

**MULTILATERAL TRADE
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THE URUGUAY ROUND**

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Group of Negotiations on Goods (GATT)

Negotiating Group on Textiles and Clothing

MEETING OF 12, 13 & 15 JUNE 1990

Note by the Secretariat

1. The draft agenda, set out in GATT/AIR/3013, dated 5 June 1990, was adopted.

Introduction

2. The Chairman referred the Group to document MTN.GNG/NG4/21, a note by the Secretariat containing the main points raised at the previous meeting. He also drew attention to MTN.GNG/NG4/W/38 Rev.2, a revised checklist prepared by the Secretariat, listing all working documents circulated to the Group, and to four submissions circulated at the present meeting: MTN.GNG/NG4/W/49 provided by Indonesia on behalf of a number of developing countries, MTN.GNG/NG4/W/50 from Brazil, MTN.GNG/NG4/W/51 from the EEC, and MTN.GNG/NG4/W/52 submitted by Indonesia on behalf of the ASEAN countries. The Chairman suggested, as regards procedures, that the Group would first discuss the new submissions, and then address the topics set out in the Group's Work Programme for this meeting.

Submission of the Group of Developing Countries (ITCB) (MTN.GNG/NG4/W/49)

3. The representative of Indonesia, speaking on behalf of the group of developing countries, members of the ITCB, introduced their communication setting out a framework for phasing out of MFA restrictions. His statement is reproduced in full in MTN.GNG/NG4/W/53. This submission was co-sponsored by the informal Group of Developing Countries, as noted in the communication from Brazil contained in document MTN.GNG/NG4/W/50.

4. A large number of participants welcomed the ITCB proposal, considering it to be a concrete basis on which to advance the Group's work. Many expressed agreement with its approaches to the areas to be addressed by the Group and with many of its specific provisions. Some participants noted, however, that the proposal did not fully address the mandate of the Group, leaving aside certain aspects such as the treatment of non-MFA, non-GATT consistent restrictions and the topic of strengthened GATT rules and disciplines. It was also observed that this paper did not envisage the possibility of concluding bilateral agreements during the transitional process, thereby introducing an element of rigidity. On this subject, some others pointed out that there should be no place for bilateral agreements during the transition; rather, it should proceed strictly on the basis of a multilaterally agreed programme with only certain administrative aspects being subject to bilateral contacts.

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5. As regards the treatment of existing restrictions, a number of participants welcomed the proposal that the phase out should start from this base, both product-wise and country-wise. As to the procedures to be followed, it was explained that all MFA restrictions existing at the beginning of the transition period would be reported to a monitoring body with a view to setting a benchmark of all restrictions to be phased out. Some delegations were concerned with the proposal whereby product categorisation prevailing on 1 January 1990 could only be changed with the approval of the monitoring body as this could complicate the commitments made to apply the Harmonized System of Product Classification as well as the possible reduction of product categories or even minor adjustments in categorization.

6. Referring to the proposal on the immediate elimination of certain restrictions, a number of participants reiterated their agreement with this concept, although some views diverged as to the specific products or measures to be liberalized through this procedure. With respect to certain of the products mentioned in the specific list being proposed, it was pointed out that account would have to be taken of the impact of like and directly competitive goods on the domestic industry of the importing country. Some participants, while agreeing that products other than those included in chapters 50-63 of the Harmonized System should be liberalized, noted that these chapters also covered many non-MFA textile products which also should be excluded from the transitional measures. Some participants considered that the liberalization of exports of suppliers having a de minimis share of total textiles and clothing imports could create problems for those countries with a small domestic market; as an alternative, it was suggested that the share of the domestic market rather than total imports might be more appropriate. A number of participants expressed support for the immediate elimination of restrictions on imports from the least-developed countries.

7. Concerning the programme of progressive elimination of restrictions, some participants expressed concern that it did not provide sufficient flexibility to respond to differing market situations in the importing countries; some others were concerned that its duration was too short. While agreeing with the principle of liberalizing a number of quotas each year in stages, some stressed that the provisions to be adopted for such a phase out should be simple, well defined, and include as few exceptions as possible, thus facilitating the monitoring process. Concern was expressed, however, that the approach, as suggested, would create difficulties in some countries as it did not take into account the different stages of development or the sensitive nature of the textiles and clothing industries in these countries.

8. With reference to growth rates and flexibility, several participants were of the opinion that those set out in the proposals were higher than could be achieved and rigid. Rather, it was considered that growth and flexibility should be determined on the basis of market conditions and the effect they would have on the industries in the importing countries. Several participants agreed, however, that growth rates should be sufficiently large to make the restrictions superfluous by the end of the transition period.

9. As regards the provisions in the proposal for taking emergency action on imports of particular products, some participants considered that the suggested approach would be possible on condition that GATT Article XIX was strengthened sufficiently. Several participants, however, found the two-year prohibition of emergency action to be unacceptable, particularly since it would limit the exercise of their GATT rights on these products. On the other hand, several felt that the two years pause before such an emergency action could be taken was necessary to allow the market to stabilize after such a long period of restriction under the MFA.

10. Referring to the proposed transitional safeguard mechanism, concern was expressed that it could create difficulties for those participants which had no MFA restrictions in place at the beginning of the transition period, as they would be limited to safeguard measures taken on an MFN basis. With respect to the concept of serious injury, several participants considered that this concept was related to MFN safeguards taken under GATT Article XIX and, consequently, would not be an appropriate approach in the case of the selective transitional safeguard measures envisaged in this proposal. It was explained, in this regard, that the factors listed in the proposal for determining the existence of serious injury, being drawn from the MFA, would be relevant in such an assessment and would, in fact, raise the threshold for the application of restrictions. It was also pointed out that this approach could not be described as being more stringent than GATT Article XIX, since neither retaliation or compensation would be allowed. Several participants considered that the price element, not present in this proposal, should be retained as one of the factors to be used in determining the existence or threat of serious injury. Concern was also expressed that the provisions of Article 7:7 of the proposal relating to equity, when read in conjunction with the provisions for LLDCs and small suppliers in the next paragraph, could lead to difficulties, particularly if the LLDCs or small suppliers were substantial exporters of a particular product. In response to another question, it was explained that the proposed procedure did not envisage emergency actions being taken unilaterally pending the outcome of bilateral consultations or of the examination by the Monitoring Body, to inject greater discipline into the transition period.

11. With reference to the proposal on additional trade measures some participants commented that any undertaking to refrain from levying anti-dumping or countervailing duties during the phase-out period on products subject to quantitative restrictions would not be acceptable as it would prejudice their GATT rights. It was further observed in this regard that the MFA was devised to deal with situations arising under fair trade conditions, whereas anti-dumping or countervailing duties actions were devised to restore a situation of fair trade. Others, however, recalled their concern that the invocation of such measures had, in the past, upset the economic content of MFA agreements to the detriment of exporting countries, and that this should not be permitted during the transition period.

12. A large number of participants reiterated their support for the establishment of a monitoring body, and some were of the view that the rôle of such a body should extend not only to the phasing out restrictions but also to the commitments made in relation to strengthened GATT rules and disciplines. Some participants, however, were of the view that the monitoring body should not be involved in dispute settlement; rather, the normal provisions of GATT Articles XXII and XXIII should be used.

13. As regards the duration of the transitional period, a number of participants spoke in favour of the date proposed, that is 31 December 1997. Some others were of the opinion that this period would be too short for a progressive, non-disruptive transition period.

Submission by the EEC (MTN.GNG/NG4/W/50)

14. The spokesman for the EEC introduced the communication contained in MTN.GNG/NG4/W/50, explaining that the EEC approach took current restraints, both MFA and non-MFA, as the starting point, existing quota levels being guaranteed, and with no increases in country or product coverage. He said that the phase out process would cover all products contained in Chapters 50-63 of the Harmonized System, some products being integrated into the reinforced GATT at the outset. The staged elimination of the remaining restrictions would be based on multilaterally-agreed targets fixed on a global volume basis, thereby ensuring a balanced effort by all participants. Growth rates and flexibility would be improved gradually, relative to the existing situation, with a minimum growth rate guaranteed for exceptional circumstances. It was considered important that the transition process provide for bilateral agreements, but with comprehensive agreements being no longer permitted. It was also proposed that the transitional safeguard mechanism would apply to both unrestrained products and products liberalized during the transition period, and would be based on the concept of market disruption or real risk thereof. The EEC was prepared to incorporate into the agreement a mechanism to ensure that the application of the transitional safeguard mechanism would not impede the integration process. It was also considered that the elimination of restrictions on countries having a "de-minimis" share of imports could be included in the mechanisms envisaged in the programme of staged elimination of restrictions.

15. In commenting on the EEC submission, a number of participants expressed support for the viewpoints put forward in relation to the choice of an MFA-based modality and welcomed the approach whereby restrictions would remain exporter-administered. As regards the proposed process of phasing out of restrictions, some participants agreed that the same modalities should apply to both MFA and non-MFA restrictions not consistent with GATT and a number of participants supported the proposed starting point for the phase out, that is, current MFA restrictions with no increases, product-wise or country-wise. Some participants also favoured a phasing out process based on a percentage of the volume of restraint levels being eliminated in each stage, the volume targets being calculated using the conversion factors already contained in MFA agreements. Other

participants, however, were concerned that a process leaving the various choices open, i.e. by fibre, product or country, could be prone to manipulation or abuse, and, consequently, the content of each stage should be multilaterally agreed in the current negotiation. In response to these concerns, the Community's spokesman explained that this provision had been conceived so as to accommodate the differing needs and preferences of both importers and exporters.

16. While support was expressed for the proposal relating to progressively increasing growth rates, improving flexibility provisions, and eliminating cumulative limits on flexibility, a number of participants disagreed that provision should be made for exceptional circumstances, even with guaranteed growth rates. Several participants also disagreed with the ideas set out in paragraphs 12(g) and 12(h), that participants undertake to improve market access through specific contributions related to their respective import régimes and that there should be some form of parallelism between the phasing-out of restrictions and the application of strengthened GATT rules and disciplines.

17. As regards the possible approaches to extending special treatment for LLDCs, the Community's spokesman suggested that this could be achieved through special provisions at each stage of the liberalization process, for example by more favourable growth rates and flexibility. Some other participants, however, considered that LLDCs should be exempted from all restrictions from the beginning of the transitional period.

18. In response to questions concerning the transitional safeguards, the EEC representative explained that the aim of the safeguard mechanism was to ensure that developments unforeseen at the beginning of the transition period could adequately be taken care of, while at the same time ensuring that there would be no impairment of the phasing out process. He explained that transitional safeguards would not be applicable to products integrated into GATT at the beginning of the transition period nor to products subsequently integrated. It was suggested that elements could be negotiated which would make safeguards more difficult to trigger than under the MFA, with administrative mechanisms such as the "basket extractor mechanism" becoming unnecessary.

19. Several participants expressed the view that safeguard actions should not be taken against products liberalized during the transition phase as this would impair the phase out process; rather, such products should return to GATT rules. Concern was expressed that countries without restraints in place under the MFA might be denied the right to apply the transitional safeguards mechanism, thereby raising a question of equity.

20. Several participants noted the lack of a definite proposal on time-span in the Community statement. By way of explanation, it was pointed out that a firm date had not been included since this was linked to the question of strengthened GATT rules and disciplines and could only be addressed in the latter stages of the negotiations.

21. As regards surveillance and notification, it was explained that the movement to each stage of the phase out process should be endorsed by a multilateral body. Furthermore, within this multilateral process, the possibility of bilateral agreements should be provided to allow a certain element of flexibility. These proposed bilateral agreements would be of a different nature from those concluded under the MFA, their purpose being to facilitate the integration process. Referring to the surveillance body as proposed by the Community, some participants were of the view that such a body should only deal with matters directly relevant to the negotiating group on textiles, and not with questions covered by other negotiating groups. It was stressed that the body should be representative of all interests, including small suppliers.

Submission by countries members of ASEAN (MTN.GNG/NG4/W/52)

22. The representative of Indonesia introduced the submission made on behalf of countries members of ASEAN contained in document MTN.GNG/NG4/W/52. Thereafter the representative of Malaysia, also speaking on behalf of the ASEAN provided further details. He reaffirmed support for the MFA-based approach, while remaining open to consideration of proposals for the phasing out of non-MFA, non-GATT consistent restrictions. He explained that under their proposal, restrictions in place on 31 July 1991 would be notified by the importing countries to a monitoring body and would then be re-instituted as the new base levels for the first year of this transitional arrangement, with restrictions on certain products being eliminated at the outset. The application of transitional safeguard measures would be based on a set of strict and objective criteria and subject to prior approval by the monitoring body. The phasing out process should be terminated by the year 2000.

23. A number of participants welcomed the ASEAN proposal, describing it as a positive contribution to the work of the Group. Several participants concurred with certain elements contained therein, such as an MFA-based approach, the immediate elimination of restrictions on handloom and handicrafts products, a minimum growth rate of 6 per cent, the necessity for a transitional safeguard mechanism based on the concept of serious injury, and the completion of the integration process not later than 1999. Some, however, noted the lack of elaboration on topics such as the treatment of non-MFA, non-GATT consistent measures, strengthened GATT rules and disciplines and on how to secure parallelism. Several participants were of the view that prior approval of transitional safeguard measures by the monitoring body would not be practicable. It was also observed that the elements listed for the determination of serious injury were similar to those already in the MFA, including the price factor.

Statement by Japan (MTN.GNG/NG4/W/54)

24. The representative of Japan provided their views on a number of specific issues such as, inter alia the scope of restrictions, the duration and the method for phasing out restrictions during the transition period, and the applications of transitional safeguard measures. This statement is reproduced in full in document MTN.GNG/NG4/W/54.

Work programme

25. Several participants reiterated their views with respect to the six topics included in the Group's work programme, referring in this regard to the proposals which had been circulated. On the topic of modalities for the phasing out of other restrictions not consistent with GATT rules and disciplines, some participants recalled the suggestion of an approach drawing upon the procedures contained in Article 2:1 of the MFA. Under this procedure, countries maintaining restrictions would be required to notify them to the monitoring body, and these restrictions would subsequently either be brought in conformity through the transitional arrangement or eliminated. It was suggested in this regard that there should also be the possibility for cross-notification. Another participant was of the view that since these measures were consistent neither with GATT nor with the MFA they should be eliminated forthwith rather than being phased out during the transition process.

26. On the question of the safeguard mechanism during the transition period, some discussion took place on the coverage of safeguard measures, their type, and the criteria for invoking them. Some participants questioned what would be the most appropriate form of safeguard to bridge the period between the selective safeguards of the MFA and the MFN safeguards of GATT. Several participants were of the view that an immediate return to an MFN approach involved certain disruption. Others considered that resorting to selective safeguards during the transition period could delay the integration process. Some discussion also took place on the question of whether or not restrictions in place at the beginning of the transition period should be justified in relation to the criteria defined for taking transitional safeguard measures.

27. With respect to the surveillance mechanism, several participants were of the view that there should be one surveillance body that would deal with both monitoring the transition and dispute settlement, with ultimate recourse to the normal GATT dispute settlement mechanism. Other participants favoured an approach whereby, following the recommendation made by a surveillance body, recourse would be available to a committee, and thereafter if the problem persisted, to the normal GATT dispute settlement mechanism. This committee would also, in the view of some participants, be entrusted with the verification of the completion by all participants of each stage of the phase out process. Several participants were of the view that recommendations of the monitoring body should be binding; others, noting the possibility that a party might not be in a position to fully accept a recommendation, stressed the need for flexibility in this respect.

28. Some discussion also took place on the question of strengthened GATT rules and disciplines. While there was broad agreement that the textiles and clothing sector should return to GATT progressively, several participants questioned the need and feasibility of any linkage between the progress of the work in this group and that of other groups, particularly the need for parallelism in the implementation processes. With respect to the question of time-span, participants recalled their positions as stated

in the various submission put before the Group. Some were of the view that this question might more usefully be tackled later, since this time-span would be function of the modalities chosen for the integration process.

Initial discussions on a draft Framework Agreement

29. The Chairman recalled the obligation of the group to put forward a draft framework agreement for the meeting of the Trade Negotiating Committee in July 1990. Several members pointed out in this respect that a number of factors relating to the framework agreement depended upon the definition of modalities for the phasing out process.

Future meetings

30. The Chairman noted that the discussion of this draft framework agreement would be the central issue to be addressed at the next meeting of the Group, scheduled for 10, 12 and 13 July 1990. Until then, he intended to hold informal consultations on this question.