should cover. The secretariat would be requested, in the light of such additional elements

suggested, to prepare an outline also indicating limitations which any such compilation could contain. The outline would be discussed at the June meeting.

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

6. Colombia recalled its communication in MTN.GNG/NG8/W/5 concerning Article 14.5, which was to be kept on the table.

Agenda item B: The Agreement on Import Licensing Procedures

7. Because the Group had met, exceptionally, at the same time as the Surveillance Body, the Chairman gave, exceptionally, a summary of the discussion which had taken place on 8 March 1988, for the benefit of delegations which had not participated. The Chairman stated that the following summary was on his own responsibility, without prejudice to the positions of any delegations:

- "A number of delegations made statements concerning the proposals made by the United States (MTN.GNG/8/W/16 and 27) and the EEC (MTN.GNG/NG8/W/17); some in general terms, some specifically related to items identified in the secretariat checklist (MTN.GNG/NG8/W/26).

- "The United States said that the proliferation of licensing systems was becoming an increasing problem in the trading system. It was recognized that automatic import licensing was useful for various purposes and that non-automatic licensing could be used legitimately to administer measures adopted pursuant to relevant GATT provisions. However, central to the United States' proposals was the idea of limiting the use of licensing. The existing Agreement should be clarified and expanded. First, the recommendations adopted by the Import Licensing Committee in May 1987 should be formally adopted into the Agreement. Secondly, a general review of the terminology of the Agreement should be carried out in order to provide clearer definition of and guidelines for licensing practices. The United States supported, in this context, the on-going work in the Import Licensing Committee to define the term "licensing". Thirdly, the United States proposed that the Negotiating Group should examine ways to limit the use of licensing, for example through limiting the duration of the use of licences or the maximum number of tariff lines or volume of trade which should be covered by import licences. A possible commitment to digressivity in the use of licensing procedures should also be considered. Fourthly, the Group should examine ways of bringing greater discipline into the use of discretionary licensing, which could often be applied in an arbitrary manner. Drawing attention to the close relationship between quantitative restrictions and licensing, the United States suggested that the Group should develop guidelines for the administration of quantitative restrictions relating, for example, to their notification or justification. Finally, more operational review procedures and more detailed dispute settlement procedures should be adopted.

"Delegations generally welcomed the clarifications given by the United States. A number of participants supported the proposals for incorporation of the May 1987 recommendations into the Agreement. However, one participant, non-signatory, questioned the practical utility of limiting the number of administrative bodies to which application should be made to two. There was broad support for clarification of the language of the Agreement. However, concerning the extension of the scope and nature of the Agreement, while some delegations supported the proposals for improved disciplines, a number of participants stressed that non-tariff measures, including quantitative restrictions, were under discussion in other Negotiating Groups and that care should be taken not to overlap with the work of these Groups. It was pointed out that the objective of the Licensing Code should continue to be to ensure that licences are neutral, objective and transparent in application. Attention was also drawn to the need to encourage the enlargement of the Agreement's membership.

- "The EEC, referring to its proposals, said that its first proposal was intended to ensure that the provisions of Article 2.2(a) and 3(a) of the Agreement were correctly applied so that any procedure having the effect of an import licence should not have additional restrictive effects on trade. Its second proposal on export licences was based on the idea that, as Articles XI and XIII of GATT should apply equally to exports as to imports, the scope of the Code should be expanded to take account of this. The EEC was also considering making a submission to the Group concerning the question of refusal of import licence applications for reasons of foreign exchange shortage."

Agenda item C: The Agreement on Technical Barriers to Trade

(i) Proposal on procedures for issuing product approval

8. The delegation of the United States introduced the proposal in MTN.GNG/NG8/W/23, to further expand the Agreement to include disciplines over regulatory and administrative procedures for issuing product approval. This proposal involved one aspect of the question of improving the Agreement in the area of testing, inspection and type approval and its importance had been recognized by the Committee on Technical Barriers to Trade which had discussed the issue within the context of the second three-year review held under Article 15.9 of the Agreement. The proposed procedures for the approval process were built on the principles existing in the Agreement and sought to ensure efficient and expedited handling of approvals. The goal, therefore, was to extend the basic obligations in the Agreement, such as national treatment, most-favoured-nation treatment and transparency, to the regulatory and administrative procedures used by governments in approving products. While the proposal stressed the importance of reliance on manufacturer's declaration of conformity, it also recognized that legitimate domestic objectives such as protection of health, safety, essential security, environmental or consumer interests, had to be taken into account by central government authorities in choosing the appropriate methods for particular products. The delegation of the

United States also gave detailed explanations on the proposal in terms of definitions and scope, establishment of procedures, access, transparency and administrative mechanisms.

9. A number of delegations supported the thrust of the United States' proposal or noted that many elements were acceptable in principle. In preliminary comments, one delegation noted that on some concepts there appeared to be divergent points of principle involved. This delegation, supported by some other delegations mentioned in this connection, inter alia, that the definition and scope of "approval" was limited by not taking account of the tendency to delegate responsibility for granting approvals to local government bodies or authorized non-governmental bodies. Therefore, procedures for issuing approval should be extended to cover their activities in this area. This delegation also noted that appropriate methods for product approval enumerated in the proposal intervened at different points in time and that this should be reflected for the sake of clarity. In this connection, it pointed out that there was no reference in the proposal to the approval procedures based on quality assurance or design documentation. Together with another delegation, it was also concerned about reliance on manufacturer's declaration of conformity not supported by other appropriate mandatory mechanisms of control. One delegation favoured the method of approval based on third party certification of a manufacturer's declaration of conformity. This delegation also held the view that in order to be operational, the definition of "legitimate domestic objective" should not only cover the purposes of a requirement, but also whether the requirement was an essential means to arrive at a given objective, i.e. the notion of "fitness for purpose". Another delegation, on the other hand, particularly welcomed the attempt to further clarify what constituted an unnecessary obstacle to trade.

10. A number of delegations stated in general that it was difficult to fully address and obtain results in the area of procedures for issuing product approval without also considering the issue of testing and inspection. Another delegation, however, thought that for purposes of initial discussions this area could be dealt with separately.

11. A number of delegations also made comments on some of the specific elements of the proposal in MTN.GNG/NG8/W/23: (i) the selection of least cumbersome method for product approval should be decided by the applicant itself and not by the approval authority; (ii) the use of responsible intermediaries for applications, such as importer or agents in the country of approval, should not be excluded; (iii) the time limits for approvals should operate after the receipt of complete and acceptable approval documentation and should, to a large extent, depend on the approval method; and (iv) it would be impractical for approval authorities to have recourse to the advice of impartial technical experts for each approval.

12. It was emphasized by some delegations that there should be reference to internationally accepted criteria for the operation of approval bodies and that progress in this area in other fora be taken into account.

13. One delegation noted that in the final analysis a balanced and non-discriminatory arrangement had to be found, which took into account different stages of technological development among countries.

(ii) Proposal on processes and production methods

14. The delegation of the United States introduced its proposal on processes and production methods (PPMs) in MTN.GNG/NG8/W/24, stating that the proposal would extend all major disciplines in the Agreement which presently applied to technical specifications drafted in terms of product characteristics to technical specifications based on PPMs. This would broaden the scope of the Agreement and make it more responsive to modern commercial and technological realities. The growing use of PPMs in programmes to improve quality control represented a new problem. The recent developments in technology affected the means by which governments prepared regulations to ensure the quality of products, and it appeared that PPMs would be increasingly applied in high technology areas. The intention of the proposal was not to discourage the use of PPMs but rather to eliminate potential trade barriers posed by PPM-based requirements. In the Tokyo Round, it had been agreed to include PPMs under the dispute settlement provisions of the Agreement. That coverage had since been subject to a narrow interpretation by some Parties to the Agreement which had also blocked the full exercise of rights under these provisions. After eight years of experience, the United States believed that lack of full coverage of PPMs seriously weakened the effectiveness of the Agreement, by excluding a growing body of regulations from its disciplines. Regulations based on PPMs could pose major barriers to both agricultural and industrial trade. Full extension of the provisions of the Agreement to PPM-based requirements would strengthen the Agreement and make it more effective in reducing arbitrary or unnecessary technical barriers to trade. The delegation of the United States went on to explain in more detail the proposal which consisted of: (i) a re-definition of the term "technical specification" in Annex 1 used for the purposes of the Agreement, to include in its definition, "processes, conditions of growth and production methods"; and, (ii) an amendment to the text of Article 14.25 which would replace the term "circumvent" by "nullify or impair".

15. Delegations that spoke considered the subject of PPMs a very important one and stressed that their inclusion would mean a considerable extension of the coverage of the Agreement. It was generally recognized that PPMs had a growing importance in the industrial area, especially in high-technology products.

16. Two delegations agreed in principle with the thrust of the proposal, that PPMs should be covered by the provisions of the Agreement. Some delegations considered it appropriate to seek internationally agreed disciplines in order to eliminate any unnecessary barriers to trade that may be caused by PPMs. Some delegations supported efforts for a uniform interpretation of the Agreement's coverage of PPMs, an issue which had caused trade friction in the past. With regard to the approach to be

taken, one delegation thought that two alternatives were open, either to clarify and strengthen the text of Article 14:25 to make PPM-drafted requirements clearly subject to dispute settlement procedures of the Agreement or, as the United States had proposed, to extend the coverage of the Agreement to PPMs.

17. Some delegations considered that a number of issues had to be tackled before the Group would be in a position to discuss the substance of the proposal. In order to determine the coverage of the extension that was being sought, certain concepts had to be clearly defined. Some delegations stressed difficulties relating to the definition of PPMs, in particular in the industrial area, while others saw difficulties in defining the scope of the PPMs in the agriculture sector. One delegation stated that a clear distinction had to be made between specification of products, and quality assurance methods used in production. Some considered it relevant to discuss whether PPMs should include codes of practice. According to one delegation, the appropriate approach to this issue could be considered only after having examined questions concerning specificity of PPMs. Some delegations stressed the importance of inputs of information from participants on current trends in the formulation of PPMs, both in the agricultural and industrial sectors.

18. Some delegations raised questions concerning the establishment of a hierarchy, as seemed to be suggested in the proposal by the United States, whereby requirements drafted in terms of PPMs be used in residual cases when the use of requirements drafted in terms of product characteristics were not feasible. In this connection, the proposal on Article 14.25 was taken up by some delegations, who questioned the need for maintaining this provision if in the end provisions of the Agreement covered PPMs. One delegation wondered whether maintaining this provision would imply discouraging Parties from drafting requirements in terms of PPMs. One delegation said that the guiding principle of standardization in international and national practice was that drafting of requirements in terms of PPMs were resorted to only in exceptional circumstances when it was not possible to attain the objective sought by drafting in terms of product characteristics. Some delegations had concerns about the feasibility and desirability of making national requirements based on PPMs mandatory in international trade. Rigidly enforced adherence to PPMs might not be suitable in different countries and might even operate to restrict innovation.

19. One delegation stated that the basic reason why PPMs had not been included in the Agreement had to do with agriculture, and that PPMs would continue to play an important rôle in this area. This delegation was considering the possibility of developing a set of rules on health and phytosanitary measures including PPMs which could settle problems in this sector generally, either within the Agreement or as an autonomous code. This delegation also suggested that agricultural PPMs be discussed in the Negotiating Group on Agriculture and that the NG8 focus on PPMs in the industrial sector. Another delegation did not consider it useful to

suggest such a distinction. While it was not opposed to discussing PPMs in the Negotiating Group on Agriculture insofar as they were relevant to the Ministerial Mandate on health and sanitary measures, the United States proposal which aimed at clarity, uniformity and coherence in the operation of this Agreement ought to be discussed in its entirety in the NG8.

(iii) Code of good practice for non-governmental bodies; and extension of obligations under the Agreement to local government bodies

20. Pending submission of more details, the European Economic Community recalled its proposals on a code of good practice for non-governmental bodies and the extension of the major obligations in the Agreement to main local government bodies (MTN/GNG/NG8/W/8). While the obligations in the Agreement applied to the activities of central government bodies, under Articles 3, 4, 6 and 8, central government bodies had the obligation to "take such reasonable measures as may be available to them to ensure" that non-governmental bodies observed the relevant obligations. The disciplines as regards non-governmental bodies ought to be strengthened in order to achieve an overall balance in rights and obligations because first, standards elaborated by such bodies could become trade obstacles in the same way as technical regulations and standards applied by central government bodies. Secondly, there was a trend towards privatization of standardization activities which meant that they would become increasingly subject to best-efforts obligations. A code of good practice might take the form of an annex to the Agreement, which might be submitted to private organizations for acceptance. The main obligations on national treatment, m.f.n. treatment, the use of international standards, and transparency, should be handled in an operational manner geared to the practices of private organizations. The code would cover preparation and application of standards and technical regulations by non-governmental bodies but could also extend to the other aspects of standardization such as determination of conformity or certification.

21. The proposal on local government bodies was to extend to these the obligations now applying to central government bodies. This meant to transform the obligation of Parties in Articles 3, 6 and 8 to take "such reasonable measures as may be available to them" into a result-oriented obligation, whereby Parties would take greater responsibility as regards the observance of obligations under the Agreement by local government bodies, whose activities had an impact on trade of other Parties. Extension of notification requirements to the preparation and adoption of standards and technical regulations by local government bodies would be an important element of their proposal on this subject.

22. A number of participants welcomed the proposals for an improved balance of rights and obligations between different Parties with different degrees of centralization in standardization activities. Some delegations shared the view of the European Economic Community that the present provisions setting the different levels of obligation under the Agreement did not fully ensure this balance. Another delegation added,

however, that so far no complaints had been made regarding the activities of local government bodies. Some delegations expressed reservations concerning the extension of notification requirements; any additional obligations in this respect might increase the burden of the minority of Parties which actually fulfilled the present obligations.

(iv) Transparency on the operation of certification systems and on the drafting process of standards, technical regulations and rules of certification systems

23. The delegation of Japan explained its national practices in connection with the two proposals in MTN.GNG/NG8/W/6. One delegation sought further information on how the system of a "standard processing period" had functioned in Japan.

24. Concerning transparency in the drafting process of standards, some participants saw problems in involving representatives of foreign interests or foreign experts. In this connection, one delegation drew attention to provisions in the Agreement concerning comments on proposed technical regulations and rules of certification systems.

25. Some delegations considered that if national procedures were to be open to foreign interests, this should primarily be in the area of technical regulations, and asked the Japanese delegation to share its experience concerning the participation of foreign interests in the drafting of technical regulations.

(v) Other Issues

26. The Group took note of a submission by the Nordic countries on testing and certification (MTN.GNG/NG8/W/15/Add.1) which would be included in the checklist of issues. A more detailed proposal would be submitted in due course. One delegation supported the suggestion in MTN/GNG/NG8/W/9 on voluntary draft standards and their status. Some delegations supported the suggestion in MTN.GNG/NG8/W/26 concerning recommendations and decisions adopted by the Committee on Technical Barriers to Trade.

Agenda item D: Other business, including arrangements for the next meetings of the Negotiating Group

(i) Secretariat work in the area of Anti-Dumping

27. See paragraph 5 above.

(ii) Further work

28. The Chairman stated that he did not think it appropriate to give any assessment of the work carried out at this meeting. He encouraged delegations:

- (i) to reflect on the further elaboration of issues for negotiations which had already put forward;

- (ii) to elaborate additional positions on issues of interest to each of them in the areas of Licensing and Technical Barriers to Trade (as well as on other areas); and
- (iii) to provide revised elaborations of proposals in the light of comments made at this meeting.

29. Following consultations, he proposed that the next meeting be held on 6-8 June 1988, with the possibility of continuing on 9-10 June in formal or informal sessions, if necessary and feasible. He proposed the following agenda in this order: the Anti-Dumping Code, the Code on Subsidies/Countervailing Measures; the Code on Government Procurement; the Code on Customs Valuation; a general item as item A on the agenda for the next meeting; and Other business.

30. He suggested a further meeting on 14-16 September 1988, when the Codes on Import Licensing and Technical Barriers to Trade would be discussed, together with any other item considered useful.

31. A fourth meeting should be held toward the end of October - a precise date to be fixed later. At that meeting, the Anti-Dumping Code would be reverted to together with other items.

32. The Group so agreed.