

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG14/10
14 November 1988

Special Distribution

Group of Negotiations on Goods (GATT)

Negotiating Group on Functioning
of the GATT System

MEETING OF 24-28 OCTOBER 1988

Note by the Secretariat

1. The Negotiating Group held its tenth meeting on 24-28 October 1988 under the Chairmanship of Mr. J.L. Katz (United States). It adopted the agenda contained in GATT/AIR/2698.

2. The Group had the following new documentation before it:

MTN.GNG/NG14/9: Note by the Secretariat on the ninth meeting

MTN.GNG/NG14/W/27: Proposal by Jamaica on Negotiating Objective (iii)

MTN.GNG/NG14/W/28: Proposal by the European Communities on
Negotiating Objective (iii)

MTN.GNG/NG14/W/29: Statement by Jamaica at the meeting of
30 September 1988

MTN.GNG/NG14/W/30: Communication from a number of contracting parties
containing Preamble and proposed Ministerial
decisions on all three negotiating objectives

A. Discussion of subjects defined in the negotiating objectives

3. The representative of Switzerland said that document NG14/W/30 was the collective effort of a number of contracting parties. It was based on the propositions made until now by different delegations, as well as the papers put forward by the Chairman. It covered all three objectives. The preamble stressed the underlying linkages between the three. Part (i), on the trade policy review mechanism, was based on the Chairman's proposals and those by other delegations. In this connection, the draft format contained in Annex I took account of the proposals made by one participant which had not been directly involved in the preparation of the document. Concerning Ministerial participation in GATT, the document was a direct reflection of the discussions in the Negotiating Group: it proposed regular Ministerial meetings of the CONTRACTING PARTIES and put forward a

structure for further discussion of a possible small Ministerial group. On the third objective, the document reflected the present state of negotiations in the Group as well as the fact that long-term considerations were clearly involved. Switzerland supported the document as the basis for negotiation.

4. Fifteen participants spoke following Switzerland in support of NG14/W/30 as the basis or a basis for negotiations in the Group. They emphasized that the language of the document was carefully drafted and balanced, both overall and within each of the three objectives, and that it was based largely on material already provided to the Negotiating Group. A number of specific aspects of importance to individual delegations were noted. The opening paragraphs of section (i) clearly established the scope of the review process as covering trade policies and practices, in the context of other policy developments. The importance for developing countries and other smaller trading nations of taking into account the external trading, monetary and financial environment was spelled out in paragraph 2. Paragraph 5 of the document envisaged a way to avoid unnecessary duplication and administrative burden for countries consulting under various GATT provisions, while ensuring the maintenance of a regular cycle of trade policy reviews. The appointment of "discussants" to introduce individual reviews, as proposed in paragraph 8, would contribute to clear and effective discussions in the GATT Council. Secretariat visits to capitals as envisaged in paragraph 9(b), although perhaps not strictly necessary in all cases, would help to ensure that the review process would be transparent and effective. In section (ii), it was recognized that, while there was already a general consensus that regular CONTRACTING PARTIES' Sessions at Ministerial level should be held, views were still divided on the question of the appropriateness of a small Ministerial group. In this respect, the paper set out clearly defined parameters for the Group's future discussions. In section (iii), a proposal was advanced for a mandate for a joint report by the heads of the three relevant institutions on global trade-related issues of strategic importance. Views, opinions and proposals put forward in the Group should be taken into consideration in their discussions. In this connection, reference was made to the objectives set out by Mexico in NG14/W/26 as essential in developing the mandate for the report.

5. A number of delegations supported NG14/W/30 as a text which could be accepted by them as a whole, although it contained obvious areas of compromise. Others saw it as a useful basis for discussion and clarification of particular points. Others again could not support some of the formulations in NG14/W/30 and could not support it as the basis for negotiations. They emphasized that all relevant submissions before the Group should be taken into consideration by the Chairman in drafting his report to the Group of Negotiations on Goods.

6. Specific comments were made on all areas of NG14/W/30. One participant emphasized that a Preamble, linking the three elements of the negotiating mandate, was necessary to bring out the importance of coherence in global economic policy-making for the functioning of the GATT system as

a whole. Another participant recalled that the improvement of the functioning of the GATT system was not only the responsibility of the Negotiating Group, but of the negotiations as a whole. This did not emerge from NG14/W/30, and should be reflected in the Chairman's report. Some participants said political action, not "institutional recognition" as in paragraph 14 of the Chairman's report, was necessary on trade questions. Recalling the contractual nature of the GATT, they said that its appropriate rôle would be to contribute its part to coherence in international trade policy making; it was neither necessary nor appropriate to transform GATT into a body for economic policy formulation. One emphasized that the promotion of greater coherence differed from the creation of a "central rôle" for GATT. Another said that greater clarity should be given, in the Preamble as well as in Negotiating Objective (iii), to the concept of a framework for consultation and cooperation in which the GATT and the international financial institutions would mutually assist each other. Some participants did not think that such a preambular section was necessary.

7. On Negotiating Objective (i), there was broad agreement that a trade policy review mechanism should be established under the CONTRACTING PARTIES. One participant, however, speaking on behalf of some others, said his delegation, while not opposing the principle, questioned the timeliness of such an initiative and the wide-ranging nature of the proposed mechanism and format for reports. His delegation could therefore not yet accept the proposal unless the terms of reference were clarified. One participant queried the proposal to introduce the mechanism on 1 January 1989 and recalled that his delegation had dissociated itself from the budgetary provisions agreed by the GATT Council in order not to prejudge the work of the Ministers.

8. In relation to the objectives of the proposed mechanism, it was recognized that trade policies and practices were to be the subject of the reviews: other aspects of policy mentioned should clearly be treated as context. Differing views were expressed on the way in which the relation with GATT principles and obligations should be formulated. The importance was stressed of taking into account, as context, the external trading environment and the impact of international financial and monetary developments, for developing countries and other smaller trading nations. Concerning reporting procedures, it was generally accepted that simplified reporting procedures should be evolved for least-developed contracting parties: in addition, two delegations queried whether annual updates of reports in years between reviews were necessary if no new policy developments had taken place, given the burden that such reporting could represent for small administrations.

9. It was generally agreed that the impact of individual contracting parties on the functioning of the trading system, measured in terms of their share of world trade, should be the primary determinant of the frequency of review. Participants agreed that a longer period than six years between reviews could be provided for least-developed contracting parties. The notion of "early reviews" in the case of "major changes" in trade policies was questioned by some participants.

10. Differing views were expressed on the way in which the concerns expressed in paragraph 5 of NG14/W/30 should be reflected. All participants recognized that duplication between trade policy reviews and balance-of-payments or other regular consultations under GATT provisions should be avoided, that the administrative burdens for consulting countries should be minimized, and that no contracting parties should be exempted from the trade policy review process. Some delegations found the formulations of NG14/W/30 acceptable. Others felt that the phrasing used in the Chairman's informal discussion paper would be preferable. Others again saw a need to refer to a specific interval between full balance-of-payments consultations and trade policy reviews; one participant proposed that such an interval should be 24 months.

11. It was agreed that trade policy reviews would be carried out by the GATT Council at periodic special meetings. Differing views were, however, expressed on the proposal to appoint "discussants" for each review.

12. Participants also expressed differing views concerning the nature of the report to be drawn up by the Secretariat as part of the review process. Some said that it was essential that the Secretariat report be an independent assessment of national trade policies and practices. Without this there could be no guarantee of objectivity. Others felt that the Secretariat report should be factual in nature, based on notifications by the countries under review and other information available to the Secretariat. Two delegations did not regard a Secretariat report as a necessary element in the review process.

13. Similarly, different views were expressed on the desirability of Secretariat visits to capitals for discussions. Some felt this was essential to enable the Secretariat to gain as complete a picture as possible of the trade policy situation and context. Others felt it would not be necessary in all cases: in this connection, one participant said that such visits should be undertaken for all countries subject to two- or four-yearly reviews. Others again felt that visits could be undertaken on a voluntary basis. Still others did not wish such visits to take place.

14. Questions were also raised concerning the content of the format for country reports, which some participants thought needed greater definition, and about the proposal in Annex II of NG14/W/30 for a "strategic review" which might be considered in special meetings of the GATT Council.

15. Concerning the format for country reports contained in Annex I, one participant said that the scope of certain questions was too broad and needed clearer definition. He recalled that the review mechanism should deal with trade policies and practices within the overall framework of GATT principles. Another said that some of the ideas expressed by his delegation had not been included in the format and asked the Chairman to take account of them in drawing up his report.

16. Concerning the proposals for "strategic review" contained in Annex II of NG14/W/30, some participants drew attention to the need to define the relationship between the trade policy review mechanism and the existing

review of developments in international trade by the Council in its special meetings.

17. On Negotiating Objective (ii), there was broad agreement on the text contained in section (ii), paragraph 1 of NG14/W/30, concerning regular Ministerial-level Sessions of the CONTRACTING PARTIES. There were still considerable reservations concerning the proposed small Ministerial group. Some participants felt it would still be premature to list the considerations which the Group might take into account in further discussions. Others said that these considerations were useful. One participant suggested that they should be included in Part I of the Chairman's report to the GNG.

18. On Negotiating Objective (iii), several participants emphasized the importance of the report proposed in NG14/W/30 being the result of a joint exploration, by the three institutional heads, of the questions proposed. Some others said that the report, which should be from the Director-General of GATT, should be based on consultations with other relevant organizations such as UNCTAD and the regional development banks as well as the IMF and IBRD. One participant cautioned against the institutions trying to evolve joint global economic policy recommendations which contracting parties could be required to follow. As regards timing, some delegations felt that an interim report should not be a requirement. It was stressed that the discussions should take account of the views, suggestions and proposals expressed in the Negotiating Group: in this connection particular attention was drawn to the proposals made by Mexico in NG14/W/26.

B. Consideration of the Chairman's Report to the GNG

19. A draft of the Chairman's report to the GNG was discussed in informal consultations. The Chairman reported to the Group that, despite substantial efforts to reach a common, agreed text on recommendations to be made to Ministers, it had unfortunately not yet been possible to do so.

20. There was a consensus on the objectives of the trade policy review mechanism and on the procedures for regular reporting by contracting parties. There was also agreement that the trade policies and practices of all contracting parties would be subject to periodic review, with their impact on the functioning of the multilateral trading system, defined in terms of share of world trade, as the determining factor in establishing the frequency of reviews, having regard also to the practical possibilities of the number of reviews that could be carried out in any one year.

21. There were still differences of opinion concerning the procedures to be applied to countries subject to balance-of-payments consultations or consultations on Protocols of Accession. Although it was agreed that duplication should be avoided and the administrative burden for these countries minimized, and that there should be no exceptions to the trade policy review process, it had not yet been possible to agree on how this should be done.

22. Some delegations believed that it would be useful to have discussants, appointed by the Chairman of the Council from delegations, acting in their personal capacity to assist the Chairman in opening the review discussions. Other delegations, however, did not agree with this idea.

23. On the documentation to be provided, there was general agreement that this should include a Secretariat report, based on information available to it and provided by the contracting parties under review. Some, however, felt that this should not be limited to a factual description of the situation and stressed the need for the Secretariat report to be an independent assessment of trade policies and practices. A substantial body of delegations agreed that the Secretariat would be assisted in drawing up its report by visits to capitals concerned for discussions, at least in the case of countries subject to two or four year reviews. Some delegations believed that such visits were essential; others would prefer such visits to be purely on a voluntary basis, to be decided by the countries being reviewed. There was agreement that the reports emerging from the review process should be published promptly after the reviews.

24. There was general agreement that the enhanced surveillance process would be completed by a more general overall assessment by the Council of developments significantly affecting the trading system. This should be assisted by an annual report by the Director-General on this subject. It was the Chairman's understanding that most delegations would agree that this annual review, together with the reviews under the TPRM, would replace the current special Council exercise. This would be spelled out in the Chairman's report.

25. There appeared to be no significant issues emerging on the proposed text on greater Ministerial involvement.

26. On the third Negotiating Objective, there were differences of views concerning the enumeration of the institutions with which contact should be made by the Director-General in carrying out the study requested of him, as well as on the possibility of making recommendations.

27. Based on this understanding of the situation, the Chairman would complete his report to the GNG, incorporating helpful drafting suggestions which had been made. The report would be on his own responsibility as Chairman.

28. A number of comments were made on various paragraphs of the Chairman's draft report. One participant reiterated that while his delegation was committed to the negotiating process in this Group and the Uruguay Round as a whole, there were still some problems, fundamental to his delegation's interests, which had not been adequately addressed. More clarification was needed on aspects of the Trade Policy Review Mechanism, in particular the terms of reference of the review body. The mechanism should be related to the observance of GATT obligations and should not cover other policy issues. Nor should there be any value-judgement on policies reviewed: this would go beyond the objectives agreed upon. His delegation would not

like to see an open-ended discussion of policies which would have considerable political and social sensitivity in his country.

29. Another noted that the report would be submitted on the Chairman's own responsibility and delegations reserved their rights to react to it in other fora. His delegation attached great importance to the preambular section of Part II and would submit an alternative text. He also considered that the consultations envisaged in section (iii) of Part II of the Chairman's report should not result in a report by the Director-General mandated by the CONTRACTING PARTIES alone: there must be cooperation among the institutions as such. Reporting within twelve months would probably imply no solution by the end of the negotiations. The lack of an interim report could inhibit progress towards a solution. In this connection, one participant drew attention to the need to ensure that the Preamble and section (iii) should be consistent. Another stated that the possibility of a preambular text should be kept open, and that they could not go along with the idea of an interim report by the Director-General.

C. Other business

30. It was agreed that the next meeting of the Negotiating Group should take place, subject to confirmation by the GNG, in the week beginning 20 February 1989.