

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG14/15
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Special Distribution

Group of Negotiations on Goods (GATT)
Negotiating Group on the Functioning
of the GATT System

MEETING OF 19 FEBRUARY 1990

Note by the Secretariat

1. The Group held its fifteenth meeting on 19 February 1990 under the chairmanship of Ambassador J. Lacarte-Muro. The agenda contained in GATT/AIR/2921 was adopted.

Item A (I) of the Agenda

2. The Chairman invited further comments from participants on the joint submission from Australia, Canada, Hong Kong and New Zealand concerning Domestic Transparency (MTN.GNG/NG14/W/37).

3. One participant was sceptical about the value of the proposal. He agreed on the need for a high degree of transparency and said there was no doubt room for improvement at the domestic level, but as the proposal recognized this could not be imposed on contracting parties. In his view contracting parties already undertook cost-benefit analyses before imposing trade restrictive measures, and one problem with a voluntary undertaking of this kind was that those that did not choose to implement it might become suspect. His delegation saw enhanced transparency in a wider context, and he was not convinced of the merit of picking it out for detailed treatment. He could imagine something along the lines of the proposal being included in a final agreement on the overall framework of policy coherence, such as that addressed by his delegation in NG14/W/40.

4. One participant said that although the general idea was a good one, he doubted that enhanced domestic transparency could be achieved by supplementing existing government efforts to achieve public support for their policies with action at the multilateral level. He could nevertheless support the inclusion of something along the lines of the proposal in the kind of framework for policy coherence suggested in NG14/W/40.

5. One participant said that although his delegation recognized the value of enhanced domestic transparency, it was sceptical of the approach proposed and considered there to be a danger of weakening the legal force of the GATT by attaching to it this kind of voluntary undertaking.

6. One participant supported the general idea of improving domestic transparency, but questioned the practical implications of the proposal. The voluntary nature of the undertaking raised doubts about its purpose. His delegation could support a political statement by the CONTRACTING PARTIES to encourage domestic transparency, but nothing which went much further than that.

7. One participant said that her delegation could support the proposal, which was modest and represented an endorsement of the concept of transparency. Many countries encouraged public scrutiny of trade policy formulation, but few had established an institutional framework for ensuring domestic transparency. The experience of her own government was that the recognition of the costs of trade restrictive actions could provide a counterweight to protectionist pressures.

8. One participant said his delegation could support the proposal, although it understood the concern of others that this kind of voluntary undertaking was not the best way to express support for enhanced domestic transparency. His delegation was willing to participate in discussions to make the concept more operational.

9. One participant supported the proposal, and agreed that a commitment to improve domestic transparency should be voluntary, not obligatory.

10. One participant supported the idea of approaching domestic transparency through voluntary undertakings. However, he believed that countries whose macroeconomic policies had a major impact on the world economy should have stronger obligations than others, and he proposed that the text should mention explicitly the costs of protectionism not only to the domestic economy but also to the export interests of developing countries. Also, he stressed the importance of making transparent the practices of multinational corporations which strongly affected the economies of developing countries.

11. One participant said her delegation could subscribe to the proposal, since it left domestic transparency up to each contracting party to implement as best it could within national legal and political structures. She asked whether, if the proposal was approved, the sponsors had the intention of inserting it in any specific context in the final Uruguay Round agreement.

12. One participant said that the principle of transparency was a key element of the GATT, but in practice the level of transparency was difficult to evaluate. Domestic trade policy-making depended also on external factors, especially in developing countries. The Group should examine in this regard the rôle of the trade policies of developed countries as well as factors such as international interest rates and indebtedness, and it should establish more transparency over the practices of private operators. Also, it should bear in mind under this part of its mandate the systemic benefits of more transparent decision-making within GATT itself. Another participant supported the need for greater transparency within the institution.

13. One participant said that the coverage of the term "trade policy matters" in the proposal needed to be defined precisely, and he asked what the sponsors of the proposal had in mind in this regard. He also suggested the following addition to the proposed text: "with the understanding that this process is voluntary and each individual contracting party itself can decide the best approach to promote such transparency".

14. The representative of New Zealand said that a fine judgement had been involved in deciding whether to couch the proposal in terms of a voluntary undertaking, with the risk that it would then be deemed pointless, or a binding commitment with the risk that it would receive insufficient support from participants. In his view, the debate had shown that the decision to propose a voluntary undertaking had been correct; it could help plant the idea that establishing formal frameworks for domestic transparency would assist governments in taking stock of the economic objectives they were trying to pursue through trade policy. The coverage of a domestic transparency exercise could be as broad as each contracting party wished it to be. Limiting it only to border measures would, in his view, be too narrow, but it could easily be extended to cover all aspects of the interface between the domestic economy and the international trading system. The reason the idea had attracted interest in his own country was the relatively high level of industrial protection that prevailed and the micro-economic inefficiency costs that this caused. His Government had informed the public of their costs to gain support for trade liberalization. He said that the issue of domestic transparency was germane to all three elements of the Group's mandate, and expressed interest in the suggestion of another participant that something along the lines of the proposal could be included in a declaration on policy coherence. Greater symmetry between more liberal, better-informed, domestic trade policy decisions and the process in GATT of negotiating concessions was likely to be a productive one.

15. The representative of Canada said that the costs of protection were often less well known than the benefits accruing from it to special interest groups. Greater domestic transparency was being encouraged in Canada by the business community and many consumer groups with a vested interest in better trade policy-making. Some of the parameters favoured by his government with respect to mechanisms to improve domestic transparency were independence from political pressure and sectoral influence, ready access to information, and an ability to provide information and analysis to the general public. Since the proposal was couched in terms of a voluntary undertaking, there was no restriction on what a government might choose to cover through domestic transparency.

16. The representative of Australia pointed out that the appendix to the proposal contained an illustrative list, and he encouraged other participants to add their own experiences to it.

17. The representative of Hong Kong said there did not seem to be any negative reactions to the proposal itself, but there was concern over the implications of including something non-binding in the final package of the Uruguay Round. In her view, it would be impossible to impose obligations

on contracting parties in this area, but the proposal could represent a first step towards getting a more binding commitment at a later stage. She did not believe that such a voluntary undertaking would weaken the GATT necessarily, since there was a political dimension to the GATT; where exactly to place it in terms of the final Uruguay Round agreement could be discussed further, possibly through informal consultations.

18. The Chairman said that participants should reflect further on the proposal and that the Group would return to it at an appropriate time. He then drew attention to NG14/W/39, containing a Secretariat Note on the improvement of GATT notification procedures, and asked participants to address the questions posed in that Note with regard to what aims the Group should set itself in this area.

19. One participant said the fundamental question was what level of ambition to aspire to in making improvements to the notification system. His delegation had in the past suggested an approach which fell between a purely administrative exercise (on which there would be no need for the Group to negotiate) and a global review of all notification obligations under the GATT (which it felt would be counterproductive since notification requirements did not stand as a subject on their own but should be examined in the context of the specific purposes which they set out to achieve). He expressed interest in knowing the budgetary implications of the following proposals.

20. The Group should aim to reach two objectives. The first was to ensure that there were no lacunae in GATT notification procedures, and for that reason his delegation was proposing establishing a general obligation for contracting parties to notify any measure of a trade nature. This would involve strengthening the 1979 Framework Agreement, and a more decisive political commitment by all contracting parties to fulfil their notification obligations. His delegation had suggested setting up an illustrative list of measures that would have to be notified; it would be non-exhaustive, but it could simplify the work of contracting parties. To a certain extent the Group had already made progress in that direction through the decisions taken on the illustrative list of measures annexed to the format for country reports under the TPRM.

21. The second objective was to ensure that at any given time there would be available in GATT a global overview of the various trade policy measures adopted by contracting parties. In this regard, his delegation had proposed the establishment of a central repository of notifications and a common notification format. It was not the intention to affect existing notification requirements under specific GATT Articles or the Tokyo Round Codes; those requirements corresponded to particular and often specialized needs, and they should not be modified. However, it should be possible to establish certain summary information which should be included in any GATT notification, such as a description of the measures, an indication of the reason why they were being adopted, and a brief description of their trade impact; this information could be included in a central repository. The GATT Secretariat would need to assist directly in the implementation of this system, by seeing to it that notifications were made and asking

contracting parties where necessary for an explanation of why a particular measure had not been notified. The central repository would allow a complete inventory of measures to be established, which could facilitate preparations for the TPRM and leave TPRM discussions free to focus on specific aspects of contracting parties' trade policies and practices.

22. One participant welcomed the clarification that the proposal for a central repository would be additional to, and in no way in place of, existing notification requirements which were often highly detailed and extensive and tailored to the needs of specific GATT Committees.

23. One participant said that GATT notification systems had very uneven records and needed to be improved. A lot of work would be involved in an exercise of simplifying, standardizing, consolidating and hopefully computerizing notifications across the board. Also, at present such an exercise was something of a moving target because notification issues were under discussion in many Negotiating Groups. In his view, therefore, it could best be left until after the Uruguay Round, at which time a working group might be established to carry out a thorough assessment of the room for improvement. In the meantime, individual committees could be asked to take stock of areas where improvements could be made to their individual notification requirements, particularly in terms of simplification and standardization, without compromising the level of detailed notifications that they needed to do their jobs. Other possibilities for making improvements were for the Secretariat to offer technical assistance to developing countries to help them prepare their notifications, and for the Secretariat to prepare at the beginning of each year a comprehensive document for every contracting party listing its specific notification requirements over the following twelve months.

24. One participant supported the establishment of a central repository for GATT notifications. This could play an important rôle in enhancing transparency and represent an useful support service for the TPRM. Her delegation envisaged at this point a relatively simple procedure which would involve the logging in of all GATT notifications. Like other participants, her delegation was concerned that existing, detailed notification requirements should not be modified unnecessarily in the process. The logging of full notifications into the central repository should therefore be accompanied by a summary description of the measures and of the notification requirements that were being met. Full notifications would still be passed on to the appropriate GATT Committee. This process would require no renegotiation of existing notification requirements; nor would it result in significant budgetary implications. It could be put into effect on a prospective basis directly after the end of the Uruguay Round, and when time permitted the Secretariat could begin to centralize notifications from previous years.

25. One participant said that a central repository could be useful in improving the efficiency of the notification process, encouraging each contracting party to respect its notification obligations, and assisting with the implementation of the TPRM. It would be most pragmatic now for the Group to study the simpler form of central repository described in

paragraph 9 of the Secretariat Note, which would involve only the logging in of notifications.

26. One participant said that paragraph 2 of the Secretariat Note pointed to the need to streamline the notification system and to strengthen surveillance that notification obligations were being met. If this could be achieved through the process suggested in paragraph 11, his delegation would support it. Regarding more ambitious efforts to consolidate or simplify notifications, his delegation wished to have more concrete suggestions from the Secretariat on what could be done. It did not consider this to be the time to renegotiate current notification obligations and it felt that any future system must evidently take into account new notification obligations resulting from the Uruguay Round.

27. One participant, referring to paragraph 8 of the Secretariat Note, said that the TPRM should not be drawn into the exercise on improving notifications. The TPRM provided a unified picture of countries' trade policies and it was intended to focus on broad issues; it was explicitly not intended to serve as a basis for the enforcement of GATT obligations. A phased approach towards the exercise of improving notifications would be the most practical. The first step could be a central repository for logging in notifications before passing them on to committees to handle according to present arrangements. A further step which his delegation considered could be agreed on during the Round would be for the central repository to remind contracting parties of their notification obligations, to ask them to provide supplementary information, and for the Secretariat to provide technical assistance to contracting parties in fulfilling their notification obligations. He saw merit in the idea of continuing work on this issue after the end of the Uruguay Round.

28. One participant felt the approach proposed in paragraphs 19 to 21 above was too ambitious. In particular, his delegation did not favour strengthening the general obligation to notify beyond that contained in the 1979 Agreement. In order to reduce the budgetary implications of the exercise, the Group should not try to change notification obligations but should adopt the simplest and least financially burdensome exercise with regard to a central repository. His delegation could support the idea of the central repository informing contracting parties in advance and regularly of the notifications they were required to make.

29. The participant whose remarks are recorded in paragraphs 19 to 21 said he did not consider his delegation's approach to be too ambitious. It was not suggesting in any way the renegotiation of existing notification obligations. Passing from the 1979 framework agreement to a more binding general obligation to notify would have certain implications for contracting parties, but he did not believe that these would be so radical. Nor would it have budgetary implications.

30. The Chairmar said that the Group would return to this issue at its next meeting.

Item A (III) of the Agenda

31. The representative of the European Communities distributed a new submission by his delegation (MTN.GNG/NG14/W/40) and introduced it. He said that the three elements proposed in the submission represented a clear and strong basis for improved institutional co-operation.

32. Many participants welcomed the submission, but said that their comments were preliminary in view of the short time they had had to review it, and that they would comment more substantively at the next meeting. Several asked for the views of the IMF and World Bank on the submission.

33. One participant said the submission corresponded in several ways to the thinking of his own delegation which was preparing its own written contribution on this subject. He believed that most participants would agree with the general goals for coherence set out in the submission, and that the subject of transparency could be taken up most fruitfully in the context of policy coherence. Coherence required first the strengthening of the GATT both as an institution and in terms of its personnel so that it could co-operate effectively with the other institutions. Institutional autonomy should be preserved, and he agreed that the GATT should not become involved in the conditionality imposed by the IMF and World Bank. It was important to take into consideration the liberalization efforts undertaken by developing countries, and his delegation shared the view of the Communities with regard to the question of negotiating credits. However, it disagreed with the Communities with regard to co-operation at the secretariat and management level; this should be kept informal. He agreed that a common institutional approach to the problems of coherence should provide the possibility of a common report.

34. One participant said the basic message of the submission, in his view, was that trade, monetary and financial policy coherence required greater exchange rate stability. His delegation agreed that policy coherence was important, but it approached the issue from a different perspective.

35. Coherence could not be achieved in closed groups such as the G-7; it could be achieved only when matters such as those identified in the text of the Montreal agreement were tackled effectively. This involved, on the one hand, the correction of the external imbalances of the main industrialized countries which were leading to strong protectionist pressures, and on the other the treatment of the serious difficulties from which a large number of countries were suffering, among them the debt problems of the countries in Latin America. His delegation believed that policy coherence required the acknowledgement of co-responsibility by creditor countries and their willingness to make sacrifices to resolve the debt problem. When asking the indebted countries to undertake trade liberalization commitments, it had to be understood that they were tied down by multilateral agreements in which their voice was of little importance with respect to the huge sacrifices which they were being asked to accept. His delegation had already expressed its views on what possibilities were available in the Uruguay Round to assist the developing countries, but for the time being it did not see much happening in this respect.

36. He noted with concern that the submission did not address the important issue of development from the point of view of policy coherence. This was contained in Part IV of the GATT, and this Group had been instructed by ministers in Montreal to consider how policy coherence could contribute to development and to increasing the economic possibilities of developing countries, but for the time being the development dimension was a dead letter. In other Groups, developed countries were approaching it only from the point of view of achieving equal levels of commitment over fixed transitional periods; this was not adequate.

37. His delegation agreed with the submission that any type of cross conditionality between the GATT, IMF and World Bank should be rejected, but he questioned how consistent it was when, on page 7, it spoke of the GATT bringing to the attention of the international financial institutions the trade liberalization efforts of countries which wished to draw on their resources. His delegation recognized the need to have an agreement on institutional co-operation, but for the time being it considered that it was premature to express views in this respect.

38. One participant questioned how productive discussion was in this particular forum on the matters raised in the submission. That did not mean her delegation believed that the issues were not linked or that there were not problems.

39. One participant said the submission was sound and consistent in conceptual terms and offered a good basis for work in this area of the mandate. It highlighted the linkages between trade, monetary and financial policies, which were particularly evident in the case of the highly indebted countries. It was necessary to stress the need for policy coherence particularly on the part of those contracting parties which had a direct influence on the trade environment, although as was noted in the submission it was for all countries to contribute in this respect. Also, while structural adjustment was needed in all countries, it is of utmost importance that the major countries adjusted and reduced their external and internal imbalances to ensure that there was an appropriate basis for economic growth and development throughout the world. He welcomed the statements in the submission that responsibility for policy coherence increased with the economic size of countries, that the success of adjustment programmes was linked to increased export market access, and that the aim of strengthening GATT was to ensure non-discrimination and to respond to developing countries' needs.

40. One participant felt the observation that all countries had a contribution to make to support the multilateral system was pertinent, as was the statement that co-operation had to be based upon partnership among institutions. He welcomed the emphasis placed on day-to-day contacts between secretariats, which was a point his delegation had stressed in the past.

41. Several participants asked for clarification from the Communities on the proposed Joint Declaration, in particular how they envisaged securing its adoption by the GATT, IMF and World Bank as part of the Uruguay Round,

what procedural initiatives they would propose for starting a debate in the IMF and World Bank on joint principles for the conduct of financial and monetary policies, and how they proposed to deal with the fact that the membership of the three institutions was different.

42. One participant welcomed the confirmation that the procedures established with respect to coherence should not lead under any circumstances to cross-conditionality, but shared the doubts of other participants that the formulation of certain parts of the submission would guarantee this. She welcomed the fact that recognition of the concept of credits was beginning to take shape, and asked whether the Communities had more specific ideas within the framework of coherence of how this would be achieved in operational terms.

43. One participant said the submission contained many ideas which his delegation could agree with, such as the level of responsibility for coherence increasing with the size of economies and the need to ensure adequate flows of financial resources to developing countries, which in his view should be extended to include all countries engaged in economic restructuring. He said with regard to the various surveillance mechanisms operated by different institutions that the TPRM seemed to differ in nature from the others and he questioned the degree of symmetry between the mechanisms.

44. One participant said the concept of coherence was well elaborated in the submission. He agreed with the principles of coherence on page 4 of the submission, but suggested adding the link between high interest rates, foreign debt, and trade. He agreed that cross-conditionality should be avoided, and that credits should be recognized. However, he disagreed that coherence should be pursued through bodies of limited membership such as the G-7. He also reserved his position on the proposals for institutional co-operation, particularly since he saw no rôle given in it to the CONTRACTING PARTIES.

45. One participant welcomed the contribution of the submission to the search for realistic ideas on coherence. It was necessary to restore adequate flows of financial resources to developing countries, to increase their export market access, and to restore the growth performance of those suffering severe debt problems. He continued to be concerned about cross-conditionality.

46. One participant welcomed the effort of the European Communities to stimulate discussions on the need for coherence in the interaction of global economic forces. The submission was comprehensive and would require careful study. Her delegation believed that trade, finance and development assistance were inextricably linked. The tightening and increased complexity of the linkages called for international economic co-operation and co-ordination to maximize the potential of this interdependence.

47. She recalled recent structural adjustment programmes being undertaken by heavily indebted countries such as her own. For most, the debt strategy had sought to "buy the time" required to bring about the growth of output

and export earnings that would restore these countries' debt service capacities. The strategy, however, had underestimated the gravity of the debt problem and overestimated the scope for reviving growth through domestic economic reforms in the absence of an improved international trading and financial environment. This had resulted in inappropriate conditionalities (including some measure of trade liberalization) as well as insufficient amounts of external financing. Huge trade surpluses which debtors were obliged to run, either through curtailing imports or aggressive export strategies, had provoked protectionist sentiment on a globally damaging scale. Some of the adjustment programmes might have resulted only in the transfer of distortions from world capital markets to world trade.

48. While there were merits to systematic management of the interrelated issues of trade, money and development finance, the process should be qualified at two levels: the process of co-ordination among international institutions and the process of achieving a comprehensive and integrated approach to policies on sensitive issues such as trade and finance. Structural adjustment programmes were inherently comprehensive, but choosing the appropriate policy instruments had to be the sovereign prerogatives of governments. The first level of strengthened co-operation among international institutions could contribute to the following objectives: putting adjustment programmes in their international context; highlighting the need for adequate compensation through concessional financing for the short-term costs of trade liberalization when this resulted in import surges and delayed adjustment on the export side; giving credits for unilateral trade liberalization measures; and international surveillance of the effects of the macroeconomic policies of developed countries on the trading system.

49. Any proposal on enhancing co-operation among international institutions could result in enhancing their leverage to demand economic and administrative reforms in internationally-supervised adjustment programmes; when accompanied by stringent performance criteria, these could only be attained at tremendous sacrifice through drastic austerity measures. Her delegation therefore shared the concern that co-operation should not result in cross-conditionalities and/or additional conditionalities.

50. One participant asked what was meant by the participation of each institution in the general surveillance activities of others; did this cover all the governing body meetings, and any other surveillance activities? He asked also what would be included under reciprocal co-operation which was mentioned in the Annex to the submission; did it refer to matters raised in the last paragraph on page 7, or was more comprehensive co-operation envisaged? With regard to the proposed joint reports, in his view these should be prepared more frequently than every two years because of the rapidly changing world economic situation.

51. Responding to the comments made, the representative of the European Communities said that greater policy coherence was not aimed only at reducing exchange rate fluctuations; it was equally important in the

context of the debt problems of developing countries. The submission did not suggest that coherence should be pursued in closed bodies such as the G-7; rather, it stressed the rôle of general surveillance. Interest rates were cited as one important example of matters that should be covered in the proposed biennial joint reports and in the context of IMF surveillance. It was necessary to insist in all respects on the autonomy of the three institutions; they would have to work together, but each within its own field of competence. On each institution's general surveillance activities, it was felt that shared experiences could lead to mutually beneficial adaptation over time. Joint reports should be prepared biennially because they would then coincide with biennial GATT ministerial meetings. He agreed on the need to strengthen GATT institutionally if it was to co-operate as an equal partner.

52. With regard to obtaining the Joint Declaration, the initiative had to be tackled first by GATT. When agreement had been reached among Uruguay Round participants, it would be transmitted to the IMF and World Bank with an explanation of what was expected from them. When political approval had been given at the highest level of those two institutions, trade ministers meeting in the final stage of the Uruguay Round could, with the approval of the other ministers, make a common statement.

53. The Chairman recalled that the Group needed to define more precisely what further matters it wanted the Director-General to take up with his counterparts in the IMF and World Bank on this part of the negotiating mandate. He recalled also that some participants had said at previous meetings that they wished to take up substantive issues related to the trade-finance link and the recognition of credits, and he urged them to put forward concrete proposals on these matters so that the Group could address them effectively in the short time it had left to complete negotiations.

Item A (II) of the Agenda

54. The representative of Switzerland introduced the submission by his delegation (MTN.GNG/NG14/W/38), which he noted had been submitted to a number of other Negotiating Groups because of the scope of the issue which it addressed. He said that procedures for dispute settlement were a central part of the multilateral trading system. The effectiveness of the system depended largely on substantive rules, but also on procedures to protect and interpret rights and obligations under the GATT and related international agreements. The system of dispute settlement in GATT had two levels. So far, the Uruguay Round has been dealing with the international level, and it had already brought about substantial, preliminary improvements. The level of national dispute settlement had been largely neglected, except in the area of TRIPS where considerable attention had been paid to the problem of procedural standards (enforcement) both at the border and within the country. For reasons stated more explicitly in the paper, the Swiss delegation sought to correct this imbalance.

55. The basic question was how private persons could be effectively protected from potentially illicit government action in the area of

international trade. A number of approaches, reflecting different levels of ambition, were described in the submission. Switzerland would welcome the achievement of full effect of the GATT within national legal systems. The same held true for the MTN Agreements and future agreements. However, his delegation realized that, for a number of reasons, the international community still was far from achieving that goal; attitudes and perceptions would have to develop considerably first. It would be equally difficult to give full effect to selected principles of the GATT.

56. The Swiss delegation was therefore submitting a proposal for the improvement of domestic protection. It contained two elements: minimal procedural standards, and a standard on the appropriate density of rules. The procedural proposal built upon a philosophy and approach already contained in GATT and the MTN Codes, but which had only been realized in a highly imperfect manner. Article X:3 of the GATT contained a number of procedural obligations of contracting parties which were designed to apply to the traditional field of tariffs. These needed to be updated for the non-tariff areas and for the new subjects of GATT. Similarly, the evidence on the MTN agreements showed that the problem had not been approached systematically during the Tokyo Round. The proposal therefore contained a number of principles which his delegation believed were suitable to serve as minimal standards across the board of GATT law. They did not prevent more elaborate standards in particular fields of the law, such as TRIPS.

57. The standards proposed were only minimal requirements, essential to uphold the rule of the law:

(a) Provision of fair hearing for those affected was an essential requirement to make decisions and render fully informed judgements. The proposal reflected standards achieved in due process of law in many countries. It took into account the need for ex ante decisions where an urgent determination was needed, and therefore provided for the possibility of ex post hearings.

(b) The obligation to provide a reasoned decision was the other side of the coin of the right to be heard, so that views could not merely be stated but would also be taken into account and reflected in the decision. The reasoning or motivation of the decision was an expression of such an obligation. It should be noted that the minimal standard did allow for routine administrative decisions with an explicit reason stated. The right would have to be granted only upon complaint, and thus in a second instance. Also, it should be noted that there was no minimal requirement for written motivation; oral justification might be sufficient.

(c) The requirement of prompt and effective provisional measures in case of pending irreversible damage was of particular importance in the areas of illicit importation. Beyond counterfeiting, which was also dealt with in TRIPS, other cases of immediate action might be necessary.

(d) Legal remedies were of utmost importance to uphold the quality of decisions in the first place and to offer the means to remedy incorrect decisions. It should be noted that the proposal was limited to a minimal

standard. It did not require both administrative and judicial review. One of the two avenues was sufficient, and it was a matter for each contracting party to choose appropriate means of review or combinations thereof, under their respective national systems. Also, it should be noted that legal review by courts might be limited to issues of law, excluding questions of fact and the discretionary exercise of administrative powers. This should allow avoidance of abuse and excessive delay in adjudication.

58. With regard to the proposal related to substantive rules on improved predictability of law, it was essential, for business security, that substantive rules did not remain unnecessarily vague or broad. This did not mean that clear-cut rules were possible and available in each and every case. Sometimes, it was necessary to adopt broad language in order to achieve justice in particular cases which might vary considerably under different circumstances. The Swiss delegation believed that the level of normative density achieved in GATT should not be undermined by more open texts in respective national laws and regulations. It believed that the text of the GATT could be a common yardstick, even if it was not always as precise as it should be.

59. It was suggested in the submission that no special provisions would be required with regard to remedies attached to violations of procedural and substantive rules on the protection of domestic rights under GATT. Violations would be subject to ordinary dispute settlement procedures of the GATT and related agreements. When a contracting party did not live up to the minimal standards on procedures or on density of rules, it would be subject to dispute settlement under Article XXIII of the GATT and of the respective Codes, and the obligations and remedies attached to the system.

60. His delegation was open to which of the Groups discussed substantively its proposals. It believed their thrust was important since the quality of the legal system in a country was essential for the trading system.

61. One participant said the submission brought up several important issues. His delegation attached considerable priority to the relationship between the multilateral system and domestic legislation. The concept of "direct effect" was not the solution to the problem. The series of arguments in the submission were interesting, but it was important to take into consideration the constitutional and legal implications of such a concept for each contracting party. It was not simply a matter regarding incorporation in domestic law; a more decisive solution needed to be found. The more modest approach suggested by Switzerland was therefore interesting, and it could be pursued in other areas of the negotiations. For example, his delegation had proposed in the Group on Safeguards that certain minimum procedural criteria should be elaborated with regard to the adoption of a code.

62. One participant said the issues covered by the submission were relevant in several Negotiating Groups, especially in the context of the Tokyo Round Codes, and would require careful reflection.

63. One participant agreed that the model proposed in the submission was the most realistic and expressed interest in discussing it in detail.

64. One participant asked for practical examples of problems that had arisen with the application of GATT rules where the approach that was being put forward in the submission might have proved helpful.

65. One participant asked for clarification of the proposal to adopt the third model when all of the supporting arguments in the submission led to the conclusion that the first model would be the most satisfactory. She asked also for elaboration of how amendments to Article X:3 would be accomplished; if this was a proposal for the reform of a GATT Article, she queried whether it might not be more appropriately addressed in the GATT Articles Group.

66. The representative of Switzerland responded by offering as a concrete example the situation where an exporter was not able to secure an import licence, and there was no way to appeal that decision. The idea behind the proposal was really to update the procedural requirements already existing in Article X:3; these were clearly shaped at present towards tariffs, and not towards non-tariff measures. His delegation was open to which of the Negotiating Groups was best equipped to discuss the proposal; the GATT Articles Group could not deal with matters touching on the Tokyo Round Codes. Several forms of amendment to Article X:3 could be envisaged, such as footnotes. It was true that the supporting arguments in the submission pointed to a solution along the lines of the first model, but Switzerland had concluded that such an approach was not realistic and it was therefore proposing the more modest third model.

Item B of the Agenda

67. The Chairman encouraged participants to place written submissions before the Group in the near future on any matters which they considered should be taken up in the negotiations.

68. The Group agreed on the following dates for its next meetings:
2-3 April, 22-23 May, 25-26 June, and a possible date to be fixed for July.