

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG8/16

20 April 1990

Special Distribution

Group of Negotiations on Goods (GATT)

Negotiating Group on MTN
Agreements and Arrangements

MEETING OF 21-22 MARCH 1990

1. The Group met on 21-22 March 1990 under the Chairmanship of Ambassador J. Weekes (Canada).

A. The Agreement on Technical Barriers to Trade

(i) Conformity assessment

2. The Chairman recalled that the Group had before it proposals by the Nordic countries on testing and inspection procedures (MTN.GNG/NG8/W/50); by Canada on certification systems (MTN.GNG/NG8/W/69); by the United States on product approval procedures (MTN.GNG/NG8/W/52/Rev.1), on systems for the accreditation or approval of testing laboratories, inspection and quality system registration bodies (MTN.GNG/NG8/W/60), and on elements relating to testing, inspection and laboratory accreditation and product certification in its proposal on improved transparency in agreements concluded within the scope of the Agreement (MTN.GNG/NG8/W/34/Rev.3); by the European Economic Community on conformity assessment procedures (MTN.GNG/NG8/W/72); by New Zealand on elements relating to Article 5.2 in the proposal on processes and production methods (MTN.GNG/NG8/W/58); and by Japan on transparency and acceleration of certification systems (MTN.GNG/NG8/W/37/Rev.1).

3. The representative of the EEC introduced document MTN.GNG/NG8/W/72. He noted that the discussions in the Committee on Technical Barriers to Trade had shown the growing interest of Parties to enlarge the scope of the Agreement, to cover also procedures other than those actually covered by Articles 5 and 7. The new submission therefore suggested to cover other procedures for the assessment of conformity of a product with a technical regulation or a standard. Concerning the strengthening of the Agreement, the document went beyond stating the basic principles of national treatment, the avoidance of unnecessary obstacles to trade, and the use of international recommendations and guides, but also contained more precisely defined requirements in various respects. Thirdly, as conformity assessment procedures were becoming increasingly important in international trade, Parties should be encouraged to enter into mutual recognition agreements; the current concept of mutual satisfactory understanding ought to be made clearer and certain criteria for negotiations ought to be established; the proposals in this respect also dealt with the need to ensure a balance of interests. Fourthly, the proposal tried to regroup, for presentational reasons, the principles which should apply to all conformity assessment procedures.

(ii) Transparency

4. The Chairman recalled that a new proposal by the Nordic countries (MTN.GNG/NG8/W/75) attempted to incorporate in a comprehensive text the various proposals on Article 10. The other papers were Japan's proposals on transparency in the operation of certification systems by central government bodies (MTN.GNG/NG8/W/36/Rev.1) and in the drafting process of technical regulations, standards and certification systems (MTN.GNG/NG8/W/37); a Nordic proposal dealing with timing of notifications and the functioning of enquiry points (MTN.GNG/NG8/W/43/Rev.1); India's proposal on languages for exchange of documents (MTN.GNG/NG8/W/44/Rev.1); and the United States proposal on transparency in agreements covered within the scope of the Agreement (MTN.GNG/NG8/W/34/Rev.2).

5. The representative of Finland, on behalf of the Nordic countries, introduced MTN.GNG/NG8/W/75, stressing that it only attempted to consolidate all proposals made with respect to Article 10 and thus did not cover all aspects of transparency.

(iii) Second level of obligations

6. The Chairman recalled that the Group had before it an EEC proposal for extending the major obligations of the Agreement to local government bodies (MTN.GNG/NG8/W/32); a United States proposal on regional standardization activities (MTN.GNG/NG8/W/35); and a revised EEC proposal for a "Code of Good Practice for the Preparation, Adoption, and Application of Standards (MTN.GNG/NG8/W/71).

(iv) Production and processing methods (PPMs)

7. The Chairman recalled that a proposal by New Zealand was before the Group (MTN.GNG/NG8/W/58).

(v) Dispute settlement

8. The Chairman recalled that a Nordic proposal was before the Group (MTN.GNG/NG8/W/68).

(vi) Further work

9. The Chairman concluded that as nearly all the proposals relating to the Agreement were before the Group the secretariat could finalize the side-by-side comparison of the present text of the Agreement and the amendments suggested.

B The Agreement on Import Licensing Procedures

10. The Chairman stated that it had been reported to him that the Informal Group established at a previous meeting had held a meeting on 28 February 1990 in pursuance of the NG8 request that it clarify and exchange views on the proposals under consideration. In doing so, it had focused on the revised proposal by Hong Kong and the United States

contained in MTN.GNG/NG8/W/53/Rev.1. Clarifications had been sought, and given, with respect to a number of elements in that revised text. In some instances the points made orally in the NG8 at its November 1989 meeting had been reiterated and further elaborated upon. Some delegations which had not commented on that previous occasion had made their viewpoints and ideas known. A number of comments had also been made on issues which had so far not been dealt with in detail in the NG8 itself. Some delegations had suggested alternative formulations or alternative approaches with respect to some of the provisions proposed. In terms of operative provisions the more extensive discussion had related to the general provisions in Article 1, paragraphs 4 and 5; Article 2, paragraph 1 concerning automatic licensing; proposed new language on non-automatic licensing in Article 3:3, 3:4, 3:5(a), (c) and (g); the proposed new Article 5 concerning notifications, in particular its sub-paragraphs 2(f) and 3; and the proposed new Article 8 ("review"). The discussions should have permitted delegations to increase their understanding of the various participants' intentions, their general and specific concerns, and the more technical drafting points which had been brought up.

11. One delegation stated, inter alia, that concrete suggestions had been made by a number of delegations on possible ways of changing proposed language to meet concerns. It had itself a better understanding of the viewpoints and concerns of other delegations. A number of proposals had not been commented upon, which it hoped was an indication of elements on which there was a fair degree of agreement. In other areas there were differences of views which could be attributed to concerns of a drafting or presentational nature. On some points differences of a more substantial nature remained. However, the informal process had permitted the process to be taken further, both through suggestions on how to bridge differences, and through more discussion of those points where there were differences of a more substantial nature.

12. One delegation agreed that the informal work continue, as in a number of areas substantive differences existed. Work should concentrate on such points, so that existing differences could be better appreciated and narrowed down.

13. One delegation drew particular attention to the recommendations from the Code Committee as relevant for a number of issues under discussion.

14. After a discussion on how to proceed further the Chairman concluded that it did not appear that any delegations were planning to table any further texts at this stage, and that the secretariat be requested to organize further informal discussions, in consultation with delegations. He suggested that the secretariat begin the production of an informal side-by-side text in the anticipation that it would be needed. The best time for introducing such a text could be further considered in the informal discussions.

C. The Agreement on Implementation and Application of Article VII
(Customs Valuation Code)

15. The Chairman informed the Negotiating Group that an informal meeting at the level of customs experts had been held on 19 March 1990. It had been reported to him that customs experts from a number of developed and developing countries had attended and that the meeting had provided an opportunity for frank and open discussion of the proposals tabled by India (MTN.GNG/NG8/W/54) and Brazil (MTN.GNG/NG8/W/57) for shifting of burden of proof to deal with the problem of under- or overvaluation of goods which was prevalent in some developing countries. Some developing countries which were considering acceding to the Agreement had stated that a solution to the problems raised might facilitate accession of more developing countries. The meeting had also had a brief exchange of views on proposals made for greater technical co-operation and exchange of information among customs administrations in order to assist developing country customs officials. The observer from the Customs Co-operation Council had given an account of the CCC's work in this area. The meeting had also had a brief exchange of views on a proposal tabled by the delegation of Kenya on behalf of the Member States of the Preferential Trading Area of Southern and Eastern African States. Some delegations were in the process of preparing a non-paper containing possible solutions to the problems they considered were encountered either in the implementation of the Agreement or in acceding to it.

16. The representative of Kenya introduced document MTN.GNG/NG8/W/73 on behalf of the Preferential Trade Area for Eastern and Southern African States. Noting that the PTA was an intergovernmental organization presently comprising eighteen countries, whose main objective was to promote co-operation in the effort of speeding up the rate of economic development, he recalled that a Protocol in the PTA Treaty dealt with the co-operation between Member States in various customs matters. With regard to valuation, the Treaty provided that Member States should "adopt a standard system of valuation of goods based on principles of equity, uniformity and simplicity of application in accordance with internationally accepted standards and guidelines." In order to decide which valuation system to adopt in the PTA subregion, comparative studies of the GATT Agreement and the Brussels Definition of Value (BDV) had been undertaken with the assistance of the Customs Co-operation Council, UNCTAD and the European Community. Seminars had been conducted for senior customs officials and after serious consideration of the matter, the PTA Council of Ministers had decided that proposals be submitted to this Negotiating Group; these were contained in the document now before it in order that some of the serious concerns and difficulties of the PTA Member States with regard to the GATT Agreement be taken into account. These problems were real and genuine. A substantial portion of revenue of the PTA Member States derived from customs duties and there was serious concern of the impact on revenues of under-declarations of the price paid or payable for imported goods. However, the countries in question were especially concerned with the facilitation of intra-PTA and international trade. That was why they had been trying to decide on a better and single system of valuation for the subregion, with the objective of striking a balance between customs control and facilitation of international trade.

17. The representative of Kenya emphasized that the proposals merely suggested improvements in provisions which already existed in the Protocol to the GATT Agreement. For example, those dealing with discounts allowed to sole agents, distributors and concessionaires had already been recognized in its paragraph 6; excluding such discounts from the tax base or customs value would seriously jeopardize revenue. Concerning burden of proof, under the Agreement, customs would have to accept many invoice prices which did not reflect the actual transaction value; this because they were unable to obtain all the facts and thus would be without grounds to reject them; this further encouraged importers to submit such invoices. On minimum values, the proposal was for an improvement of paragraph 3 of the Protocol. On this point it should be understood that minimum values were applied only to few commodities. The uplifting of values was also proposed in few cases only, for example, if the importer and exporter were associated in business, but only where under-declaration was detected and eventually confirmed by investigation. The proposed technical assistance did not imply that assistance had not been forthcoming, but was only a re-statement of its importance. In this regard they also supported the proposal by Brazil on technical co-operation and exchange of information.

18. One delegation, also representing a PTA Member State, requested the NG8 to resolve all the issues raised in MTN.GNG/NG8/W/73; this would contribute to the simplification and facilitation of customs formalities and thereby PTA trade, with positive consequences for the rates of economic development.

19. A number of delegations gave preliminary comments on the PTA proposal. One delegation noted that in respect of under-valuation it was almost identical to India's proposal which several delegations considered would, to a large extent, solve the problems of implementation and lead to many more governments acceding to the Agreement. Substantial progress had been made in informal consultations with other delegations which were faced with similar problems and a text would be circulated as soon as possible for consideration by the NG8, possibly at the next meeting. One delegation thought that the PTA contribution highlighted many of the difficulties faced by developing countries in the area of valuation. A number of delegations stressed that more time for study was needed.

20. One delegation stated that it would participate constructively in consultations to address valuation issues further, but had serious concerns with regard to the PTA proposal which it considered to go against the very principles on which the Agreement was based. The Agreement recognized that developing countries needed time to take on the full obligations, but a transition period for this purpose was quite different from setting up a two-tier system of obligations which would damage the uniform application of the Agreement. One delegation stated that further thought had to be given to those problems for which the Group could find solutions, possibly through an interpretation of the present Agreement, but these should be separated from other problems which had an incidence on the underlying philosophy of the Agreement, and on which it would not be possible to reach a solution in the Group in the near future. One delegation stated that it understood the concerns about customs fraud, but no solution should be

inconsistent with the spirit of the present Agreement, in introducing new possibilities of arbitrary administration and entailing difficulties for importers who declared low prices with sound reason. Some delegations stated that the Agreement was basically adequate to deal with the admittedly serious problems that had been raised in various proposals. They therefore welcomed the flexibility shown in seeking a solution in the form of an agreed interpretation within the parameters of the existing Agreement, without changing it. The PTA proposal reflected a serious interest in joining the Agreement but certain elements might result in reverting to arbitrariness in valuation practices that the Agreement was intended to eliminate and had successfully done.

21. The observer from the Customs Co-operation Council recalled that the CCC and its Technical Committee on Customs Valuation had long been involved in attempting to address the issues raised. The CCC was therefore pleased to see the questions being examined at a forum such as this. He recalled that the CCC represented the customs administrations of all the major industrialized and developing countries. Its goal was to achieve for its members, to the greatest degree possible, the harmonization and uniformity of customs systems and procedures. In the field of valuation, its governing body, the Council, had adopted as an objective for achieving that goal, that its 108 Members adopt the GATT Valuation Agreement as the preferred customs valuation system. This decision, first made in the Seoul Declaration in 1984, had been reaffirmed at each Council since. In the over ten years of operation of the Agreement, forty countries represented by twenty-nine contracting parties had implemented the GATT Agreement. While it therefore was still a long way from realizing its objective, most, if not all, the countries represented in the Negotiating Group were Members of the CCC and, therefore, all of these customs administrations had accepted to work towards the commitment made in the CCC's declaration. He sensed that the will existed to find a way to solve the important matter which had been raised. However, this did not, of necessity, require amendment of the Agreement, particularly since most of the Parties now applying it seemed to find it satisfactory. For its part, the CCC had devoted, and was prepared to continue to devote whatever effort it could within the limit of the mandate given to it by its Members to assist in the matter.

22. The Chairman stated that there was a clear understanding that informal work in this area should go on. The secretariat was requested to fix a date for the resumption of the informal work in consultation with delegations.

D. The Agreement on Government Procurement

23. The Chairman recalled documents MTN.GNG/NG8/W/9 submitted by India, MTN.GNG/NG8/W/47 submitted by the EEC, and MTN.GNG/NG8/W/70 submitted by the Republic of Korea. He had been informed that informal consultations had been held on 8 March 1990. In addition to reiterations of reasons and explanations already stated in the Group, further clarifications had been made. With regard to MTN.GNG/NG8/W/47 many governments were believed to face difficulties in developing a clear view of the consequences of

membership, both in terms of procedural and administrative changes that might be required, the actual volume of procurement involved, the impact on domestic suppliers of exposure to competition and the possible new export opportunities abroad. It was believed that through increased knowledge and transparency gained during a transitional period, the consequences of full rights and obligations might be assessed with more certainty, as might the value of any individual offers. A number of clarifications had been sought and comments made, inter alia, on the change-over from transitional status to membership status, the incentives that could be envisaged and the proposed information on different types of entities which had been suggested. In this connection, there had been comments on, and references to, the other proposals on the table, notably concerning the effective implementation of Article III and the appropriateness or otherwise of the provisions for accession contained in Article IX. He added that, at its meeting on 9 March 1990, the Committee on Government Procurement had addressed the question of accession of further countries to the Agreement and had agreed to continue a major review of Article III which had begun in October 1989. The question of terms of accession were being dealt with in this context.

24. One delegation recalled that document MTN.GNG/NG8/W/70 had been submitted as a contribution to facilitating membership of developing countries. The suggestion that half of the average concession level of all current Parties be the level of concessions from developing countries, meant a comparison of percentages, i.e. the actual value of contracts under the Code in proportion to the value of all government procurement contracts. A special provision for least developed countries might permit accession even if that level was not offered. With respect to coverage, entities defined as entities under the authority of central government, including those operating at regional or local level, had been proposed without an intention to prejudice the issues discussed under the Code Committee's Informal Working Group. By proposing a reserved period, the intention had been to point out the obligation of governments to do their best, bearing in mind the need for special and differential treatment for developing countries. The proposal was that developing countries should raise their level of obligations progressively according to a schedule previously agreed upon. However, the period should be flexible and subject to negotiation in each case.

25. The Chairman stated that further informal meetings might be fixed by the secretariat in consultation with delegations.

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

26. The Chairman recalled that the Group had agreed that, in order to carry the work further, it would be necessary to hold informal meetings, chaired by a Deputy Director-General. He also recalled that a number of issues had been left pending in the absence of agreement. The informal discussion would deal with both substantive and procedural questions.

(i) Introduction of new written proposals

27. The representative of Hong Kong introduced MTN.GNG/NG8/W/51/Add.2, the main objectives of which were to restore balance, to improve and clarify the provisions and to render them more predictable, transparent and certain, for all parties concerned. It was also necessary to ensure that anti-dumping duties and procedures did not become an instrument of trade protection. One delegation commented on the amendments proposed relative to nominal value, sales in the ordinary course of trade, cost recovery period and definition of sufficient evidence.

28. The representative of the European Economic Community introduced MTN.GNG/NG8/W/74, which was a translation into legal terms of the previous proposals in MTN.GNG/NG8/W/28 and MTN.GNG/NG8/W/63, aimed at enforcement of existing disciplines and adaptation of the Code to new realities.

(ii) Issue oriented discussion

(a) Circumvention of anti-dumping duties

29. The drafter of MTN.GNG/NG8/W/59 stated that the proposal on this subject was fully consistent with Article VI and that it would be an advantage to all countries involved to have clear standards and transparent procedures. The drafter of MTN.GNG/NG8/W/74 drew particular attention to the proposal that "the provisions concerning investigation, procedure and undertakings apply to all questions arising" in the framework of anti-circumvention situations.

30. A number of delegations saw an interlinkage between anti-circumvention provisions and increased disciplines regarding anti-dumping measures in general. Some stated that they shared or understood the concerns of the drafters and/or that they were ready to discuss multilateral rules in this area. The point was made that such rules should not be permitted to change normal trade flows; and that it was essential to retain the overall balances within the existing Agreement.

31. In a general statement it was argued that if present practices in the field of dumping and injury determinations were not changed, an expansion of the Agreement to address circumvention might result in a system wholly biased against exporters. In the absence of evidence which could illustrate the magnitude of the circumvention problems, this delegation suggested that these were of marginal importance. Moreover, it was necessary to discuss the notion of circumvention versus normal investment and other operations of multinational companies; there had to be tight criteria for what could be considered "genuine" circumvention as opposed to "assumed" circumvention.

32. To illustrate the problems, attention was drawn to the fact that an industry might have to wait for a year or more to obtain a remedy which did not reopen plants or create new jobs, but simply offset the dumping margin as of the day of the finding. If shortly thereafter the producer which saw it in its strategic interest to continue to dump set up a facility in the importing country to assemble knocked-down components of the product, the domestic industry would, in the absence of an anti-circumvention measure,

have to refile a new case and wait another year to get redress. This had occurred in a number of product areas, television being one. Another delegation stated that its experience was similar and that circumvention problems had occurred in fields such as electronic typewriters and photocopying machines. The trend of certain imports from a particular source of products as well as parts of products, even after the opening of an anti-dumping investigation, had demonstrated the facility with which exporters could operate and the difficulty which affected industries faced.

33. A number of delegations referred to the need to have clear criteria. One delegation stated in this connection that both proposals seemed to be based on the premise that a simple shifting of manufacturing operations and the sourcing of components from the country originally subject to an order would be adequate for extending the finding of dumping and injury. One issue which was often mentioned was the relevance of the "like product" concept versus a value-added formula which would define "closeness" to a product. Some delegations considered it crucial to uphold the current tight definition of "like product". The drafter of MTN.GNG/NG8/W/59 stated that if assembled parts were found to be like the whole product, this could not be considered "stretching" the like product definition, provided the threshold was high. Such a value-added criterion would create predictability and provide guidance to investors wherever their locations. The drafter of MTN.GNG/NG8/W/74 stated that a value-added criterion of 50 per cent which it had proposed had proved to be a reasonable one. In reply to an enquiry, the drafter of MTN.GNG/NG8/W/59 stated that the proposed criteria in regard to "later developed" products were the same as those employed for "the same class or kind" of merchandise: fiscal characteristics, expectations of the ultimate purchaser, trade channels and ultimate use, and manner of advertisement or display.

34. The question of the effect of a value-added threshold on present origin rules was also taken up. One delegation wondered why the substantive transformation standard could not be adopted so that circumvention findings be limited to operations insignificant enough to not alter the country of origin definition. In reply, it was stated that the purpose was to ensure the integrity of an anti-dumping order. A product assembled in a third country, for instance, would be a substantial transformation in origin terms but still represented circumvention.

35. Some questions dealt with the calculation of import trends and the company-specific nature of anti-circumvention measures. It was explained that the examination of import trends would be done on a country basis; if sufficient evidence was not available on that basis, or one was dealing with a limited number of producers, particular import trends might be examined as well. This matter might require further discussion. However, under the proposal in MTN.GNG/NG8/W/59, a company which had not been found to circumvent a dumping order could not be subject to an anti-circumvention measure. What mattered was that a company subject to an original order was the importer of the parts in question.

36. Some delegations argued that anti-circumvention measures should be limited to importers which were related to the company found to circumvent.

One delegation replied that the relationship test was an important factor but not a critical one because what mattered was whether or not the parts imported came from the source which was subject to the original anti-dumping order. If significant parts came from elsewhere, that would be counted against the value which the source of dumping represented. Another delegation explained that since its anti-circumvention investigations were company-specific, measures would apply to related parties only.

37. One delegation stated that Article VI did not require an investigation of the existence of dumping for each one of a number of separate parts; it was enough to determine that the parts were sufficient to amount to the same like product and from a source subject to the original order. Another delegation stated that an investigation of all parts would not be possible in cases where a large number of parts were involved.

(b) Recurrent injurious dumping

38. The drafter of MTN.GNG/NG8/W/59 explained that, unlike track one above, this second track did not deal with recurrent injury in the same general sector, but with recurrent injury to producers of the same product, and only in strict related-party situations. A full new investigation was required, the only difference from current GATT practice being the withholding of appraisement so that the investigating authorities could apply a dumping margin back to the date of initiation. The proposal was not open-ended like the provisions in Article 11 which, if the investigative period was short, could be more punitive. The possibility of imposing provisional duties after a few days of investigation was of great concern. Moreover, retroactivity should in all cases be limited to the date of initiation.

39. The drafter of MTN.GNG/NG8/W/74 stated that its experience and ideas were close to those set out above. Article 11 had to be modernized. In particular, the present requirement that importers knew or should have known that dumping occurred ought to be replaced by a requirement that it be shown that a history of dumping existed in the same business sector. Frequently dumping was concentrated in certain sectors with the same firm occurring and with high dumping margins reflecting a conscious strategy. While it was very important that investigations be thorough and that the parties concerned had an opportunity to defend themselves, it wondered whether it was reasonable to require that the product be the same. In its view recurrent dumping would cover a case where, for instance, dumping and injury had first been found for electric typewriters and two years thereafter the same occurred for electronic typewriters.

40. A number of clarifications were sought and comments made. In replies to questions concerning MTN.GNG/NG8/W/59, it was said that the only basis for investigating in the (1) and (2) situations referred to would be the imported product; the "standing" would extend to the producers of the same product or, in the case of a major input, the industry producing that same input; in the case of assembled products, the prices in the exporting country would be compared to the prices in the importing country. If sales

were not sufficient in the exporting country, sales to a third country would be used and, in the absence of such sales, perhaps a constructed value. In the case of parts exported from their producer for assembly in the importing country, normal value would be based on the prices in the exporting country; if the investigation resulted in a no-material-injury determination duties would be refunded back to the date of initiations, assuming that they had been applied as of that date; relationship would be between the producer of the major input and the assembler, and might cover situations such as ownership, control, overlapping boards of directors, perhaps joint ventures, perhaps long-standing business relationships. A precise definition might be explored further. The situation of threat of injury might also require further consideration.

41. Some delegations expressed a general concern as to the consequences of introducing the concept of recurrent injurious dumping; the point was made that this could lead to a growing use of anti-dumping legislations. Some participants doubted the relevance of dealing with input dumping in this category. It was also said that an expansion of retroactivity went against the principle of predictability. In reply it was stated that when a product was assembled, modified, combined or placed in a slightly different context that took it outside the scope of the original order, the notion of having to refile a case and wait for an offsetting remedy, given the continuation of the injury, was untenable, and required a right to apply duty back to the date of initiation.

(c) Repeat corporate dumping

42. The drafter of MTN.GNG/NG8/W/59 stated that this third track was designed as a deterrent to companies which continued to engage in dumping - within the same general category of merchandise - as a strategy, and which could afford to do so because presently the price of dumping was relatively insignificant. If the dumping remedy was as severe as many thought it was, there would have been no repeat problem. The proposal was limited to retroactive application of a duty to the date of initiation, if, after a full investigation, there was evidence of repeat injurious dumping, with high margins over a short period of time. Deterrence of these practices would benefit the trading system by reducing trade frictions.

43. One delegation stated that it had similar experience and that the proposal deserved careful examination.

44. One delegation stated that this proposal, more than anything, highlighted the need to ensure that traditional anti-dumping proceedings met the substantive and procedural standards of the Code, because these standards and procedures would decide whether a firm would be "on the books" and, therefore, might encounter a fast track action. Two other delegations shared these views. The drafter stated that he agreed that there was a correlation between clarifications and improvements elsewhere in the Code, and the introduction of this deterrence element.

45. The view was expressed that concepts such as "same general category of merchandise" and "same business sector" lent themselves to arbitrary

interpretations. One delegation saw these concepts as potentially tilted against companies producing a variety of products. Some delegations sought clarification of the meaning of "single corporate entity". The drafter of MTN.GNG/NG8/W/59 expressed readiness to further discuss definitions, but noted that the notion of "same category" already existed in Article 2.4

(iii) Other issues raised, including approaches to further work on anti-dumping

One delegation reiterated the following points which in its view were among the major ones: (i) concerning the calculation of export prices and normal values, the adjustment for differences affecting price comparability tended to involve arbitrariness resulting in an artificial creation or increase of dumping margins. Examples were given. In order to eliminate arbitrariness and to ensure a fair and symmetrical comparison, it was necessary to develop an indicative list of those differences that could be adjusted, and introduce precise methods for calculating export price and domestic sales price. For this purpose, Article 2.6 should be amended. Also, the elements of constructed value, i.e. cost of production, selling costs, general and administrative expenses, other costs of production, and profit should be clearly listed in Article 2.4. Regarding profits, the term "same general category" should be defined as narrowly as practicable, and the calculation should be based on the profit realized on sales of the product of the same general category in the domestic market of the producer or exporter concerned. If this profit was not available, the basis should be the profit normally realized, also by other producers or exporters, on sales of a like product in the domestic market. Where the profits of other producers or exporters were used, these should not exceed the weighted average. Moreover, in the calculation of profit, below-cost sales should be included except in specific circumstances where such sales were conducted for an extended period of time in substantial quantities, at prices not capable of recovering costs within a reasonable period of time; (ii) determination of injury should be made only when the following three elements were all affirmative: (a) an increase in the volume of dumped imports; (b) the effect on prices in the domestic market for like products; and (c) the consequent impact on domestic producers of such products. Furthermore, Article 3.2 should be divided into two paragraphs, as proposed in MTN.GNG/NG8/W/48/Add.1; (iii) concerning review and refund procedures, after having given an example of a certain practice, it proposed that, if the resale price was increased by the dumping margin, the full amount of duty collected should be refunded and the anti-dumping measure terminated. Where there was association or compensatory agreement between exporters and importers, anti-dumping duties ought not to be interpreted as costs incurred between importation and resale. Moreover, refunds should not be effectively hindered by complex or lengthy procedures; (iv) concerning a sunset clause, it had proposed that an anti-dumping duty be terminated after five years from the date of the imposition of the duty, except where the authorities concerned (a) received evidence in writing by or on behalf of the domestic industry that dumped import still existed, and that termination of the duty would cause or threaten material injury to the domestic industry; and (b) recognized the

necessity for the extension of the duty, in which case they might specify an extended period of up to three years.

46. On the question of how to calculate profits and general expenses, one delegation pointed out that in 90 per cent of the cases where one was in the situation involving constructed value, sales were demonstrated to be below cost. Profits were therefore not apt to be found. A rule of thumb was the only basis, and only a figure that had some application in the commercial environment could provide certainty and predictability for exporters. With regard to sunset, there was no justification for an automatic lifting of an order that would be fully justified under Article VI and the Code. It had no problem with sunseting any order upon evidence that the existence of injury was no longer present; in its own case, an annual review took place and if no dumping margin were found for three consecutive years, the order was automatically lifted.

47. One delegation suggested that the following items could be taken up in the near future in terms of precise textual amendments: (i) causality (Article 3.4); (ii) threat of injury (Article 3.6 at least the criteria laid down in recommendation ADP/25); (iii) initiation and subsequent investigation, notably the inclusion of precise indications in Article 5.1 with regard to information and supporting evidence needed before initiation; (iv) transparency (Article 6.7, bearing in mind recommendations ADP/17, 18, 19 and 21); (v) minimum requirements before the taking of provisional measures (Article 10.1); special treatment of developing countries (Article 13); and (vi) judicial review with regard to measures definitively taken (Article 16.6(a)).

48. Some delegations expressed general support for the proposal, with the reservation that they attached great importance to the principle that determination of threat of injury be based on facts only; in this regard they thought the proposal in MTN.GNG/NG8/W/74 went beyond the recommendation in ADP/25. Concerning the proposal on developing countries, these delegations favoured a general rule on de minimis dumping margins.

49. One delegation stated that it was prepared to consider so-called least controversial issues but that some aspects of the above suggestion meant that certain other areas would also have to be addressed.

50. One delegation stated that it continued to believe that the best way of moving towards the development of a text that might ultimately be used as the basis for negotiations was to build upon successes and identify areas where a common area of interest was felt to exist. Discussion of items which could lead to significantly improved investigation procedures and higher standards for findings was of equal importance as the so-called "new areas". It recalled in this connection the proposals contained in Section III of MTN.GNG/NG8/W/59 relating to "minimum procedural standards and transparency in anti-dumping proceedings".

51. One delegation stated that the time element and the question of priorities had to be taken into consideration. It believed that the important issues, even if a convergence was difficult to find, should not

be overlooked as a result of time constraints. It should also always kept in mind that every issue was part of a whole package. Another delegation made a similar point, stating that priorities differed from one delegation to another. Therefore, the whole package of issues had to be kept in mind; ultimately the objective was to arrive at a comprehensive package.

52. The Chairman concluded that the Group was beginning to see areas where, quite clearly, agreement would be possible. Whilst a year-and-a-half ago a clear sense of direction was not evident, it now seemed to him that the prospect of developing an agreement looked promising. This required bearing in mind that all delegations' interests had to be addressed. Although it would not be possible to deal with all issues simultaneously, one had to ensure that the negotiations would not be completed until all the issues had been taken up. The Chairman's "structured agenda" of 19 January 1990 was an annotated agenda serving as a guarantee that all the issues listed therein would have to be addressed. The discussions had shown that informal discussions were probably the most useful way of moving negotiations forward.

F. Other business, including arrangements for the next meeting(s) of the Negotiating Group

The Chairman recalled that meeting dates had been previously agreed upon. He suggested that the secretariat inform delegations about changes in the precise planning. He noted that some of the time set aside for the NG8 might more appropriately be spent in informal meetings.