

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG8/18

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Group of Negotiations on Goods (GATT)

Negotiating Group on MTN  
Agreements and Arrangements

MEETING OF 1 JUNE 1990

1. The Group met on 1 June 1990 under the chairmanship of Dr. Chulsu Kim (Republic of Korea).

A. The Agreement on Technical Barriers to Trade

2. The Chairman noted that a revision of MTN.GNG/NG8/W/68 had been circulated. He stated that he had been informed of informal meetings held on 29-31 May 1990 to discuss: (i) provisions on conformity assessment procedures; (ii) proposed amendments to Article 10; and (iii) code of good practice for standardization bodies.

3. He requested that informal consultations continue under the auspices of NG8 under the current chairmanship.

4. The representative of Canada recalled its proposal in MTN.GNG/NG8/W/77 which addressed the major objective of the Agreement, to ensure against unnecessary obstacles to trade. The proposal was based on concepts either already present in the Agreement or contained in submissions made. He explained the new paragraphs proposed to Article 2.1; i.e. provisions for proportional application; the requirement that Parties take into account the risk associated with products under technical regulations when drawing up measures; the introduction of the concept of degressivity; the avoidance of regional bias without restricting a Party's right to take measures which reflected special circumstances within its country; the requirement that measures used to comply with international agreements or standards be consistent with the provisions on unnecessary obstacles to trade - he noted in this regard that a number of bilateral agreements where the implementing measures might take the form of technical regulations or standards were aimed at concerns such as resource conservation, environmental protection, etc. His delegation would further refine its proposal in the light of comments from other delegations. It noted that there were relationships with other proposals, notably the EEC proposal on conformity assessment procedures which suggested the need to take risk into account, and the Nordic proposal on different types of technical regulations and standards, calling for the least trade restricting alternative to be used.

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

5. The Chairman stated that an informal meeting at the level of customs experts had been held on 31 May 1990 on the basis of the non-papers submitted by India and Kenya on shifting the burden of proof in cases where the customs had reason to suspect that goods had been undervalued. A further informal meeting would take place on 1 June to consider the results of the consultations and other outstanding matters. He thanked the customs experts for the progress they seemed to be making.

6. A number of delegations expressed satisfaction with progress made on the question of burden of proof.

7. One delegation stated that the PTA Member States looked forward to arriving at a mutually beneficial solution also on the proposals regarding minimum values and discounts. One delegation stated that it supported the PTA proposal on these points.

8. One delegation, reiterating the importance it attached to increasing participation in this Code, said that every effort was being made in consultations regarding the concerns of non-members and members alike, to try to facilitate participation. It had an open mind with respect to the issue of how to deal with fraud which it thought was the issue rather than that of burden of proof. With regard to minimum price, it considered it to be outside the mandate of NG8 to attempt to amend the Code in a way which would not be consistent with Article VII. With respect to sole concessionaires and discounts, while understanding the revenue concerns and that the Code might provide an unfamiliar method of valuation for those who had been used to the CDV, it believed strongly that it was not possible to combine elements of those two fundamentally different systems.

9. A number of delegations shared these views on minimum values and discounts.

10. One delegation stated that a consensus seemed close concerning India's non-paper which it believed took care of an important part of the PTA proposal as well. As for the two other elements of the latter, they were both referred to and thus recognized by the Protocol. This provided, inter alia, that problems arising in respect of sole agents and sole concessionaires should be studied with a view to finding appropriate solutions. One should therefore consider how the problems, where they existed, could be resolved. Another delegation agreed that the solution which seemed to be forthcoming for the burden of proof was likely to settle a great part of the problems raised by the PTA.

11. One delegation stated that in its view the Code provided the parameters to deal with the burden of proof. However, it was prepared to work towards an elaboration which would assist countries experiencing

difficulties in their administration. With regard to minimum values, the proposal seemed to make their use very open-ended which perhaps could lead to a permanent avoidance of Article 1 of the Code. On the issue of sole concessionaires and discounts it believed that a solution in the area of burden of proof might deal with this problem as well. However, if the background to this issue was not fraud it was seriously concerned that the PTA proposal could undermine the Code.

12. One delegation looked forward to further discussions in order to facilitate accession of developing countries. However, it considered that the Present Code and Protocol provided sufficient flexibility for developing countries in respect of the minimum values and discounts.

13. One delegation, supporting the proposals made on burden of proof, said that it would not be sufficient to count on co-operation with foreign customs authorities. With respect to the PTA proposal, it did not believe that it would be within the spirit of the Code to provide for a long-term solution based on minimum prices. With respect to sole agents, it considered that a solution should be found, taking into account the provisions on related persons and Article 1.1(d).

14. Some delegations expressed confidence that on the question referred to as burden of proof a reasonable solution might be within reach. They participated in the discussions on the assumption that whatever the solution, it should aim to increase participation in the Code, facilitate its application by present members, and be within its parameters, without introducing formal amendments to it. Minimum values were basically contrary to GATT Article VII. Practical experience supported the view that the Code provided an adequate response; countries had been able to continue this type of valuation system for a reasonable time whereafter they had phased it out. The Code also pointed to a practical way of handling problems in connection with discounts for sole concessionaires.

15. One delegation agreed that the solution in the area of burden of proof was to be found through clarification of existing provisions rather than any formal amendments.

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

16. The Chairman stated that he had been informed that a third informal meeting had been held on 28-30 May, in which the informal group had continued and completed the discussions on two items in the structured agenda, viz. (i) circumvention of anti-dumping measures; and (ii) determination of the existence of material injury caused by dumped imports. The group had also had intensive discussions on the items relating to procedures for initiation and conduct of anti-dumping investigations and anti-dumping measures. The group was scheduled to meet

again on 18-21 June to complete the discussions on the remaining items in the structured agenda. He expressed confidence that the comprehensive paper in this area, which would be circulated by about the end of June, would provide a basis for further discussions and intensive negotiations in an informal meeting, which was proposed to be held on 16-19 July 1990.

D. The Agreement on Government Procurement

17. The Chairman stated that he would give a relatively detailed report under this item for the sake of transparency since not so many delegations had participated in the informal meetings on this subject. It was an attempt to summarize many clarifications and rather extensive explanations made, in particular by the drafter of one of the proposals. It was without prejudice to the position of any delegation.

18. A further informal meeting had been held on 21 May 1990. He had been informed that most of the discussion had centred on the proposal for a transitional membership mechanism (MTN.GNG/NG8/W/47). In further clarifying this, and in replies to questions, the drafter had reiterated that the text was not intended as a substitute for negotiations on accession, nor for the present rules on special and differential treatment for developing countries. The purpose was to enable non-Parties to prepare themselves in setting up a procurement system, without risk to their trading positions or domestic development strategies, and to put them in a stronger position to evaluate the costs and benefits of subsequently becoming Parties. While the drafter believed that enlarged membership would bring substantial economic benefits through developing trade in the area of public procurement, participation in the mechanism should be without prejudice to whether the country concerned wished to apply for membership later. While its entities should have to publish their calls for tenders and contract awards according to the rules of the Code they would not be obliged to accept bids from Code countries; they would only have to indicate whether such bids would be accepted and, if so, under what conditions. Transitional countries should also be required to implement the Code principle of non-discriminatory specifications. In return for increased predictability of possible access to contracts in non-signatory countries, Code members, on their part, should be required to make it clear in advance whether bids would be acceptable from countries that were not Code countries. This went beyond present requirements.

19. The drafter had held that the advantages of competition in public procurement did not principally derive from winning contracts abroad, but from internal benefits through more efficient organization of procurement; under the proposed transitional mechanism this could be obtained by systematically publishing the information mentioned, and by using non-discriminatory specifications; apart from better efficiency of contract awards this would lead to better knowledge of the scale and content of procurement within the country itself. In circumstances where a country had an inevitable need for recourse to foreign sourcing, it was

particularly important to ensure that supply was as efficient as possible. In addition, the predictability obtained from existing Code members would be of benefit for any suppliers in transitional countries which were in a position to bid for contracts in Code members.

20. Explaining that it no longer suggested a time-scale to be put on the transitional mechanism, the drafter considered that better identified needs could give rise to more useful discussions of special and differential treatment in any subsequent accession negotiations, because at that point it was very important to know the extent of one's procurement and possible vulnerabilities, in particular if a country wished to make use of Article III, e.g. with regard to balance-of-payments-sensitive areas and of areas tied up with the development of domestic capacity. With regard to how the general terms of Article III could be applied in a more concrete way reflecting the real needs of parties concerned, it considered that a significant contribution could come about by recognizing that where limitations on full Code coverage were to be considered, predictability should be ensured regarding access to contracts excluded from full Code disciplines. This predictability should be subject to enforcement.

21. The drafter had also stated that it envisaged an agreement outside the Code and that its approach was flexible.

22. One delegation had stated that on practical grounds it would be necessary for a transitional mechanism to operate within the Code in some way or other, and that any obligation to inform transitioning countries of their eligibility for contract awards ought to be binding on all Code Parties. Further thinking was needed on institutional arrangements.

23. Concerning MTN.GNG/NG8/W/9 one delegation had stated that the real difficulty about the implementation of Article III was how to achieve concrete agreements in that area on the basis of the typically very limited information which was available.

24. Regarding MTN.GNG/NG8/W/70 one delegation had noted that in many countries it would be difficult to produce unambiguous statistics. The drafter of this proposal believed that figures for total above-threshold central government contracts could be produced; if necessary, the Code might be amended to obtain figures for regional and local-level agencies of central governments and other non-covered entities. It had reiterated that the proposal tried to deal with the problem of the high "entrance fee" to the Code and that the reference to regional and local agencies was without prejudice to the actual coverage. Another delegation had noted that the proposal that any developing country should open 50 per cent of its government procurement, in relation to the share opened by developed countries, was too mechanical a formula. The drafter had replied that in its experience Article III was of little use in negotiations and that this was why a specific formula had been proposed as an alternative.

25. The Chairman of the informal meeting had stated that it would be useful if delegations who had submitted proposals made further written precisions by the next informal meeting. A paper might also be useful concerning the formal relationship between a solution envisaged in the field of a possible transitional mechanism and the Agreement itself.

26. Following this report, the Chairman requested that consultations under the auspices of the NG8 continue on 26 June 1990.

E. The Agreement on Import Licensing Procedures

27. The Chairman stated that it had been reported to him that the informal group dealing with this Agreement had held a further meeting on 4 May 1990. It had continued the process of clarifying and exchanging views on proposals made in document MTN.GNG/NG8/W/53/Rev.1. In response to his suggestion, the secretariat had produced a draft informal side-by-side text which the Group had agreed to have introduced at the meeting to facilitate the discussion.

28. The Group had focused on this occasion most of its attention on proposals relating to operative provisions. In so doing, it had attempted to concentrate on points which appeared to involve differences of substance. The meeting had also taken note of recommendations adopted by the Committee on Import Licensing Procedures in 1987. A number of participants had made alternative drafting suggestions with respect to some of the provisions. The drafters of MTN.GNG/NG8/W/53/Rev.1 had indicated on some points that they would be amenable to making certain modifications of the language they had themselves put forward. The more difficult questions would seem to relate to the following proposals (in the order in which they appeared): a proposed second paragraph to Article 1:4 (on having a period for comments and discussions about changes in procedures); proposed new paragraphs 3 and 4 to Article 3 (dealing with transparency and predictability when licensing is used to implement measures other than QRs, or where exceptions to licensing requirements may be granted) and 5(c) to Article 3 (introducing publishing requirements prior to any opening dates for quotas); the second paragraph in a proposed new Article 5 (on details of notifications), in particular its subparagraph (f) (referring to "GATT basis for taking the measure") and the proposed new Article 8 (review), perhaps with the exception of its paragraphs 1 and 3.

29. The Chairman stressed that the above assessment was, of course, without prejudice to the judgement or negotiating position of any delegation. He also added that according to his information the meeting had permitted very useful further clarifications of views and intentions, and appeared to have made it possible to narrow down a number of differences.

30. Noting that the secretariat was circulating an informal side-by-side text, giving the status of work prior to the next informal meeting which

would be held on 11 June, the Chairman invited participants in the informal group to continue to work in a businesslike manner and with a spirit of compromise. He suggested that the stage might have been reached when the informal group could get down to drafting, at least on some points. This might imply the use of bracketed alternative language where this was necessary.

31. One delegation stated that it sensed a willingness to work towards mutually acceptable solutions and believed that this was an area where one had every reason to be hopeful of positive results. It agreed that the time had come where one would have to begin to work on concrete language.

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

(i) Further work

32. The Chairman recalled that the Group has already agreed to meet in the week preceding the TNC meeting. Participants knew what was expected of them by that time, i.e. to produce profiles of a solution in each of the areas dealt with in this Group.

33. He suggested that it be left to each of the informal groups to carry out their work, with an urging that as many issues as possible be settled so that the NG8 could deliver as positive results and signals as possible to the TNC. This might require informal meetings during the week of 16 July. He had been informed that an informal anti-dumping meeting was likely to be held on 16-19 July and that customs valuation was likely to be dealt with informally on 18-19 July also. He therefore proposed that 16-19 July be used for informal meetings as necessary and under the auspices of NG8, and that NG8 held its formal meeting on 20 July 1990. The Group so agreed.

(ii) Proposals concerning least-developed countries

34. The Chairman reminded delegations of the proposals on behalf of least-developed countries in relation to the MTN Agreements and Arrangements, which had been put forward in November 1989 (MTN.GNG/NG8/W/56).