

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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**Group of Negotiations on Goods (GATT)**  
**Negotiating Group on GATT Articles**

**NEGOTIATING GROUP ON GATT ARTICLES**

**Note on Meeting of 3-4 May 1990**

1. The Negotiating Group on GATT Articles held its seventeenth meeting on 3-4 May 1990 under the chairmanship of Mr. John M. Weekes (Canada). The Group adopted the agenda contained in GATT/AIR/2975.
2. The Chairman informed the Group that the following documents had been issued since the last meeting:
  - A note by the Chairman dated 23 April 1990 containing revised drafts of Decisions on Articles XVII and XXVIII as well as a first draft of a Decision on Article XXV:5.
  - A note by the Chairman dated 27 April 1990 containing a first draft of a Decision on the Protocol of Provisional Application.
  - A note by the secretariat (NG7/W/71) responding to the request made at the last meeting for advice on the distinction between the grandfather clause and other derogations in Protocols of Accession.

The Chairman also indicated that copies of oral statements made at the last meeting by the delegations of the United States and Japan on the Balance-of-Payments provisions and Article XXIV respectively had been made available by the secretariat as agreed. He further informed the Group that an informal paper comparing proposals on the balance-of-payments provisions with the existing provisions which had been prepared by the secretariat for his own use was available for any delegation wishing to see it.

**Article Item A: Consideration of issues arising from the examination of specific Articles**

**Article II**

3. The Chairman recalled that there were two issues to be considered under this Article, the first being the draft decision on Article II:1(b) on the recording of other duties or charges in schedules of concessions, and the second, the proposal by the United States on the possibility of levying a uniform import fee for trade adjustment purposes. On the first point, the representative of Brazil indicated that his delegation was unfortunately not in a position to lift its reservation and that his government would require some more time to consider the matter. On the

second point, the representative of the United States emphasised the interest of his delegation in negotiating an agreement from which they were convinced all contracting parties would benefit, since it would facilitate adjustment to competition and thus remove impediments to the improvement of market access. He hoped all participants would give serious consideration to the proposal.

#### Article XVII

4. The Group discussed in informal session the draft decision circulated on 23 April. The Chairman subsequently noted that following these discussions the secretariat had prepared a revised decision dated 3 May which was available to all participants: further discussions would be necessary and these would be organised at the time of the next meeting.

#### Article XXIV

5. The Chairman recalled that the statement made at the previous meeting by the representative of Japan, in which further explanation was given of the new mechanism proposed for the redress of serious adverse effects of regional arrangements, had been made available to all participants.

6. The Chairman suggested that more intensive discussion of Article XXIV might focus on the following categories of issues:

- (i) increased involvement of GATT at the time of the formation of regional arrangements and in their subsequent surveillance;
- (ii) procedures used by members of Article XXIV arrangements in the renegotiation of concessions;
- (iii) clarification of certain points in Article XXIV:5 and XXIV:8, which had a bearing on the characteristics and requirements of customs unions and free trade areas. Examples of these points had to do with the interpretation of terms such as: "interim agreement", "reasonable length of time", "general incidence of duties", "duties and other restrictive regulations of commerce", "substantially all trade" etc;
- (iv) ways of minimising possible adverse effects of regional arrangements on third countries and of trying to ensure that they contribute to the liberalisation of trade;

7. Several participants reiterated their interest in addressing points pertaining to Article XXIV as contained in the submissions on the table. Some, however, while supporting the thrust of the Japanese proposals, suggested that the Group should concentrate on the clarification of existing disciplines rather than embarking on matters such as the creation of new mechanisms, about which some speakers expressed hesitations, even though they did not question the need for more effective involvement by the CONTRACTING PARTIES in the formation, enlargement and surveillance of regional arrangements.

8. Referring to those terms in Article XXIV:5 requiring clarification one delegation supported the Japanese proposal that the "general incidence of duties" should be assessed flexibly, allowing for the examination of individual commodities on a country by country basis and not through an automatic formula; the drafting history seemed to support this. As to the term "duties and other regulations of commerce" another participant indicated that it should be accepted as covering all measures which had a differential impact on imports as compared to domestic products, with each member of the free-trade area or customs union being considered separately. Regarding the term "shall not on the whole be higher or more restrictive" the point was made that some methodology was needed to measure the effects on third parties; the Group might consider whether it would be desirable to ensure that particular industrial sectors or particular third parties were not disproportionately affected, i.e. interpret "on the whole" as meaning the members of the customs union taken as a whole. On the meaning of the phrase "a reasonable length of time" it was suggested that a standard period such as ten years might be agreed or that the working party examining an interim agreement might specify the length of time applicable in that case.

9. A number of participants expressed interest in rendering the provisions in Article XXIV:6 dealing with the renegotiation of concessions more operationally effective. Some delegations indicated that under no circumstances should non-members of a customs union be required to accord compensation to members in return for tariff reductions resulting from the formation or enlargement of the union and that the absence of such compensation could not be a ground for retaliatory withdrawal of concessions by the customs union; it should be clearly recognised that benefits flowing to third parties need not be reciprocated.

10. The point was also made that the members of a customs union were not entitled under XXIV:6 to claim that a reduction in other duties should be taken into consideration as compensation for the increase of bound rates. The concept of inherent credit thus needed to be curtailed. Benefits from reduced tariffs, when a regional arrangement was formed or enlarged, could only be taken into account in Article XXIV:6 if the third party concerned had rights - IN, PS or SS - in the items affected by the reduced tariffs. This should be reconfirmed and hopefully covered by a draft text.

11. With respect to the unilateral withdrawal of concessions the point was made that the procedures of Article XXVIII, which were relevant in Article XXIV:6 situations, permitted unilateral withdrawal of Schedules of concessions. However, if negotiations had not been carried out and agreement not reached, the provisions of Article XXVIII:3 should be interpreted as permitting affected parties to withdraw the application of their own Schedules to the members of the customs union. Replying to the question of whether proposals dealing with the renegotiation of concessions would be applied to future and existing arrangements the representative of Japan said that its proposal had a forward looking character and did not seek to undo existing arrangements.

12. Referring to Article XXIV:7 one participant suggested that provision should be made for increased surveillance of interim agreements and for recommendations under paragraph 7(b) on the proposed timeframe and on measures required to graduate from an interim arrangement.

13. Several speakers expressed doubts as to the necessity for a new mechanism aimed at addressing possible adverse effects stemming from the creation or expansion of regional arrangements. Some suggested that the proposal appeared to be based on the view that the creation of a preferential relationship between the members of customs unions or free-trade unions should itself be regarded as an increased barrier to the trade of third countries; such a view was said to be contrary to the basic philosophy of Article XXIV. In this light, while adverse effects on third parties should be minimised, they could not be avoided altogether. A participant suggested that an excessively strict approach to adverse effects would be detrimental, for example to certain European countries which might be denied the possibility of creating or joining regional arrangements. The point was also made that Article XXIV contained the necessary elements to examine and subsequently review regional arrangements, and that Article XXVIII provided procedures for tariff negotiations where compensation for impairment of rights was necessary. One participant expressed that the Trade Policy Review Mechanism and the improved Dispute Settlement procedures provided another avenue for the examination of possible adverse effects. The relationship between the new mechanism proposed by Japan and the existing dispute settlement procedures needed clarification, as did the question whether the new mechanism was intended to apply to existing agreements under Article XXIV as well as to future ones.

14. The representative of Japan explained that the intention of his proposal was not to modify Article XXIV but to clarify its interpretation and that the proposal was not targeted at a particular arrangement. The proposal concentrated on preventing or minimising serious adverse effects. The proposed new mechanism would not be limited to dispute settlement since it would also require more involvement of the contracting parties in the form of gathering data on the effects of regional arrangements. Regarding the question why, given the existence of Articles XXII and XXIII, a new mechanism was necessary, he recalled that in GATT there existed special bodies with a surveillance function, such as the BOP Committee, and that the importance of the derogation contained in Article XXIV justified similar treatment. This need was underlined by the fact that in almost all of the working parties charged with the examination of regional arrangements, it had been impossible to reach unanimous conclusions. One participant sharing the thrust of these remarks indicated that the proliferation of arrangements with the concomitant increase in the volume of trade conducted on a preferential basis constituted another reason for examining in detail the question of adverse effects.

15. Regarding the suggestion of Japan that the secretariat prepare a draft legal text on Article XXIV, the Group, in the interest of facilitating the preparation of such a text, invited participants having specific points or more concrete suggestions on the subject to bring them to the attention of

the secretariat. The delegations of Australia and Canada put forward in writing specific suggestions on a number of provisions; it was understood that other delegations could do the same during the course of the following days. In the light of this it was agreed that the secretariat should prepare a paper of a preliminary character on the issues on the table with the inclusion of drafting language on those points where this was possible.

Article XXVIII

16. The Chairman informed the Group that he had held informal discussions based on the draft decision of 23 April. They had been useful and it was his intention to hold further discussions at the time of the next meeting on the basis of a revised text.

Articles XII, XIII, XV, XVIII

17. The Chairman informed the Group that he had held informal consultations on the balance-of-payments provisions. These had not been encouraging, in that there was little sign of a meeting of minds. It was his intention to engage in further consultations over the next two weeks with a view to determining if further work would be possible. It was his belief that progress could be made only if discussions would be more focused.

18. A participant said that in considering changes to the balance-of-payments provisions due account should be taken of the particular circumstances of developed countries which were in the process of fundamentally restructuring their economics. The liberalisation of these economies and their increasing participation in the global economy could lead to acute balance-of-payments problems whose solution might require the use of trade measures in addition to macroeconomic measures. Flexibility in the use of policy tools to address balance-of-payments problems was essential for these economies in making a successful transition to market-based economies and this had to be recognised in any future discussion on the balance-of-payments provisions. For example, existing criteria relating to the serious nature of the balance-of-payments problem, the necessary level of reserves, etc. would have to be reconsidered in this context.

Article XXV:5

19. Several delegations expressed their support for the draft decision. It was said that the decision was in keeping with the overall objective of removing, so far as possible, all exceptions and derogations from the GATT. A participant said that it could support the decision except for paragraph 4 which called for the termination of existing waivers. This issue would have to be reviewed at the end of the Round pending the outcome in other areas of the negotiations. In reply a participant said that his delegation could accept the decision only if paragraph 4 were retained; its deletion would lead to an undesirably inconsistent treatment of existing and new waivers.

20. With respect to paragraph 4, a participant suggested a period of two years, calculated from the date of the adoption of the decision, as the deadline by which existing waivers should be terminated. Another participant said that his delegation would not wish to propose a period shorter than the life of certain existing waivers, for example that permitting the implementation of the Caribbean Basin Initiative; for this reason he proposed that the deadline should be about five years.

21. The Chairman said that since the draft decision had been circulated only recently it would be further discussed at the next meeting. In view of the interrelationship between paragraph 4 of the draft, in particular, and work in other areas of the negotiations, it might then be appropriate to put the draft decision on one side until a clearer assessment could be made of progress in those other areas.

#### Protocol of Provisional Application

22. Some participants said that the draft decision circulated on 27 April, in that it related only to general "grandfather clauses" and not to specific derogations in accession protocols, was not consistent with the objective of terminating all existing derogations from the GATT and thus placing all contracting parties on an equal footing. It was suggested that consideration should therefore be given to amending the decision to cover specific derogations contained in accession protocols. Some participants drew attention to the links between this issue and work in other areas of the negotiations. Final agreement would therefore have to be predicated on the results emerging from these areas. Another participant said that a clearer picture was required before his delegation could take a position.

23. A participant said that a clear distinction needed to be drawn between the grandfather clause and specific derogations in Protocols of Accession. The former was available to all countries but was not intended to provide permanent legal cover for GATT-inconsistent legislation. Derogations in Protocols of Accession had been negotiated and paid for by individual countries and were therefore recognised as having a permanent and legally sure character. They could not be reviewed or changed without the consent of the country concerned. His delegation was not prepared to discuss the terms of its accession in this Group, which was only mandated to review those provisions applicable to all contracting parties. In the view of his delegation the legal character of waivers differed considerably from that of specific derogations in Protocols of Accession. The former were granted free of cost and at the discretion of the CONTRACTING PARTIES by a two-thirds majority voting procedure and could be revoked by a similar procedure. It was for this reason that his country had chosen to obtain an inalienable and permanent right to certain exemptions in its Protocol of Accession rather than to seek a waiver as legal cover for them. Referring to the specific derogations which permitted the use of quantitative restrictions in the field of agriculture, he said that his delegation was actively participating in the Uruguay Round negotiations on agriculture

which aimed at the elaboration of uniformly applicable and applied rules and which, if successful, would no longer require recourse to the exemptions currently provided for in its Protocol of Accession.

Dates of future meetings

24. The Group agreed that the next meeting would be held on 21-23 May and reserved the dates of 19-21 June and 17-19 July for its subsequent meetings.