MULTILATERAL TRADE NEGOTIATIONS THE URUGUAY ROUND

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Group of Negotiations on Goods (GATT)

Negotiating Group on GATT Articles

NEGOTIATING GROUP ON GATT ARTICLES

Note on Meeting of 27-30 June 1988

1. The Negotiating Group on GATT Articles held its eighth meeting on 27 and 30 June 1988 under the Chairmanship of Mr. John M. Weekes (Canada). The Group adopted the agenda contained in GATT/AIR/2623.

2. The Chairman informed the Group that three new documents had been circulated by the secretariat. The first was a corrigendum of document NG7/W/30, dated 20 June, which updated the list of contracting parties between whom Article XXXV presently operated; the second, document NG7/W/45, dated 17 June, contained an illustration of the effects on the ranking order of suppliers of the application of a number of proposals which had been made for the attribution of negotiating rights in renegotiations under Article XXVIII. The illustrations were drawn from a selection of recent Article XXVIII negotiations. The third, document NG7/W/46, dated 24 June, provided information on the consultations held in the Committee on Balance-of-Payments Restrictions under Articles XII and XVIII:B since 1975. Concerning the Group's enquiry on the legislation maintained under the Protocol of Provisional Application, the Chairman's letter to contracting parties would be circulated within the coming days.

Agenda Item A: Consideration of issues arising from the examination of specific Articles

Article XXI

3. In introducing his country's communication on this subject (MTN.GNG.NG7/W/44) the representative of Argentina said that the invocation of Article XXI was a matter of great importance because it provided an exemption from the fundamental principles of GATT. The Group should define conditions for its application and provide for consultations between the country invoking Article XXI and contracting parties affected by it. The submission of his delegation proposed two options, first in order to improve the balance within Article XXI, the Group might draft an Interpretative Note which would restore the link envisaged in the Havanna Charter between its Article 86, on Relations with the United Nations, and Article 99, on Security Exceptions. This would restore the intended balance between the respective rôles of the GATT and the United Nations. Alternatively the Group might provide an interpretation of some key concepts in Article XXI(b)(iii), such as "protection of essential security

interests" and "time of war or other emergency in international relations". Consideration should also be given to the need to have recourse to Article XXIII:2 by those contracting parties which had been the subject of an Article XXI action, without limitation as regards the mandate of panels; and to the possibility of compensation for contracting parties which had been the subject of an unwarranted Article XXI action.

4. The delegation of Nicaragua, introducing document (MTN.GNG/NG7/W/48) said that there was a clear need to review in detail the provisions of this Article. While each state clearly had the right to defend its national security it was also true that Article XXI could be abused and that its effects on other contracting parties could be seriously detrimental. It was therefore appropriate for the GATT to examine trade measures taken by its members and justified on security grounds, particularly if these related to questions of security duly referred to the United Nations. To avoid misuse of Article XXI it was necessary to interpret certain terms in XXI:b, as proposed in Nicaragua's submission. Such interpretations would avoid the politicisation of GATT by making it unnecessary for the contracting parties to pass judgement on security matters in the absence of a determination by the United Nations or other competent inter-governmental organisations. Referring to Article XXIII it was asserted that to prevent the examination of the legality of certain Article XXI actions meant that the dispute settlement provisions of the GATT lacked real content. Similarly, if these actions were found to be inconsistent with the General Agreement, the possibility of taking compensatory measures was essential to protect the interests of smaller contracting parties which lacked retaliatory power.

5. Another delegation, while agreeing that it was not the intention of the submissions made on this Article to bring into the GATT inappropriate political issues, shared the view that when trade measures were taken for security reasons it was important to establish a clear relationship between the measures taken and the security considerations on which they were based. Without calling into question the sovereign right to invoke Article XXI the Group should examine how such a direct relationship could be established.

6. Other delegations were of the view that since Article XXI involved very sensitive matters a great deal of discretion was necessary in dealing with it. Considerations of sovereignty were paramount in the application of this Article and it was unrealistic to think of a GATT body placing conditions on its use since only the individual contracting party concerned was ultimately in a position to judge what its security interests were. Hitherto contracting parties had been very judicious in using Article XXI, which had been invoked very infrequently.

7. Referring to the proposals contained in the Argentinian submission, NG7/W/44, one delegation expressed the opinion that since the GATT had no competence in the determination of questions of security or of a political nature, it seemed doubtfully useful to set up any institutional test to

determine whether a matter was security-related or political. Referring to the point in the submission that according to the interpretative note to Article 86 of the Havana Charter the International Trade Organization (ITO) had responsibility in determining whether a measure was taken in connection with a political matter brought before the United Nations, it was stated that the same note went on to acknowledge that if political issues were involved in making such a determination, the question should fall within the scope of the United Nations. Similarly, the dispute settlement function attributed to the ITO was perhaps narrower than that implied in the submission's reference to the interpretative note to paragraph three of Article 86; the note referred specifically to nullification and impairment with respect to a "member which has no direct political concern in the matter", so it could not be considered as a broad granting of authority with respect to all aspects. Finally, the same delegation suggested that rather than focusing on institutional arrangements it would be useful to continue observing the opening sentence of the third paragraph of Article 86 which read "the members recognise that the organisation should not attempt to take action which would involve passing judgement on essentially political matters".

8. Other delegations, however, shared the view that there was a danger of this Article being abused if governments were not cautious in its invocation. It was also mentioned that there were other actions under Article XXI, for instance, under paragraphs b(i) and (ii), which although security-related were not necessarily of a political nature; such actions could affect trade interests and the right of recourse to Article XXIII by the affected contracting party would seem necessary to redress the balance of rights and obligations. Other delegations, which did not favour any change in the text of Article XXI or the development of rigid disciplines in what was essentially a matter for unilateral decision, suggested that the notification provisions under the Article might be improved. The point was also made that the right of recourse to Article XXIII was the appropriate safeguard against abuse.

9. Referring to comments made on the lack of retaliatory power of the less-developed contracting parties, one delegation suggested that this question should not be seen as a North-South problem. In the opinion of another participant this matter deserved serious consideration; in order to improve the balance of rights between parties with a large trade weight and those with a small trade weight, provision should be made for compensation of the latter when an action affecting them under Article XXI was not GATT consistent.

Article XXV:5

10. In introducing the discussion on Article XXV.5, the Chairman recalled that the Group had before it two documents: the EEC submission NG7/W/4 and a factual background note by the secretariat, NG7/W/18. During past meetings it had been suggested that adjustments were needed in two respects: the establishment of precise criteria defining the exceptional circumstances leading to the granting of waivers, and the introduction of clear limits on their duration.

11. One participant said that the definition of the "exceptional circumstances" to be taken into account when granting a waiver was extremely important but also very difficult, since by definition exceptional circumstances were hard to identify in advance. The question of the duration of waivers therefore took on particular importance; whenever a waiver was granted a time limit should be imposed. The absence in Article XXV of any procedures for the termination of waivers suggested that they were all expected to be time-bound. This was now the normal practice - and indeed the majority of waivers granted in the past had been time-bound: such time limits should now become standard practice. The problem was how to bring into line with present circumstances and current practice those existing waivers which had been granted without a time constraint. The Group should consider subjecting existing waivers to a review mechanism which would make it clear that they are not intended to be permanent. It was a disturbing factor that many existing waivers permitted derogation from obligations under Articles I and II, which constituted the core of the system. The point made in the secretariat note (NG7/W/18) that "some waivers, though formally still in force, may in fact no longer be needed" because the measures had been discontinued or were now covered by other decisions made it all the more necessary to terminate those which should no longer exist.

12. Many participants spoke in favour of the view that all waivers should be subject to time limits, and that current practice in this regard should be formalised and standardised. The point was made that since waivers under Article XXV:5 were granted in consideration of exceptional circumstances, which by definition could hardly be permanent, the waivers themselves could only be temporary. Some participants said that to define appropriate time limits in the abstract or in advance would be very difficult or inappropriate, given the different circumstances under which waivers were granted; the duration of future waivers should be determined case by case. It was suggested that a review mechanism should be instituted which would permit the termination of waivers no longer needed or justified, or the extension of waivers where necessary.

13. In discussion of the question of how to treat past waivers granted without any time limitation participants, for the most part, echoed the view that they should be put on the same footing as current and future waivers. One participant spoke of granting grace periods after the expiration of which termination would be required; another suggested that their termination should be discussed during the periodic reviews. It was also suggested that since waivers were granted by a two-thirds majority vote it might be appropriate to establish whether there was a positive two-thirds majority in favour of their continuation at the time of review. However, it was pointed out that to impose a voting requirement for continuation of a waiver was tantamount to imposing a specific time limit. The view was also expressed that because the CONTRACTING PARTIES had recognized the danger of abuse of the waiver power, they authorised waivers collectively and through double voting procedures; if in these circumstances time limits had not been imposed the measures in question

were presumably not to be regarded as transitory. The suggested imposition of time limits in such cases would, however, imply that authorised measures were transitory. In response, a participant noted that approval of waivers through scrutiny and double voting did not justify their permanence under the very different circumstances operating in the trading environment many decades later.

14. It was suggested that the termination of waivers which had been granted without time limits should not be used as negotiating currency in the Uruguay Round. Care should also be exercised to ensure that waivers which were to be terminated should not be replaced by grey area measures or other restrictions.

15. Certain delegations considered it necessary to distinguish between waivers which constituted derogations from fundamental GATT principles and other waivers. It was also suggested that it would be illuminating to examine the circumstances under which certain derogations from Article XV had been accorded. The secretariat was requested to identify those of the waivers listed in NG7/W/18 which were still in force, together with the conditions applying to them. It was agreed that an appropriate addendum to the document would be produced.

Articles XII, XIV, XV, XVIII

16. Some delegations were of the view that a review of the BOP Articles was necessitated by changes in the international monetary system and the experience gained with respect to BOP adjustment since the Tokyo Round. In particular, there was a recognition that the change from the Bretton Woods system of fixed exchange rates to flexible exchange rates along with the adoption of appropriate internal measures allowed for more efficient means for curing BOP disequilibria. One delegation observed that in the light of these changes, countries at a higher level of development should not have to resort to trade restrictive measures for BOP purposes. While acknowledging the special circumstances of developing countries that led to the application of the BOP provisions, the experience of the use of Article XVIII:B was far from satisfactory. Other delegations argued that the prolonged use of quantitative restrictions created inefficiencies in the allocation of resources and exacerbated the BOP situation rather than improved it. Furthermore, these measures rather than being of a temporary nature, had grown to provide quasi-permanent protection to many sectors, thus upsetting the balance of rights and obligations of contracting parties. A participant noted that the 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes recognized these aspects but added that it had had little practical effect.

17. One participant referred to the fact that 85 per cent of all quantitative restrictions in force were imposed under Article XVIII; further the 112 consultations held in the BOP Committee since 1974 had led to no discernible, sustained move towards liberalization. Thus, not only was the invoking country affected but the multilateral trading system in general. Some of these participants also indicated the nature of the

review that needed to be undertaken. It could involve enunciating clearer principles by clarifying existing provisions, instituting more effective procedures and reinforcing the political will needed to make BOP consultations effective. One participant called for an examination of the rationale for BOP measures as well as of the existing disciplines and procedures; the review could therefore relate either to issues of interpretation or to changes in the Article.

18. With respect to Article XII one delegation observed that it had not lost its raison d'etre and said that the need for BOP measures was not related to the level of development. With respect to Article XVIII some delegations were of the view that the proper context for evaluating its working was the structural imbalances affecting developing countries, which this Article was meant to address. Other exceptions from the General Agreement like waivers and the MFA, measures in the area of safeguards and primary products, grey area measures, non-tariff barriers, etc. were relevant in analysing Article XVIII as they all contributed to the structural problems facing developing countries. Furthermore, these imbalances had worsened since 1973 on account of such factors as the two oil shocks, the international financial crisis, high interest rates and exchange rate changes. Moreover the régime of flexible exchange rates had aggravated these problems by increasing dependence on the monetary and fiscal policies of reserve currency countries and this led to a greater justification for adopting trade restrictive measures for BOP purposes.

19. However, one participant expressed the view that the existence of the MFA or other quantitative restrictions could not be advanced as a reason for making BOP restrictions permanent. Other quantitative restrictions were subject to surveillance since the 1982 Work Program and in any case were being discussed in other Groups.

20. One participant disputed the existence of any general inadequacies in the Articles. The disciplines and procedures had evolved over time, reflecting the concerns of contracting parties, and no significant trade problems had arisen from the use of these Articles. Article XVIII reflected a careful balance of the rights and obligations of contracting parties. Countries invoking it were not provided with a carte blanche with respect to the pursuit of trade policies but were subject to obligations including the need to expose policies to scrutiny by GATT CONTRACTING PARTIES and the IMF. The same surveillance procedures were not applicable to many other measures, including some which were GATT inconsistent.

21. Regarding the extent of use of quantitative restrictions under Article XVIII:B a participant maintained that if measured by the value of trade affected quantitative restrictions and restrictive actions under other Articles had caused more damage to the trading system.

22. However, some participants indicated their willingness to consider in the review of the Article any specific issues or difficulties relating to its operation; one such issue identified by a participant related to the surveillance of the application of Article XVIII:B in the light of the experience gained after the Tokyo Round.

23. Some participants considered that the examination of the trade policy régime by the BOP Committee was rarely undertaken in a systematic manner, partly due to the lack of well-defined criteria for such an examination in Article XVIII:B and in the 1979 Declaration, especially with respect to alternative measures. Another difficulty was that wide divergences on the interpretation of the Article existed, especially on the use of these provisions for BOP reasons as opposed to the protection of domestic industry; in this regard, the infrequency of recourse to Article XVIII:C by contracting parties was noteworthy since it appeared that quantitative restrictions were being used to protect specific industries on a quasi-permanent basis.

24. In reply, a delegation maintained that the plan of discussions within the BOP Committee contained all the necessary elements required for reaching a conclusion. On the use of BOP measures as opposed to measures to protect industries, he expressed the view that while the distinction between the two was difficult to draw, it could not be asserted that restrictions under Article XVIII:B had in fact been used to protect domestic industry.

25. Some participants observed that the temporariness of restrictive measures had not been ensured and noted that only three countries had disinvoked Article XVIII:B between the years 1974 and 1987. Further, in the BOP Committee consultations, consulting countries had been reluctant to indicate a time frame for the removal of such measures. One participant expressed the view that the absence of strict time limits was a lacuna in the Article's provisions.

26. In reply a delegation said that the temporariness of measures had to be seen in the light of the economic circumstances of the consulting country; Article XVIII:B could not be disinvoked while the underlying problems were still in place. Improvements in the BOP position should not be expected to lead to a proportional reduction of trade restraints as improvements could be caused by temporary rather than structural factors. Another participant maintained that the right to use trade restrictive measures could not be related to factors like the achievement of a trade surplus but would have to depend on the need for these measures; existing GATT rules recognized that the need existed as long as monetary reserves were insufficient for development purposes.

27. On the issue of guidance a participant expressed his support for the recent trend of the BOP Committee making explicit recommendations on the appropriateness of trade policy measures pursued by consulting countries.

However, another delegation noted the lack of follow-up to the guidance provided by the Committee as shown by the lack of responsiveness of trade policy measures to changes in economic circumstances. Other delegations made references to the lack of consistent moves towards liberalization.

28. One participant observed that the guidance provided by the BOP Committee would depend on the circumstances of the particular case and the extent of difficulty faced by the consulting country. In this connection paragraph 11 of the Article placed matters of development policy outside the scope of the Committee's guidance. It was also stated that the consultation procedures in the BOP Committee were not intended to promote structural adjustment leading to disinvocation of the Article; rather it was intended for transparency and in order to protect the interests of affected parties who could in any event seek redress by recourse to Articles XXII and XXIII. Further, the records, and conclusions of the BOP Committee would show that contracting parties had embarked on trade liberalization in keeping with improvements in their BOP position.

29. In regard to the type of consultations taking place in the BOP Committee, one participant felt that too many consultations held under Article XVIII:B were in the simplified form. Another representative observed that simplified consultations had tended to become routine and suggested improvements in the nature of seeking more information from the consulting countries. It was said that no inferences could be drawn from the fact that the great majority of consultations were simplified ones. An appropriate mechanism in the form of the BOP Committee was in place, which could decide on the nature of consultations. Moreover, the Committee could seek all the information it required in the case of simplified consultations or request full consultations if deemed appropriate. No contracting party had obstructed any of the Committee's decisions including a request for full consultations. In reply a delegation said that while recognising the BOP Committee's responsibility, this Group should seek to identify and correct any problem relating to the nature of consultations.

30. In relation to paragraph 12 of the 1979 Declaration, it was suggested that insufficient consideration was given to the contribution that third countries could make to relieve the BOP position of the consulting country. According to some delegations this provision had not been dealt with in a result-oriented manner. It was suggested that quantitative restrictions and other institutionalised derogations like the MFA were relevant to a consideration of this aspect. Mention was made of the need to stabilise commodity prices and the terms-of-trade and to provide greater access to financial resources when countries faced structural problems.

31. Referring to the non-notification of prior import deposit schemes by fifteen countries, a participant noted that this was an area of deficiency and required rectification. The lack of notification of BOP measures by several contracting parties meant that they escaped the surveillance of the BOP Committee.

32. In regard to the special and differential treatment accorded to developing countries a delegation emphasised that the present review would not compromise that position. Another participant indicated that in the context of BOP measures the special and differential treatment accorded was not embodied in Article XVIII but in the difference between Articles XVIII and XII.

33. One participant suggested that the review of the BOP Articles should take into account the following considerations: that some countries pegged their exchange rates to that of their main trading partners to avoid the volatility of prices; that some countries had insufficient access to foreign financing while implementing alternative measures to restore BOP equilibrium; and finally that for least developed countries quantitative restrictions may be a practical way of temporarily managing foreign exchange shortages.

34. Other aspects of the functioning of the BOP Committee raised by one member related to problems with the nature of IMF inputs and to the need for timely circulation of documents.

35. Several participants sought clarification on the notion of cooperation between GATT and the other Bretton Woods institutions - the IMF and the World Bank - envisaged in the submission of the EEC (MTN.GNG/NG7/W37), which in their view should be between the consulting country and each of the three institutions; cooperation between institutions would not be helpful.

36. The link between the review of the BOP Articles and the work of other Negotiating Groups was raised by several participants. Some participants viewed the examination of quantitative restrictions for BOP purposes as part of a wider examination of quantitative restrictions and other measures which were being considered in other Negotiating Groups including the Safeguards Group. However another participant disagreed with this view and maintained that the two were distinct. One participant was of the view that proposals in the Group on the Functioning of the GATT System to establish a trade policy review mechanism and improve cooperation between GATT and the Bretton Woods institutions reinforced the aims of this Group; the Group should consider ways in which BOP consultations could take account of this mechanism so as to avoid an excessive administrative burden on consulting countries. Others suggested that the work of the two Groups was distinct; the proper context for understanding the two was an asymmetry in that many GATT-inconsistent measures were not subject to surveillance procedures; to some the only link was the time frame for developing country BOP consultations which was part of a proposal made in a submission to the FOGs Group by some developing countries. While allowing for differences in the nature of work between the two Groups, some members did not rule out the possibility that information gathered in one could be useful for the other.

Article II:1(b)

37. Discussions on Article II:1(b) were initiated by a submission made by New Zealand (MTN.GNG/NG7/W/47) to the Group. The representative of New Zealand explained that under existing procedures, a binding taken on as a result of negotiations applied to the "ordinary customs duty" which was inscribed in the contracting party's Schedule. The effective tariff rate, which was the sum of the "ordinary customs duty" and "other duties and charges", could be higher than the bound rate as long as the level of these "other duties and charges" (apart from those specified in Article II:1(b)) was not higher than that prevailing on the date the concession was negotiated. Because the permissible level of "other duties and charges" did not appear in the Schedule, which only provided a guide to the date at which these charges applied, it was difficult to know what the effective tariff rate was. Although in the past this may not have been a problem, it had become so recently because the magnitude of "other duties and charges" had increased and was sometimes more significant than the ordinary customs duty. Accordingly New Zealand proposed that the commitments negotiated should relate to a single concession rate, combining the ordinary customs duty and "other duties and charges", and that this single rate should appear in the loose-leaf schedules as the Column 3 commitment. This would make secure and transparent both the conduct of negotiations and the subsequent monitoring of commitments. The representative indicated that the substantive legal right with respect to the structure of charges on imports would remain unaltered - countries could maintain domestically any structure of other duties and charges they chose, provided the totality of duties and charges did not exceed the new single rate specified in the Schedule.

38. Several delegations welcomed the New Zealand proposal as contributing to greater transparency, clarity and security of bindings. One participant noted that his country had already realised this proposal in moving from the CCC Nomenclature to the Harmonized System Nomenclature which had rationalised the tariff structure. He added that the future integrated data base of GATT requiring that each tariff line should express in one rate the overall incidence of import charges (except internal taxes and fees) was a further argument in favour of the New Zealand proposal.

39. While agreeing in principle with the objective of achieving greater transparency, one participant stressed the importance of distinguishing between those "other duties and charges" which were GATT consistent and those that were not; the latter would not appear in GATT Schedules and contracting parties would retain the right to challenge them. Further, as it would be unrealistic to envisage the recalculation of all base rates, contracting parties during the Uruguay Round would be free to negotiate "other duties and charges" of interest. In the light of these considerations and the practical difficulty of quantifying some "other duties and charges" as percentage averages, the participant suggested as an alternative the separate inscription of GATT-consistent "other duties and charges", either in the Schedules or in another document.

40. It was suggested by one participant that the proposal was also relevant to Articles XVII, XIX and XXVIII and also had useful implications for bindings emerging from formula reductions of quantitative restrictions and other non-tariff barriers. He sought two clarifications on the implications of the proposal: would it necessitate the renegotiation of existing bindings and would it lead to a circumscription of the ability to introduce administrative changes in the import régime? Another participant suggested the inclusion of an interpretative note amending the Article to list all "other duties and charges". This would facilitate the process of assessing, in terms of GATT legality, the structure of charges.

41. Responding to the comments and questions raised by the participants the delegate of New Zealand stressed that the substantive legal situation, including the right to contest GATT-inconsistent measures, would not change. Although the calculation of base rates would be more difficult, he said that it had to be done and it would be more appropriate to undertake it in an organised and transparent manner. On the problem of quantification of "other duties and charges" raised by a member, he believed that the vast majority of them were either ad valorem charges or expressed in fixed terms; however, there might be a residual category for which this problem could remain.

42. In regard to the need to renegotiate existing bindings under the proposal, he was of the view that that would not be generally necessary. Acknowledging that the reconstruction of figures would be difficult for bindings negotiated in the past, he indicated that the proposal would be more easily applicable to new bindings. On the implication of the proposal for the ability of countries to make changes in "other duties and charges", he maintained that the substantive rights with regard to these in Article II:1 as well as Article II:2 would not change.

Article XVII

43. In discussion of Article XVII participants put forward additional comments on four main areas: the necessity for a fundamental review of Article XVII; the problem of defining certain concepts such as State Trading Enterprises (STE), and the question of non-compliance with notification requirements; the applicability or otherwise of the National Treatment concept to Article XVII, and the question of countertrade and its relationship with Article XVII.

44. A number of participants took the view that trade distortions caused by state trading enterprises were a growing problem and that for this reason Article XVII should be comprehensively re-examined in the light of the original intentions of the drafters. The Article was not an exception from other GATT provisions but rather contained obligations additional to those in Articles I, II, III:4 and XI. In the opinion of other participants it had not been demonstrated that the activities of state trading enterprises had given rise to special problems; any difficulties

arising out of Article XVII related rather to inadequate compliance with notification requirements. It was suggested that prior to carrying out a revision of this Article, it would be necessary to demonstrate how and why the activities of these enterprises had negatively affected the process of trade liberalization. The identification of specific problems in the application of Article XVII should be followed by the examination of different options for dealing with them: the Group's approach should focus on generic problems rather than on the policies of individual countries.

45. Considerable emphasis was put on the lack of compliance with notification requirements and the related problem of unclear definitions. While some participants held that the Article contained sufficient guidance as to what should be notified, others said that their own authorities were in considerable doubt. It was suggested that in order to improve definitions consideration should be given to expanding the explanatory points which resulted from the panel report on notifications of State Trading Enterprises (BISD, 9S/179). Some speakers took the view that Article XVII applied both to public and private enterprises; this was indicated by Article XVII:1(a), which talked of "granting privileges to any enterprise". One participant indicated that there were no state trading enterprises in the sense of Article XVII in his country since under the law of 1982 all natural and legal persons were eligible to engage in foreign trade and all such enterprises operated autonomously in full respect of GATT law. None of them enjoyed any special or exclusive rights. Other delegations commented that it was not clear to them how such a judgement could be made, given the lack of clarity as to the definition of state trading enterprises.

46. Divergent views were expressed on the question whether obligations under Article XVII included the provision of National Treatment. A number of participants expressed the view that while the non-discrimination concept was clearly relevant, national treatment could hardly apply - it would make no sense, for example, where enterprises such as alcohol monopolies were concerned. One participant noted that the addition in 1955 of Article XVII(3) clearly indicated that national treatment was not incorporated in paragraph 1; otherwise the drafters would not have recognised the desirability of reciprocal negotiations to reduce obstacles to trade arising from the activities of state-trading enterprises. In relation to the drafting history of this Article and the comment that a panel report had concluded that Article XVII did not embrace the national treatment principle, another delegation noted that it was perhaps more important to define a future rôle for Article XVII which made sense in relation to other provisions of the GATT. It was also suggested that the reference in Article XVII:1(b) to the need for state trading enterprises to have due regard to the "other provisions of this Agreement" indicated that the national treatment concept was covered. On the apparent contradiction between granting monopoly power or special privileges to an enterprise and requiring it to abide by the national treatment principle, the comment was made that in some cases the national treatment obligations might well be relevant, depending on the scope of the monopoly situation of the enterprise. It was suggested that the addendum which had been requested on the secretariat document NG7/W/15 would throw useful light on these points, among others.

47. In discussion of the relationship between Article XVII and the question of Government Procurement it was pointed out that a reference to this subject appeared in the second paragraph of the Article. A number of participants however felt that this subject belonged to another negotiating group.

48. One participant said that in proposing consideration in the Group of the problems arising from government-mandated countertrade he had not intended to suggest that only this form of countertrade gave rise to problems. It was in general an inefficient way to conduct business. However, the fact that countertrade gave rise to problems outside the scope of Article XVII did not mean that it should not be discussed in this context. Other delegations shared this view, while still others reserved judgement on the question at this stage. Some participants, however, took the view that if countertrade were to be dealt with in the Round it should not be done in relation to Article XVII, since it was undertaken very largely by companies in the private sector. It was also pointed out that there was no presumption that countertrade as such had negative effects on trade; where it was undertaken by state trading enterprises it would be necessary to demonstrate violation of the non-discrimination or "commercial considerations" obligations in order to establish the relevance of Article XVII. It was said that it would be for the GNG to decide whether countertrade as such, or any other subject, should be added to the Uruguay Round agenda.

Article XXIV

49. Referring to earlier discussions on this Article, one participant recalled that the General Agreement recognized that the purpose of a customs union or of a free-trade area was to facilitate trade between the constituent territories and not to raise barriers to their trade with other contracting parties. The principles of Article XXIV:4 were still valid and the case for integration agreements was fully proved, as evidenced by trade figures. Some issues arising under Article XXIV needed examination but any modification should be undertaken with the greatest care not to upset the balance. His delegation doubted the value of examination of the motives which had led countries to enter into integration agreements, and objected to the characterization of existing agreements as interim agreements. Those agreements which had been notified and examined in accordance with standard GATT practices should not be subject to retroactive examination. All contracting parties concluding agreements under Article XXIV should notify them. Detailed information about these agreements could be obtained through the normal reporting procedures and through the new mechanism discussed in the negotiating group on the functioning of the GATT system. Another delegation stressed that the requirement that these agreements operate without raising obstacles to the trade of third parties should not be overlooked.

Article XXVIII

50. The Chairman recalled that at the last meeting of the Negotiating Group, held on 25-27 May 1988, he had been requested to circulate an informal paper listing the main issues which had been raised in discussion of Article XXVIII and the proposals made. He was now distributing an informal paper which was intended to facilitate discussion and as an aide memoire.

Dates and Agenda of the next meetings

51. The Chairman confirmed the dates of 20, 21 and 23 September for the ninth meeting of the Group. For the tenth meeting he proposed the dates of 31 October and 1 November. Both these dates could be revised in the light of the GNG's discussions of the Autumn meeting schedule. It was agreed that the Chairman and the secretariat would contact delegations with a view to the identification of Articles to be raised at the next meeting. An airgram listing the items for discussion at the next meeting would be circulated by the end of July.