

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG8/10  
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Group of Negotiations on Goods (GATT)

Negotiating Group on MTN  
Agreements and Arrangements

MEETING OF 18 MAY 1989

Note by the Secretariat

1. The Group held its tenth meeting on 18 May 1989 under the Chairmanship of Ambassador John M. Weekes (Canada).

2. The agenda proposed in GATT/AIR/2774 was adopted.

3. The Chairman quoted from the text agreed upon by the Trade Negotiations Committee in the course of the mid-term review (MTN.TNC/11, page 16) and said that the Group was now entering a more intensive phase of its work.

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

4. One delegation gave an outline of the intention behind a submission which it was going to submit to the Group. In this connection, it stated, inter alia, that anti-dumping was a priority area for some delegations, and that the Uruguay Round offered a unique opportunity for a durable solution to the growing problems. While interests might be diverse and even opposite, participants should have, as their common goal, the desire to make the GATT work. Historically, anti-dumping had been meant as an international counterpart to competition laws, with the aim of maintaining competition. A fine balance had been intended in Article VI and in the Anti-Dumping Code between the interests of importing countries and exporters. This suggested that restraint on anti-dumping actions was required not only because thereby comparative advantage could work, but also because anti-dumping was costly to the domestic economy, to the user industries and to consumers, and because - in terms of the GATT - it constituted an exception to Articles I, II and III and the general rule of predictability. The delegation in question supported the right of countries to take proper anti-dumping action under fair and equitable rules. Its only concern was that the Code must work to strike exactly the right balance of importing and exporting interests; it was not its aim to make dumping easier but to ensure that the Code offered sufficient protection for the "innocent".

5. A number of delegations supported this statement or welcomed it as a useful, interesting and timely initiative and looked forward to receiving more details in writing, as announced. Some delegations thought that it

outlined an approach which was complementary to, or in line with, the suggestions made in MTN.GNG/NG8/W/40, which in their view should also be used as a basis for further work.

6. Some delegations added that anti-dumping was a priority matter for them and that work on this Code should be pursued more vigorously. A number of delegations stressed in particular the need for striking the right balance between importing and exporting interests. In this connection, one delegation noted that it represented a country which was exporter as well as importer. Another delegation considered that agreement on the objectives to be achieved in seeking improvements would be an important first step. One delegation stated that the objective of making the GATT work was a concern it shared. In considering the balance of interests, however, the Group ought also to take into account the need for balance within the work of NG8. One delegation stated that the question of priority was basically a question of the amount of outstanding work which was required on each Code. One delegation stated that it had not yet identified the issues on which further work was needed.

7. Some participants drew particular attention to the GATT's objective of promoting international trade on the basis of fair competition and the principle of comparative advantage; in this connection, some references were made to the rapidly evolving economic environment. One delegation expressed particular concern about protectionist anti-dumping actions and its harmful effects on small exporters. Possible circumvention of the rules in the area of safeguard measures was also mentioned. One delegation considered it as justifiable to seek protection through anti-dumping where exporters selling below cost threatened the existence of more efficient domestic producers and, thereby, created conditions for reduced competition and even monopolization of a market. However, price differentiation might reflect real cost differences and justifiable adjustments to meet an equally low price of a competitor. Therefore, any decisions should be taken on the basis of a thorough understanding of the special circumstances in each case.

8. In additional comments on document MTN.GNG/NG8/W/40, one delegation supported the suggestions contained therein, drawing particular attention to the proposed amendment to Article 3:2 of the Code, and the insertion into the Code of a new Article 9:4. In the case of the latter provision, however, the period referred to (twelve months) ought to be reduced to six months, at least as an element of special and differential treatment for developing countries whose essential interests were affected. This would be in line with Article 13, which was applicable to all stages of anti-dumping procedures. Another delegation supported in particular the suggestions relating to Articles 2:1, 2:2, 6:8 and 7:2, but thought that further study was needed on the percentage suggested, regarding Article 9:3. It expressed some doubts as to proposals made concerning Articles 3:8, 5:1, 9:1 and 9:4. One delegation recalled its own proposal in MTN.GNG/NG8/W/9, which dealt with some of the points in document MTN.GNG/NG8/W/40.

9. Some delegations stated that they would or might put forward further proposals to the Group.

10. The Chairman stated that, with respect to the work of NG8, the TNC had encouraged early submission of specific texts from participants, in order to expedite the process of negotiations. He also recalled the Group's Decision at its ninth meeting (MTN.GNG/NG8/9, paragraph 29), and the new information subsequently circulated in response to that Decision, in MTN.GNG/NG8/W/38/Add.1 and Corr.1.

B. Agreement on Import Licensing Procedures

11. One delegation stated that it remained committed to seeking improvements in this Code. These included: (i) clarification of the terminology used therein, including tighter definitions; (ii) the imposition of a direct link in terms of scope, duration and trade effect, between the licensing procedure and the trade restrictive measure it was used to administer; (iii) a requirement that non-automatic import licensing procedures be used to implement measures that had a GATT basis and were not inconsistent with the General Agreement; and (iv) the imposition of more specific disciplines on the use of non-automatic procedures, strengthening of the notification and review procedures and clarification of the Code's dispute settlement provisions. Discussions had been held since this delegation had introduced its initial proposals, and it was encouraged by interest expressed by some delegations; this showed a growing recognition that improvements were needed beyond the inclusion of recommendations agreed in the Code Committee.

12. In this delegation's view, the current Code already incorporated substantive provisions and it was not clear how a line could be drawn between procedures and substance. Another delegation, supporting the thrust of the proposal mentioned, said that the Code should not be a substitute for other GATT provisions and disciplines, but should complement these. Another delegation said that further discussion was needed as to whether or not the objective of the Code should be extended to deal with the substantive aspects of trade restrictions or with measures taken under specific GATT provisions. The point was also made by a participant that, in making proposals, the objective of increasing the Code's membership should be borne in mind.

13. The Chairman concluded that the tabling of a revised proposal might help in making the discussion more precise and carry work forward.

C. Agreement on Technical Barriers to Trade

14. Introducing documents MTN.GNG/NG8/W/41 and 42, the representative of Finland, speaking on behalf of the Nordic countries, said that for preventing and removing technical barriers to trade international disciplines had to be developed regarding two aspects of standardization activities: the preparation and implementation of product requirements and the assessment of the conformity of products to these requirements. The latter aspect consisted of four elements: testing, inspection, certification, and product approval. At present, only two of those elements, namely testing and certification, were covered by the Agreement.

Like the proposal by the United States on improving the procedures for issuing product approval (MTN.GNG/NG8/23), the proposal by the Nordic countries on inspection procedures (MTN.GNG/NG8/W/42) intended to bridge the gap in the Agreement regarding the procedures for conformity assessment. The draft Nordic proposals on testing procedures (MTN.GNG/NG8/41) took on board the elements that were relevant to testing in the same United States proposal, and also reflected work done in the ISO/CASCO Ad Hoc Group on Definitions, which was in the process of preparing an internationally agreed definition for the term "inspection".

15. One delegation said that the two Nordic proposals were parallel to the proposal by the United States which had been referred to.

16. Commenting on the suggestion in MTN.GNG/NG8/W/41 that Parties use international recommendations on testing and determination of conformity, one delegation pointed out that the text proposed as new Article 5.2 allowed exceptions for those Parties which considered the use of international recommendations inappropriate in their countries. This delegation also asked about the relationship between the definitions for the term "inspection" in document MTN.GNG/NG8/W/42 and the term "testing" in the ISO/IEC Guide 2-1986. In this delegation's view, the definition for the term "inspection" by the ISO/CASCO Ad Hoc Group on Definitions might be a more appropriate basis for further consideration by the Group. Another delegation supported the proposal for addressing inspection procedures under the Agreement. Joined by another delegation this delegation, however, emphasized that any relevant procedures must be transparent and non-discriminatory in order to prevent the creation of obstacles to international trade.

17. Introducing document MTN.GNG/NG8/W/43, the representative of Finland, speaking on behalf of the Nordic countries, stated that this proposal, on improving transparency, aimed at further clarification of those provisions in the Agreement, the implementation and interpretation of which had caused problems for Parties. It did not suggest any new substantive rights or obligations for the Parties.

18. Several delegations supported the Nordic proposal on improving transparency which would incorporate several recommendations adopted by the Committee on Technical Barriers to Trade. One delegation said that this proposal complemented the proposal by the United States on improving transparency on bilateral standards-related agreements (MTN.GNG/NG8/W/34). Another delegation said that the objectives of the proposals by Japan on improving certain provisions of the Agreement on transparency (MTN.GNG/NG8/W/36 and 37) were also relevant to the Nordic proposal.

19. A number of delegations noted that the Nordic proposal would help in improving the operation of the relevant provisions of the Agreement. One delegation said that the proposed amendments regarding the functions of the enquiry points would enable Parties to know more about the scope of the information available in enquiry points.

20. One delegation had difficulty supporting the proposals for further extending the provisions of the Agreement relating to transparency. Although the proposal basically suggested the incorporation of the recommendations already adopted by the Committee, its authorities had encountered certain problems in complying with the present provisions of the Agreement.

21. The Chairman drew attention to the proposal submitted by India on the languages for exchange of documents (MTN.GNG/NG8/W/44). Several delegations said that they understood the concern of India and other developing countries in this respect. According to some delegations, however, a requirement to supply documents covered by notifications in one of the official GATT languages would represent a heavy workload and financial burden upon those Parties which did not have a GATT language as the official language. Some delegations added that this would cause an imbalance of obligations among Parties. Any requirements which exceeded the obligations laid down in the Agreement in this respect were not acceptable. The point was also made that an obligation to provide translations might be counter-productive in that the notification of longer texts might be discouraged; translation of documents should therefore be on a voluntary basis. Some participants recalled that the problem had been discussed several times by the Committee without conclusive results and some suggested that implications of the proposal be studied in more depth to ensure some form of burden-sharing between the Parties.

22. The Chairman drew attention to the proposal by India on voluntary draft standards and their status (MTN.GNG/NG8/W/45). One delegation recognized the increasing importance of voluntary standards for international trade, resulting from the common practice of "reference to standards" by governmental authorities. Another delegation suggested that the Indian submission be addressed in any further discussion of the European Economic Community's proposal on a code of good practice for non-governmental standardizing bodies (MTN.GNG/NG8/W/31).

23. In concluding the discussion on the Agreement on Technical Barriers to Trade, the Chairman noted that participants in the Negotiating Group had made their comments over a series of meetings; a number of detailed comments had also been made in Committee on Technical Barriers to Trade. He therefore suggested that delegations consolidate their views on the numerous points made and come forward with concrete texts. In this connection, the secretariat should arrange for informal consultations with interested delegations prior to the next meeting.

24. The Group so agreed.

D. The Agreement on Government Procurement

25. The Chairman recalled previous discussions and documentation, citing specifically the Korean submission, issued as MTN.GNG/NG8/W/39. The Republic of Korea stated that its proposals, including document

MTN.GNG/NG8/W/21, had been presented with a view to facilitating accession to the Code, particularly for developing countries. It suggested that these proposals be used for further negotiations in this area.

26. One delegation indicated its continued support for these proposals; Ministers had affirmed the objective to widen accession for all countries to the MTN Agreements and this was of particular significance for the Government Procurement Code.

27. The Chairman reiterated the general invitation to interested delegations to submit concrete texts for negotiations.

E. The Agreement on Implementation and Administration of Article VII (Customs Valuation Code)

28. The Chairman recalled that no statements concerning this Code had been made at the last meeting. No further statements were made.

F. Other Business, Including the next meeting(s) of the Negotiating Group

(i) The Uruguay Round and Least-Developed Countries

29. The Chairman informed the Group that its Chairman, Dr. Kim, had received the following communication from the Chairman of the GNG:

"On 25 April, the Group of Negotiations on Goods, after considering the question of the Uruguay Round and the least-developed countries, agreed to bring to the attention of all Negotiating Groups the proposals on this subject contained in the communication presented by the Ambassador of Bangladesh on behalf of least-developed countries (MTN.GNG/W/14/Rev.1). As Chairman of the GNG, I am therefore writing to you, as to the Chairmen of all other Negotiating Groups, to request that the proposals contained in this document, together with the statements made in the GNG and the related communication from the Chairman of the Sub-Committee on Trade of Least-Developed Countries (MTN.GNG/W/15), should be brought to the attention of your Group and considered in the light of its particular responsibilities."

30. He went on to recall that the secretariat had prepared a paper on special and differential treatment for developing countries in each Code, including special provisions for least-developed countries, (MTN.GNG/NG8/W/2). In the absence of comments, he stated that this matter could be reverted to on an appropriate occasion.

(ii) Further work of the Group

31. The Chairman recalled that, at the outset of this meeting, he had quoted from the Decision of the TNC urging the Group to "pursue negotiations vigorously"; and encouraging delegations to put forward "early submissions of specific texts". This was the guideline for further work.

32. On the basis of informal consultations with delegations, the Chairman made the following suggestions:

- the next meeting would be held on 17, 19 and 20 July 1989, and would focus, in particular, on the Agreements on Anti-Dumping, Technical Barriers to Trade and Import Licensing; it was understood that delegations could raise issues in connection with the Agreements on Government Procurement and Customs Valuation under "Other Business". It was also understood that delegations would consult amongst themselves and with the secretariat prior to the next meeting regarding the organization of the Group's work and the kind of documentary support that would be the most suitable to the conduct of negotiations in the various areas with which this Negotiating Group was charged;
- concerning work in the autumn, it seemed to be the view of delegations that the Group should be getting down to more precision and focus on individual subjects. There had been a recognition that, given the technical nature of the subjects being discussed in the Group, it would be necessary in many cases for experts to come from capitals; there should therefore be sufficient notice of when each Code were to be taken up in the Group. It would probably be useful for the Group to meet during the autumn for longer periods, perhaps setting aside a whole week, so that there could be more intensive work, including consultations among delegations and with the secretariat. There had been views as to whether there should be three or four meetings in the course of the autumn, and on this point the Chairman proposed that the Group meet during the week of 18 September 1989, when the focus would be on the three Codes mentioned above, and that it would be understood that delegations could raise issues related to the other two Codes under "Other Business". The secretariat would be in touch with delegations and with the Chairman to consider the best timing for the further meetings of the Group.

33. The Group so agreed.