

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG8/9  
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Group of Negotiations on Goods (GATT)

Negotiating Group on MTN  
Agreements and Arrangements

MEETING OF 27-28 OCTOBER 1988

Note by the secretariat

1. The Group held its ninth meeting on 27-28 October 1988 under the chairmanship of Dr. Chulsu Kim (Korea).
2. The agenda proposed in GATT/AIR/2697 was adopted.
  - A. The Agreement on Government Procurement
3. The Chairman recalled previous discussions and documentation, and document MTN.GNG/NG8/W/18/Add.1, circulated since the seventh meeting.
4. The Republic of Korea recalled its earlier suggestions (MTN.GNG/NG8/W/21) and introduced proposed specific texts on three matters aimed at facilitating access to the Agreement, in particular of developing countries. The proposal is being circulated as MTN.GNG/NG8/W/39.
5. One participant welcomed the submission and agreed with the suggestion made previously that, in evaluating entity offers, Parties should take into account the degree of centralization of procurement in the country concerned, because this was one of the qualitative factors that ought to be considered, although not the only one. However, the Agreement did not suggest a bias in favour of quantitative over qualitative factors, and experience showed that Parties had consistently taken the latter fully into account in assessing entity offers. It was not therefore convinced that there was a problem that required additional amendments to the Agreement. With respect to minimum bid deadlines, these had been extended from thirty to forty days, with effect from 14 February 1988.
6. Another participant also welcomed the submission and supported an approach that took into account both qualitative and quantitative elements - including degree of centralization - when assessing a request for accession. If a request was from a developing country, the provisions of Article III were also relevant. Since enlarged membership was particularly urgent in this Agreement, this delegation strongly supported the proposal to mention Article III in the provision dealing with accession. The exact wording required more time for reflection, as did the proposal to provide for a further extension of and, in special cases, flexible deadlines.

7. The Republic of Korea expressed the hope that other interested delegations would present texts.

8. The Chairman invited delegations who so desired to present further concrete texts and to carefully examine the text received from the Korean delegation. The tabling of texts, if any, was without prejudice to the position of any participant on any particular issue that interested delegations might wish to see pursued in subsequent negotiations.

B. The Agreement on Implementation of Article VII ("The Customs Valuation Code")

9. The Chairman recalled previous discussions and documentation and the more recent contribution by the Customs Co-operation Council contained in MTN.GNG/NG8/W/33. He also recalled that the proposal which had been made was not necessarily for amendment, at this stage, but mainly for clarification (MTN.GNG/NG8/7, paragraph 35).

10. No statements were made, but it was agreed to keep this Agreement on the Group's agenda.

C. The Agreement on Implementation of Article VI ("The Anti-Dumping Code")

11. The Chairman recalled previous discussions and documentation and MTN.GNG/NG8/W/30, issued since the seventh meeting.

12. The Republic of Korea introduced a submission on possible improvements of the Agreement. This has subsequently been issued as MTN.GNG/NG8/40; the introductory statement is contained in Addendum 1 thereto.

13. Many participants welcomed the initiative as an important contribution to facilitating negotiations in the Group. Some delegations added that it was likely to considerably advance negotiations; some said it appeared to be a good basis for further work. In general, detailed comments were reserved for a later meeting.

14. In preliminary comments, one participant supported in general the proposals concerning amendments of Article 2; three delegations mentioned in particular its sub-paragraph 4; one delegation mentioned paragraph 1 and one delegation mentioned paragraph 6 of that Article. One delegation also referred to the proposals on Articles 3 and 4. Two delegations supported an amendment of Article 5.1. One participant also agreed with the suggestions concerning amendments to Articles 7 and 8 and three participants welcomed the proposals on Article 9:1. Some participants stated that the proposals sought to promote disciplines which they themselves favoured.

15. According to two delegations, the contribution required further examination before they could agree that it formed a good basis for further discussions. One of these added, however, that the submission contained a number of points on which the Group had to reach common views if it were to achieve the objective of a more effective Agreement. Another delegation

stated that, while the Uruguay Round negotiations offered an excellent opportunity for continuing the work of the Committee on Anti-Dumping Practices in examining potential improvements in procedures and remedies, the Agreement had operated effectively to provide Parties with a credible mechanism to offset injurious dumping while at the same time ensuring appropriate safeguards against the misuse of anti-dumping measures. The development of too rigid rules and definitions might serve to undermine the GATT-sanctioned authority of importing countries to effectively offset injurious dumping.

16. One participant stated that the adoption of the Agreement had proved to be an important contribution to the development of an orderly international trading system, providing the basis on which the current negotiations could build to pursue the objective of the Uruguay Round to promote and further liberalize trade. It welcomed the contributions made in NG8 regarding possible clarifications and improvements to the existing disciplines and in helping to make the Agreement more transparent and effective in deterring injurious dumping practices. The world trading environment had undergone significant changes; besides the specific clarifications and improvements that had been identified, a number of emerging issues were only dealt with indirectly or not at all in the existing Agreement and needed to be addressed. Lack of international rules in these areas could effectively create a limitation on international trade. Recent efforts to unilaterally address circumvention of anti-dumping duty findings raised significant issues regarding the scope of, and the need for, appropriate disciplines on any anti-circumvention measures. There was also the important issue of the cyclical nature of certain products or sectors and the related use of constructed value to determine the incidence of dumping. The experience gained under the Agreement, as well as more recent developments, provided the basis from which to assess these and possibly other wider issues in order to ensure that the Agreement continued to contribute to a more certain environment for the enhancement of international trade. In this context, it was important to recognize the relationship between efforts in this Group and efforts in the broader MTN context to improve market access and liberalize the trading system.

17. Two participants fully endorsed this statement. Another participant agreed that changes in the international trading environment ought to be discussed.

18. With reference to document MTN.GNG/NG8/W/30, one delegation stated that as protectionism had become more common, some countries had tended to abuse anti-dumping measures, thus hampering normal trade and seriously undermining GATT achievements over many years in the tariff area. The GATT permitted anti-dumping duties as an exception to Articles I and II. Therefore, this delegation had proposed reviewing the Agreement in order to ensure that arbitrary measures were not taken. The matter was urgent, not only in regard to Article VI but also for the enhanced functioning of the GATT system. Particularly important were: (i) the method used to compare prices and thus distinguishing between fair and unfair trade. A comparison of the normal value with the export price should be carried out equitably,

to prevent anti-dumping measures from being used as a substitute for safeguards (ref. MTN.GNG/NG8/W/30, section I, paragraphs 3 and 4); (ii) the product coverage of anti-dumping duties. Under the pretext of "anti-circumvention" importing countries tended to broaden the range of application to the import of "similar" products. A broader definition of "circumvention" might result in the imposition of anti-dumping duties without prior anti-dumping investigation (ref. idem, section II, paragraphs 1 and 2); (iii) the review and termination of anti-dumping measures. Normal trade should be restored through the termination of injurious dumping by the exporter followed by the termination of the anti-dumping measure. However, the procedures that should follow the imposition of anti-dumping duties had to be clarified (ref. section I, paragraphs 7 and 8); (iv) products whose cost fell rapidly with advances in technology. Due consideration should be given to economic reality where such costs fell rapidly over a short period of time.

19. The view that anti-dumping duties constituted exceptions to important GATT principles such as the most-favoured-nation clause was also expressed by another delegation, which added that anti-dumping actions must not be allowed to be used as a substitute for safeguard measures or as a means to implement trade policy measures. Only on the basis of a concrete proposal, however, would it be possible to see how such problems might be addressed.

20. Recalling its earlier submission (MTN.GNG/NG8/W/22), one delegation submitted that the existing rules might not adequately address certain practices that some exporters, which were trading unfairly, had resorted to with increasing frequency since the Tokyo Round. The routine enforcement of anti-dumping laws in recent years had revealed that certain exporting firms had repeatedly been the subject of anti-dumping actions, in one or several countries, with respect to exports of similar or identical products. The Group should seriously consider whether some sort of distinction in terms of procedures or remedies should be drawn between an exporter which had never been subject to an anti-dumping finding and an exporter which had been subject to multiple findings, particularly when those findings involved similar products and were made over a relatively short time span. The reasons for doing so were manifestly clear in its view. When there was a widespread pattern of recurrent dumping, customary anti-dumping procedures and remedies were not sufficient to relieve or deter such a concerted form of unfair trade. Exporting firms engaged in recidivist dumping apparently regarded anti-dumping laws and proceedings as a cost worth sustaining in the course of capturing a greater share of targeted markets. This should not be condoned or tolerated; already, recurrent dumping in its own market had taken a considerable toll in sectors ranging from basic industries to high technology manufacturing. This delegation proposed for consideration a modification of Article 16 of the Agreement to allow explicitly for the possibility of strengthened or alternative remedies against recurrent dumping. For example, if duties sufficient to eliminate the injury or to offset the margin of dumping had not deterred certain exporters from repeatedly dumping within certain product lines, graduated penalties against such firms might have to be authorized. The Group should also approach this problem from the perspective of identifying repeat dumping at an earlier stage, and providing for speedier relief to the injured industry. This could be

advanced through the explicit authorization of special import surveillance provisions for sectors that had begun to experience recurrent dumping. In addition, the Agreement should be clarified to explicitly acknowledge the desirability of allowing for expedited investigations in cases involving sectors or firms associated with recurrent dumping. This would include providing for the accelerated imposition of provisional and/or retroactive measures in such cases.

21. With regard to diversionary practices, this term could cover a wide range of commercial problems, but in essence related to any attempts to evade or circumvent legitimately-imposed anti-dumping measures. The Agreement failed to address specifically how importing-country authorities should respond in such circumstances, although it was clear that these practices ran counter to the purposes of both the Agreement and Article VI of the GATT. Exporters subject to anti-dumping measures could not be allowed to flout the intent of such measures by making slight changes in their methods of production and shipment, or by any other means. Unchecked, such behaviour would ultimately undermine confidence in both the Agreement and the GATT as a whole. It was therefore in the interest of all Parties that the Group devote attention to this problem; the Agreement should clearly recognize the need to ensure that anti-dumping measures be respected and enforced. This related to so-called "anti-circumvention" provisions. While in its view the Agreement provided ample leeway for such measures to be taken, the Group might take into consideration whether and in which fashion they should be explicitly authorized. Other forms of diversionary practices and their potential remedies raised broader questions. However, at least some practices might be effectively addressed while avoiding some of the problems inherent in many proposed solutions. In this regard, the Group might consider remedies and procedures that were clearly consistent with the current Agreement, such as import monitoring, as a starting point in the search for additional disciplines over diversionary practices. While acknowledging the need to avoid unnecessary burdens on legitimate trade, it believed it was imperative that effective remedies be developed in this area.

22. One delegation, recalling that it had itself underlined the need for certain rules on anti-circumvention in MTN.GNG/NG8/W/28, reiterated that new realities in international trade should be further discussed in detail.

23. One delegation stated that the two basic objectives in this area were to ensure that rules were available for importing countries to protect themselves against unfair trade practices, and to prevent anti-dumping actions from being used as trade policy measures or from hampering the operation of comparative advantage. The Agreement might be effective as regards the former objective, but there were urgent problems concerning the latter. This Group was the right forum in which to develop new rules that would respect both basic principles mentioned. While it agreed that additional disciplines could be useful for new situations, it had conceptual doubts as to alternative remedies or graduated penalties in cases of repeat dumping, beyond anti-dumping duties which a priori removed the unfair dumping margin. Diversionary practices also created problems, but it was disputed whether the Agreement presently provided sufficient

leeway for measures such as anti-circumvention measures. It added that the term "import monitoring" was unclear and wondered whether it fell within the scope of this Agreement.

24. With regard to recidivist dumping, one delegation first noted that the GATT recognized dumping as a problem only when associated with material injury or threat thereof, or with material retardation of the establishment of an industry. Since no specific time-limits existed in respect of the application of dumping duties, it was difficult to imagine that repeated dumping of the same product could create problems. It understood the proposal to recognize that only when a finding of dutiable dumping in a number of products had been made, circumstances existed that could amount to recidivist dumping. If the concern stemmed from the number of investigations undertaken in connection with particular companies, other remedies might be available, e.g. levying the cost of investigations to the exporter in certain defined circumstances if an affirmative finding were made. Penal provisions, however, would be a fundamental departure from the use of counteracting remedies which underlie the GATT and the Agreement. Concerning diversionary practices, these would be difficult to define. They might even cover legitimate business behaviour by way of investment, assembly or production operations in an importing country aiming at cost efficiency - such operations might well occur because of the cost of customs duties and dumping duties, but the motivation of the exporter could also be effective marketing, rather than an attempt to evade a duty.

25. One delegation expressed concern about any sectoral approach which would come in addition to the possibility of applying cumulation without regard to principles and rules; it was difficult to foresee the consequences of what appeared to be new trade policy instruments.

26. One delegation agreed that new trends in the international trading environment had to be examined and a distinction made between normal situations of dumping and exceptional cases. For instance, if repeated dumping was to be dealt with, concepts such as "like product" and "domestic industry" had to be clarified. It had also to be borne in mind that trade was not only related to the interests of exporters and importers, but had a wide range of impact on consumers, marketing channels, and production. Some ideas, e.g. expediting initiation of investigations and decisions, might have merits seen from one point of view but might not be a balanced approach.

27. One delegation considered the problems raised to be real problems, but did not agree on all solutions suggested, in particular the introduction of elements of penalty as opposed to correction. Initially, it thought that monitoring, accelerated access to provisional measures, and retroactivity, were better approaches to the problems raised.

28. The Chairman summed up by inviting delegations who so desired to present concrete texts for further consideration in the Group. This would be without prejudice to the position of any participant on any particular issue that interested delegations might wish to see pursued in subsequent negotiations.

"Secretariat input"

29. The Chairman recalled previous discussions (MTN.GNG/NG8/7, paragraph 21 and MTN.GNG/NG8/8, paragraphs 61-64) and drew attention to a "Draft Factual Compilation of Anti-Dumping Measures Taken By Participants" (MTN.GNG/NG8/W/38). He stated that consultations held with a number of delegations led him to suggest that the secretariat (i) be requested to revise its draft in the light of further information, and (ii) for this purpose, be requested to ask participants who had not yet responded to the questions circulated in the airgram of 1 July 1988, to do so not later than 31 December 1988. It had been felt that the question of a second phase could be reverted to next year. The Group so agreed.

D. Further examination and clarification of issues for negotiations

30. No statements were made by participants under this agenda item.

E. Other Business

(i) Chairman's Report to the GNG

31. The Chairman recalled that he had prepared a draft report which had been sent to all participants in preparation for informal consultations which had subsequently been held. A revised text was before the Group. He emphasized that he had been requested to present the report on his own responsibility.

32. After a discussion, the Chairman concluded that the Group had agreed on his report; he took note of the comments made by some delegations that, for presentational reasons, it might, like the reports of other Groups, be looked at again in the GNG. Finally, some purely editorial changes were left to the Chairman in co-operation with the secretariat. The text, incorporating such editorial changes, is reproduced in Annex I.

(ii) Next meeting

The Group agreed to meet again in the week of 13 February 1989<sup>1</sup>, subject to confirmation by the GNG.

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<sup>1</sup>The precise dates set aside for technical reasons are 14-16 February 1989.

ANNEX I

REPORT OF THE CHAIRMAN OF THE NEGOTIATING GROUP  
ON MTN AGREEMENTS AND ARRANGEMENTS TO THE GNG

PART I

Review of the Work done so far

The Punta del Este Declaration states that the aim of the negotiations in this area is "to improve, clarify or expand, as appropriate, agreements and arrangements negotiated in the Tokyo Round of Multilateral Negotiations."

Of the nine Agreements and Arrangements which were negotiated in the Tokyo Round the following six Agreements have been the subject of work in this Negotiating Group:

- (i) Agreement on Implementation of Article VI (usually known as the "Anti-Dumping Code");
- (ii) Agreement on Implementation of Article VII; (usually known as the "Customs Valuation Code");
- (iii) Agreement on Interpretation and Application of Articles VI, XVI and XXIII, (usually known as the "Subsidies and Countervailing Measures Code");
- (iv) Agreement on Government Procurement;
- (v) Agreement on Technical Barriers to Trade; (usually known as the "Standards Code");
- (vi) Agreement on Import Licensing Procedures.

In the five meetings which took place in 1987, the Group considered suggestions by participants indicating issues that they wished to raise with respect to these individual Agreements. Upon examination of the suggestions the Group recognized the need for flexibility in identifying additional issues for negotiation. Four meetings of 1988 have enabled it to carry on detailed examination of further proposals so as to further clarify and concretize the issues raised. It has been assisted in this work by factual background documentation prepared by the secretariat, including a document containing a Checklist of Issues for Negotiations.<sup>1</sup> As a result, some specific texts have been tabled taking into account points made in the discussions. Revised and additional texts are expected to be submitted early next year. This should facilitate the negotiating process both in terms of substance and in terms of techniques and modalities.

As issues raised with respect to the six MTN Agreements mentioned deal with widely divergent and, in a technical sense, unrelated issues, it might be neither desirable nor appropriate to summarize them. Broadly speaking in relation to two Agreements, i.e. those dealing with Government Procurement and Subsidies and Countervailing Measures, the issues raised in



the Group relate mainly to implementation of existing provisions and problems encountered by some non-signatories, including developing countries, in acceding to them. Concerning the Agreement on Subsidies and Countervailing Measures, it should be noted, however, that much more elaborate proposals are discussed in the Negotiating Group on Subsidies and Countervailing Measures. As to the Agreement on Customs Valuation, clarifications have been sought in existing provisions to take care of particular problems in some developing countries and thereby facilitate wider membership. In the case of the other three Agreements - dealing with Technical Barriers to Trade, Import Licensing Procedures and Anti-Dumping - the main thrust of the proposals reflect experience during their implementation and operation and call for (i) strengthened disciplines; (ii) improvements on questions such as transparency; and - as the case might be - (iii) clarification of concepts, definitions and principles; and (iv) expansion of scope and coverage.

The Group generally welcomes the technical support which some Agreement Committees have provided to the work of the Negotiating Group through managing and interpreting the Agreements and through examining highly technical issues raised in many of the proposals. Continued support of this nature could make positive contributions to negotiations in the Negotiating Group.

## PART II

### Future Work of the Group

The Group has largely completed the initial phase of clarifying issues and substantive negotiations are beginning to take place, since some of the proposals already tabled are being analyzed and reviewed and specific texts have been, or will be tabled. The work of this Group is important in that:

- the MTN Agreements which in some cases clarify and elaborate provisions of the General Agreement deal with very important issues in international trading relations;
- their effective implementation as well as further improvements, where appropriate, could by strengthening the GATT system have considerable bearing on the stability and predictability of trading conditions;
- widened membership of the Agreements by more countries could contribute to improving further the unity and consistency of the GATT system; in this connection, the appropriate and effective use of provisions for special and differential treatment, inter alia, could facilitate membership of developing countries.

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<sup>1</sup> Contained in MTN.GNG/NG8/W/26/Rev.1.

In the light of the above and the progress made so far in the negotiations, the Group is urged to pursue negotiations in this area vigorously, in accordance with the mandate of the Group and the Negotiating Plan. Early submission of specific texts from participants is encouraged, to expedite the process of negotiation.