

**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 31 October and 1 November 1988

1. The Negotiating Group on GATT Articles held its tenth meeting on 31 October and 1 November under the Chairmanship of Mr. John M. Weekes (Canada). The Group adopted the agenda contained in GATT/AIR/2701 with the addition under "Other Business" of the Chairman's Report to the Group of Negotiations on Goods.

2. The Chairman informed the Group that document NG7/W/51 had appeared since the last meeting. It contained the statement made at the ninth meeting, by the United States, on the Balance-of-Payments Articles.

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

Article XXIV

3. One delegation reiterated that the clarification and improvement of the provisions of Article XXIV were extremely important from the viewpoint of safeguarding and reinforcing the multilateral trading system under the GATT. Referring to the US-Canada Free Trade Agreement and the ongoing process of European economic integration, he stressed that the issues raised in regard to Article XXIV were relevant in the present context and were in no sense issues of the past. He indicated his delegation's intention to put forward concrete proposals on this Article, taking account of the views of other delegations and the secretariat's background documents.

Article XXVIII

4. Recalling an earlier contribution by his delegation, a participant explained that Article XXVIII did not deal with the possibility of a pre-emptive raising of tariffs on new products and had therefore to be modified to cater to such a situation. Rapid technological change had led to the development of new products whose importance in world trade was growing and an appropriate addition to the Article would be consistent with the need to make GATT more responsive to the changing world economic environment. He disagreed with the view that the proposed changes to Article XXVIII would make its use more cumbersome, and indicated his delegation's intention to elaborate further on this Article at a later date.

Article II:1(b)

5. The representative of New Zealand introduced a statement and indicated that it would be circulated as a working document of the Group. It was intended to respond to the questions raised by participants in relation to his delegation's original proposal (MTN.GNG/NG7/W/47). Reiterating the arguments made earlier in relation to the legal implications of his delegation's proposal (MTN.GNG/NG7/9, paragraphs 12 and 13), he explained that the proposal was essentially an administrative matter, intended to improve the conduct of tariff negotiations by making transparent the magnitude of other duties and charges maintained under Article II:1(b). While the proposal would be easy to implement in respect of new bindings, there might be a problem for existing bindings, as the specification of all duties and charges in a single rate could require a complex rectification and renegotiation procedure. In such cases, it might be more appropriate to record other duties and charges separately in the schedules. A fundamental objective of his delegation's proposal was to introduce greater clarity in the conduct of tariff negotiations. He urged the Group to reach a common understanding on this question within a reasonable period of time, so that the conduct of tariff negotiations during the course of the Uruguay Round could benefit from it.

6. In reply, a participant referred to some examples of other duties and charges cited in the submission and cautioned that such charges, maintained under other Articles, and some others which were inconsistent with current GATT obligations, should not be legitimised as a result of the proposed changes to Article II:1(b). Another participant, while supporting the objective of increasing transparency, expressed concern as to the feasibility of the proposal and its impact on the balance of obligations among contracting parties. It was argued that to apply it in respect of new bindings alone would be infeasible in the long term, as this would produce two types of obligations for the same concession. It would therefore be preferable to apply the proposal in respect of existing and new bindings. However, this would increase the obligations of those contracting parties which had undertaken more tariff bindings, by adding to their notification requirements. Furthermore, the achievement of increased transparency was also necessary in other areas such as non-tariff measures, which often constituted more important barriers to trade.

7. Replying to these comments, the representative of New Zealand emphasised that the proposal would not legitimise those other duties and charges which contracting parties found to be GATT-inconsistent. The proposal would bring such charges to light, and thus make clear the magnitude of total bindings undertaken by countries; at the same time, it would not take away any country's right to challenge such GATT-inconsistent charges under Article XXIII. If, for example, a contracting party believed a particular other duty or charge to be GATT-inconsistent, it would not agree to negotiate a binding at a level incorporating such a charge. In regard to the view that the proposal would increase the obligation on those who had undertaken more bindings, two points were made. First, the additional notification requirement amounted only to recording the type and magnitude of other duties and charges; the obligation not to exceed the

bound rate already existed. Secondly, the imbalance in the extent of bindings undertaken by countries was a larger issue going far beyond the confines of the proposal which merely specified the manner in which obligations should be recorded in schedules. Finally, while supporting the view that increased transparency should be sought in relation to other trade measures, the participant noted that this was a task for other Negotiating Groups; it should not be advanced as an argument for impeding the pursuit of transparency with respect to tariff bindings in this Group.

Agenda Item B: Other Business

Chairman's Report to the Group of Negotiations on Goods

8. In the first discussion of this agenda item, which took place on 31 October, the Chairman introduced a draft of his report to the Group of Negotiations on Goods, dated 26 October 1988, and explained its basic features: Part I contained a brief description of the issues which had been raised in relation to twelve Articles and the Protocol of Provisional Application. On many of these issues a wide range of views had been expressed, and a short report could not reproduce all of the points made, which in any case were reflected in the different submissions and in the records of the Group's meetings. Part II called for vigorous pursuit of the Group's work and suggested a time-frame for the submission of specific proposals, though without implying that proposals could not be tabled subsequently.

9. Many participants expressed general satisfaction with the structure and contents of the draft report. Some would have preferred to see their views on specific issues reflected in the text, but in general it was accepted that this would not be possible in a report of this nature. It was recognised by the Group that the records of its discussions and the decisions it had taken remained valid and could in no way be modified by the Chairman's report. With reference to the preambular paragraphs some speakers said that, without implying that the Group had undertaken a review of the General Agreement as a whole, the scope and importance of the work should be made clear. One speaker said that the report should make it clear that while the discussion of certain Articles had reached a stage at which more concrete proposals should be put forward, others required further examination to promote a common understanding. In reply to a question as to how the work of other Negotiating Groups dealing with other specific Articles, such as XIX, XXII and XXIII, could be integrated with the work of this Group, the Chairman suggested that the consistency of results in different areas, and their integration where necessary, would have to be taken in the later stages of the negotiations, under the guidance of the GNG. It was suggested that there was no need to make the point that work on some Articles was the primary responsibility of other Negotiating Groups.

10. In discussion of the section of the report describing issues raised on specific Articles, a number of points were made with reference to the Balance-of-Payments Articles (XII, XIV, XV and XVIII). It was suggested that views expressed on Article XII should be clearly distinguished from

those on Article XVIII, and that it should be made clear that on some issues views differed widely. The idea that changes in the international monetary system and the general deterioration of the economic environment had made Article XVIII:B even more necessary should also be incorporated. It was also suggested that the introduction of stricter disciplines under Article XVIII should be linked with the elimination of grey area measures, the integration of textiles and agriculture into GATT and the termination of the Protocol of Provisional Application and certain waivers and exemptions in accession protocols. Other delegations suggested it should be recognised that measures taken under Article XVIII:B were a short-term exception to deal with balance-of-payments problems and that greater discipline and transparency in its use must be ensured. The economic justification of quantitative restrictions as a means of restoring external balance should be questioned. The relevance of the reference in the draft report to the absence of comprehensive surveillance of the trade policies of other contracting parties was questioned by some participants.

11. One participant referring to Article II:1(b) suggested that mention should be made of the fact that although the general thrust of the proposal had received support, some participants had expressed doubts about its feasibility and concern about its effect on the balance of obligations among contracting parties. With reference to Article XVII participants suggested that the report might refer to a number of points made in earlier discussions: that this Article incorporated additional disciplines, not a derogation from the General Agreement; that it contained a national treatment obligation and that discussions on it had touched upon countertrade and on the trade régimes of centrally-planned economies. With reference to Article XXIV it was suggested that both notified and non-notified agreements should be referred to in the context of the Group's consideration of the effects of preferential regional agreements. With regard to Article XXVIII it was suggested that the application of this Article to new products and the question of retaliation and compensation for increases in tariff rate quotas should be mentioned among the issues raised.

12. In discussion of Part II of the draft it was suggested that reference might be made to the need to reaffirm the fundamental principles of the General Agreement and to make the operation of GATT provisions more effective, in the light of changing economic conditions. Some speakers suggested that the indicative date (31 December 1989) for the submission of specific proposals should be brought forward, either to June or September 1989. Other delegations preferred the December date to be maintained, while one suggested that no date be mentioned.

13. In the second and final examination of this agenda item, which took place on 1 November, the Chairman introduced a revised version of his report to the GNG, in which an effort had been made to reflect suggestions made in the previous examination and in informal consultations. He emphasized that Part I of the report was intended to convey to Ministers a sense of the scope of the matters under discussion in the Group; the Group had held long discussions on a large number of GATT provisions, including questions of considerable complexity and sensitivity, and it was clearly not possible to provide a reflection of the views expressed by participants

on all these issues in a short report. However, all views were fully preserved in the records of the Group's meetings, and all decisions taken by the Group retained their validity. On the subject of GATT Articles XVIII:B Ministers would not be called upon to take operational decisions at this stage. However, they should recognize the importance of the work before the Group and direct that it should be pursued with vigour in the next two years.

14. One delegation expressed dissatisfaction with the balance of the paragraph dealing with the Balance-of-Payments Articles and suggested the insertion of the following wording: "It has been noted that Article XVIII:B was introduced into GATT in recognition of the structural and persistent nature of the balance-of-payments problems of developing countries arising from a combination of their development needs and external instability and that changes in world economy have only served to aggravate these problems. It has also been pointed out that developing countries need flexibility in the use of commercial policy instruments for restoring balance-of-payments equilibrium because of market distortions and unequal distribution of incomes and wealth as the price mechanism alone does not allocate resources in a way that is desirable from the perspectives of growth and equity". He believed that it would be important for the report to reflect views which had been expressed in the Group on this matter.

15. Another speaker suggested inserting the following text, also in the paragraph on the Balance-of-Payments Articles: "Another aspect which has been stressed is that any more restrictive interpretation of Article XVIII:B is necessarily linked with the elimination of grey area measures, the termination of the Protocol of Provisional Application, the integration of textiles and agriculture into the rules of the General Agreement, and the termination of waivers and modification of Accession Protocols which exempt contracting parties from the obligations of the General Agreement in respect of the importation of primary products". The suggestions of these speakers were supported by some other participants who felt that the report would thus present a clearer picture of the discussions, and that the severity of the balance-of-payments problems of developing countries, and the external instability confronting them, should be more fully reflected.

16. Another participant said that he would be prepared to support the approach followed by the Chairman in his report, but if the amendments now proposed were to be accepted he would be obliged to request the insertion of the following text: "In addition it was suggested that there is little economic rationale for the use of trade restrictions when adjusting to balance-of-payments difficulties, in view of their very limited effectiveness for this purpose, and that the surveillance and consultation procedures in the Balance-of-Payments Committee were clearly inadequate disciplines over the use of trade restrictions for balance-of-payments reasons. Problems had been cited particularly with regard to the duration, multiplicity and lack of transparency of the measures used to restrict trade." He added that in these circumstances he must also request the insertion of additional language reflecting his delegation's views on

Article XXI, as follows: "It has been pointed out that contracting parties have acted responsibly with respect to the invocation of this Article; the sensitivity of the issues surrounding this Article and the need for a careful and cautious approach to its consideration have also been noted." He would also request the insertion of language on Article XVII, reflecting the points made in the previous day's discussion (paragraph 11 above). Another delegation suggested that though there was a general recognition of the need for balance-of-payments exceptions, this did not necessarily apply to Article XVIII:B in its present form: if the text of this paragraph were to be amended, this view also should be reflected in it. Other participants said that they had been prepared to accept the Chairman's text basically as it stood, even though the treatment of the Balance-of-Payments Articles was somewhat different from that of other Articles, because they recognized the particular sensitivity of these questions for some delegations. However, if the text were now to be expanded as had been proposed, they must reserve the right to request the insertion of the views they had expressed on these Articles and on others.

17. Several speakers recalled that this was a report prepared by the Chairman on his own responsibility which did not prejudice the substantive positions of delegations. They warned against any attempt to reflect the views of delegations in any greater detail, since the reports of meetings must remain the authentic record of these views and since such a process would endanger the report as a whole.

18. The Chairman thanked the Group for the useful comments made by the participants and remarked how important it was to have had an opportunity to reflect on the wide range of views expressed. As a number of delegations had pointed out, the text before the Group was the Chairman's text; the nature of the responsibilities entrusted to him had been set out very clearly in document MTN.GNG/12. In discharging these responsibilities he would wish to consider very carefully the comments which had been made at this meeting. He would then prepare a final report, which would be sent to the Chairman of the GNG and circulated to participants early in the week beginning 7 November.

Date of the Next Meeting

19. The Group agreed to hold its next meeting on 14-15 February 1989.