

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG14/18

9 July 1990

Special Distribution

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

MEETING OF 25-26 JUNE 1990

Note by the Secretariat

1. The Group held its eighteenth meeting on 25-26 June 1990 under the chairmanship of Ambassador J. Lacarte-Muro. The agenda contained in GATT/AIR/3025 was adopted.

Agenda Item A(i)

2. The Chairman drew attention to the Note prepared by the Secretariat on Improvement of Notification Procedures (identification No. 1053) and asked for drafting proposals where participants felt that improvements were needed to the text before they could agree to it.

3. Following an exchange of views on various proposed amendments, a revised text was agreed to, ad referendum. That text is contained in an Annex to this Note.

Agenda Item A(ii)

4. The representative of Switzerland introduced a new submission containing a Draft Proposal on GATT Obligations with respect to Rules and Procedural Rights in Domestic Law (NG14/W/43) which, he said, had been foreshadowed by an earlier submission in NG14/W/38. With regard to point (iv) of the proposed amendment to Article X:3(a), he said the purpose was that national legislators should use language at least as precise as that used in the GATT when transforming GATT obligations into domestic law. At present legislators were free to grant discretion to their administrative authorities and leave decisions to be construed in the light of GATT provisions; since the private sector did not have access through most jurisdictions to the GATT, the rules could be subject to substantial erosion. The purpose of the proposal to amend Article X:3(b) was to confirm that it related to all measures under the jurisdiction of the General Agreement; for matters other than customs duties, it should be left up to national authorities to decide whether to use judicial or administrative review. He drew attention to the work underway in the TRIPs

negotiations, where in the case of standards and enforcement, more far-reaching procedural guarantees were being discussed; in the FOGS Group, Switzerland was aiming to establish the minimum standard which it believed was necessary for the effective functioning of the domestic branch of the GATT system.

5. One participant asked with respect to point (i) of the proposed amendment to Article X:3(a) whether it was intended that the fair hearing in question should be granted before or after an action was taken, and also for clarification of the phrase "the right to a hearing may be granted upon complaint only". He asked also for clarification of point (iii), which he said seemed to suggest some sort of safeguard clause.

6. One participant recalled her delegation's comments on NG14/W/38, and asked for clarification of points (iii) and (iv) of the proposed amendment to Article X:3(a) in NG14/W/43. She and another participant asked also whether Switzerland wished the proposal to be discussed and negotiated in the FOGS Group or in another Group.

7. One participant, commenting on NG14/W/38, said that while his delegation could not object in principle to any of the requirements elaborated in Section III, it felt that any step towards enlarging the scope of Article X:3 to all areas covered by the GATT, including non-tariff barriers, might lead to difficulties in implementation. It felt also that it would be better to seek to provide for procedures in areas such as anti-dumping, countervailing or safeguard action in the relevant instruments rather than generally as an extension of the scope of Article X:3. As an initial reaction, therefore, he said his delegation had misgivings about NG14/W/43.

8. The representative of Switzerland said that the proposal contained in NG14/W/43 was being submitted only to the FOGS Group. Switzerland would not object if the Chairman asked the Group on GATT Articles to address this issue. The questions of substance would be referred back to his capital for answers. However, he added by way of a preliminary response to two questions that the idea of the right to a hearing being granted on complaint only was intended to limit the possibilities of recourse to national action for parties that had no direct interest in a particular case, and that point (iii) was intended not to be an escape clause but to provide for provisional measures in the event that national procedures took a long time during which lasting and irreversible damage might occur.

#### Agenda Item A(iii)

9. The Chairman invited the representatives of the European Communities and Switzerland to suggest how the Group might proceed operationally with the matters addressed in their submissions (NG14/W/40 and 41), particularly with a view to the Group presenting a profile of its negotiations to the GNG/TNC in July.

10. The representative of Switzerland distributed a Non-Paper containing a draft decision on the Functioning of the GATT System which, he said, was an attempt to integrate into a single text the different elements which had been discussed in the Group. The purpose was, first, to provide a basis for discussing the Group's results in more concrete terms, and second, to propose language for a draft decision in July which would include:

(a) certain decisions for which there existed, in his opinion, broad support and which might constitute the final language for the decision to be taken by Ministers in December; and (b) certain other decisions which reflected the general thrust of what could go into the final package but for which further discussion and some factual information which the Secretariat could provide between now and the autumn were required. The reasons for presenting a non-paper rather than a formal submission were threefold: the paper was intended to be a discussion paper rather than a full-fledged proposal; the paper contained elements which had not been of major concern to Switzerland but which seemed to correspond to the general will of the Group; and the text was not yet at a stage of full maturity. He outlined the contents of the non-paper.

11. One participant commented on NG14/W/41. He noted that there it was suggested that the Secretariat be invested with an independent analytical capacity and policy dialogue capacity; this had been further elaborated in the non-paper. It envisaged upgrading Secretariat involvement in the preparation of Ministerial meetings and even of ad hoc Ministerial meetings, which he said had not been agreed to so far. It also proposed a more active rôle for the Secretariat in the TPRM in terms of a trade policy dialogue. While a certain increase in the strength of the GATT secretariat was feasible, and would have to be envisaged, such a proposal would change the character of the GATT Secretariat from an institution which provided support to the contracting parties in its deliberations to one that had independent status and participated in the so-called trade policy dialogue as in an independent entity. For this reason the proposal was unacceptable to his delegation. Regarding the strengthening of co-operation between GATT and the Bretton Woods institutions, his delegation had already commented extensively on the Director-General's report. More important was agreement on substantive guidelines and steps for achieving coherence rather than institutional mechanisms. His delegation was not in favour of associating the GATT Secretariat with Article IV consultations, or with the design of the trade policy component of loan programmes.

12. One participant said the non-paper seemed to restate proposals contained in NG14/W/41, on which her delegation had already commented. The non-paper could not serve as a profile of the negotiations since it did not reflect all the positions in the Group.

13. One participant said the proposal contained in the non-paper was interesting. His delegation had reservations about extending the TPRM to other areas, but it would be prepared to look into this along with other issues.

14. One participant questioned whether it was desirable to accelerate the negotiating process in this way by preparing draft texts, particularly in

view of the intention of the Chairman to prepare a paper for July containing a profile of the Group's negotiations. Negotiations on elements of the first two parts of the Group's mandate were well advanced, but on the third part concerning coherence they were lagging. Achieving greater coherence was the Group's final objective, and better transparency and the institution of Ministerial meetings were instruments to that end. Other proposals on coherence had been tabled, of which the most far-reaching was that of his own delegation, and the Group needed to continue examining those proposals. The section of the Swiss non-paper which addressed the issue of coherence would not meet the Group's needs because it tackled only inter-secretariat links and did not take account of more fundamental aspects of coherence, particularly those which had to be resolved at the political level. With regard to the section of the non-paper dealing with ministerial involvement in GATT, he said that the functions to be undertaken by ministers needed to be elaborated before related institutional issues were taken up.

15. One participant expressed strong reservations about the proposal contained in the non-paper to extend the TPRM, in particular to cover services, since the TPRM had been negotiated under the GNG and should therefore be restricted to trade in goods.

16. One participant said the proposal to extend the scope of the TPRM to services was confusing and that it remained to be seen whether it would be possible to define precisely the mandate of the Secretariat. His delegation could subscribe to the suggestions made in Section II of the non-paper. The suggestions made in Section III needed to be supplemented with regard to the substance of the issue of policy coherence, and not left at the level of institutional co-operation.

17. One participant stated that his delegation saw no need to re-open the question of the TPRM until later, when it could be seen how the system was functioning and whether modifications or corrections were required. The question of greater policy coherence was important. If a permanent basis was established for GATT/IMF/World Bank co-operation, it would enable GATT to inform the two other organizations how international financial and monetary policies were influencing international trade, how this reflected on the trade position of different countries, and so on. The IMF and World Bank could in turn inform GATT how international trade policies, particularly of stronger trading partners, were influencing international financial and monetary co-operation. This included not only the identification of direct linkage between different issues but also analysis of their consequences and implications, and the need to find solutions. His delegation was unclear about the position of the IMF and World Bank with regard to the question of greater policy coherence, and he asked for clarification at a future meeting from their representatives.

18. Several participants asked for clarification on the rôle and composition of the proposed "policy advisory group". Some added that they could support the establishment of such a group only if it was open-ended with regard to membership, and they reiterated their opposition to the establishment of groups with limited participation in GATT. Some others

expressed their delegations' support for the establishment of a small ministerial group in GATT.

19. One participant said that her delegation shared many of the views expressed in the non-paper. As regards the issue of coherence, her delegation believed that greater coherence between trade, monetary and financial policies could best be obtained through strengthened co-operation between the GATT, the IMF and World Bank. The contacts between the three institutions needed to be intensified but this should be done in an informal way. The different mandates of each institution had to be respected and all aspects of confidentiality taken into consideration when discussing how to strengthen the ties between them.

20. Her delegation made the following recommendations to strengthen co-operation: increase the exchange of information between the three institutions by exchanging reports and studies, and make it possible for each institution to provide expertise on matters within its competence; create possibilities for each institution to provide input in reviews and working groups in the other organizations whenever suitable (the GATT's possibilities to contribute in this respect would be greatly enhanced by the country-specific expertise that it would gain through the TPRM); create a working group of representatives from the respective secretariats to examine matters of common interest; set up common research projects and seminars regarding issues of common interest in order to enhance mutual knowledge and understanding; create common information services to provide trade statistics and other relevant information; promote and facilities staff exchange; and establish a GATT liaison office in Washington in order to facilitate the above exchanges.

21. In order to further explore the above proposals, her delegation recommended the setting up of a task force or working group, consisting of representatives from the GATT, the IMF and World Bank, whose work would be to determine how the above proposals could be implemented. By including representatives from each institution it would be ensured that the special considerations of each institution would be respected. This task force should report back to each institution before a certain date. The task force should also present budgetary implications of the proposals.

22. One participant said that the non-paper had put work in this area on a more concrete footing in terms of specific ideas and proposals. His delegation had not yet had the opportunity to fully consider the paper, but he said that a number of comments made by the previous speaker were interesting and warranted further consideration.

23. One participant said that the non-paper to a large extent restated ideas which appeared in NG14/W/41, on which her delegation had already made detailed comments. The non-paper highlighted the importance of making adequate preparation for Ministerial meetings and the need to present Ministers with policy issues, not technical issues. In her view, the proposed "policy advisory group" could provide necessary political impetus to the work of GATT, and her delegation supported this suggestion as long as it was intended that such a group would work within GATT so that

transparency would be ensured. However, she questioned whether such a group would not be too large if it were open-ended with respect to membership; her delegation continued to support the idea of a small ministerial group. Her delegation did not think that the non-paper could form the basis for a profile of the negotiations since it did not address the wide range of views in the FOGS Group at this point. Her delegation could support many of the points recorded in paragraph 20 with respect to the coherence aspect of FOGS, with the notable exception of establishing an office in Washington.

24. One participant said that improved co-operation between the GATT, the IMF and World Bank could be an important means of achieving greater coherence between monetary, financial and trade policies. Her delegation considered that strengthened institutional co-operation should avoid excessive structural rigidity, and it could endorse many of the suggestions recorded in paragraph 20. She noted that some of those suggestions were also contained in the non-paper. With regard to the establishment of a GATT liaison office in Washington, her delegation was not opposed in principle but it believed a decision in that respect should be taken only after the possible function of such an office and its budgetary implications had been studied, which could be done best after the end of the Round.

25. One participant said that her delegation supported the suggestions recorded in paragraph 20 with respect to practical means of co-operation between GATT and the international financial institutions.

26. The representative of Switzerland said the intention in tabling the non-paper had not been to close discussion on the coherence issue in July, and he agreed that so far discussion on that issue had been neither substantive or imaginative. The intention had been to stop the discussions drifting and to make them more operational. The non-paper was based on NG14/W/41, and on the comments which participants had made on that submission. The "policy advisory group" had been proposed as a means of preparing Ministerial meetings well and distilling for ministers policy messages. The group should therefore operate at a relatively high level, so that it would be policy-oriented and so that its chairman, who should be a minister, could participate on equal terms with members of the Interim and Development Committees. Participation of such a group had been left open because in his view the Group was not in a position yet to agree on it. He agreed that it would be important to identify clearly the function of ministerial involvement in GATT before agreeing on institutional support mechanisms.

27. The representative of the European Communities introduced a new submission on the Establishment of a Multilateral Trade Organization (MTO) (NG14/W/42), and explained the essential elements guiding the Communities' reflections in putting forward the proposal. He said that the Communities were not expecting reactions to the proposal at once; the Group was still at an early stage in its work on increasing coherence and it should pursue the issue further in the coming months. However, the Communities were somewhat disenchanted by the lack of progress that had been made to date on

the third element of the mandate, and they hoped greater efforts would be made by all participants in the future.

28. One participant agreed that work on the third element of the Group's mandate was lagging behind. He asked how the Communities considered that their submission on the MTO would contribute to the current stage of the Group's work, which was concerned primarily with agreeing on the profile of the negotiations before July. He questioned also whether the proposal did not go beyond the competence of the Group.

29. One participant said that his comments were of a preliminary nature. His delegation was not certain that the FOGS Group was the appropriate forum for discussion of the setting up of an MTO, as it did not fit into the Group's mandate. At this stage the Group should concentrate on concrete and substantive aspects of the negotiations, and not be delayed in its work by discussion of an MTO. He understood that the purpose of establishing an MTO was to incorporate the results of the Uruguay Round negotiations, particularly in the new areas; however, since concrete results were not at present known in those areas, their linkage to the proposed MTO was unclear and it was premature to discuss it. Without wanting to go into detail on the substance of the proposal for the time being, he asked whether the intention was to have a common dispute settlement procedure to cover the Tokyo Round Codes or to have a single mechanism to cover different trade agreements as a result of the Uruguay Round negotiations? He questioned whether a common procedure for dispute settlement would necessitate the setting up of an MTO, and sought clarification on how a single dispute settlement mechanism could effectively cover separate trade agreements with different memberships.

30. One participant said that her delegation considered the idea of establishing an MTO to be interesting, but it was concerned that this kind of proposal should not detract from the substantive work that lay ahead in the Uruguay Round. Her delegation could endorse the creation of a new MTO, but only on condition that agreement was first reached on strong rules in the Round and that legislative endorsement of its results was attained. It felt it important to distinguish between tying together the results of the Round at the end of the day and creating an MTO. It noted that all of the Round's objectives could be achieved, and the results could be tied together, without the creation of an MTO. Nevertheless, it considered that it might be worth exploring the question of whether a new organizational and decision-making structure could enhance the efficient governance of the world's trade regime and expand the level of international trade. There were reasons for proceeding cautiously at this time. Careful and time-consuming work would have to go into developing an MTO. That process could not be allowed to interfere with the work at hand in the Round. Nor should the vision of such a development be allowed to become a substitute for concrete results in the Round. Additionally, in the past some governments, including her own, had found it impossible to obtain ratification by their legislative bodies of an MTO-structure. All participants should be interested in ensuring that those countries could avoid presenting their legislatures with a Uruguay Round package that included establishment of an MTO such that implementation of the results of

the Round were undercut by concern over possible developments with an MTO. For these reasons, her delegation believed that now was the time to focus solely on obtaining the results of the Round and tying them together in the GATT system.

31. Furthermore, her delegation believed that the matter of establishing an international trade organization should not be discussed in this forum; the issues were broad and political and the timing was not right to deal with those issues in this Group. However, under the circumstances, her delegation would make some brief preliminary comments on certain aspects of the proposal. The need for an MTO, in order to turn the GATT into an institution, was referred to several times in the proposal and the concern was raised that the GATT lacked a proper institutional basis. Her delegation believed that the GATT was already an institution, it was an established system that had been in place for forty years, it employed a sizeable secretariat, and adopted, implemented and interpreted rules which governed world trade. It was incorrect to suggest that the GATT was not an institution, or that an MTO was needed to convert it into an institution. For the same reason, in her delegation's view, there was no reason to believe that the creation of an MTO would enhance co-operation between the GATT, the IMF and World Bank; the enhancement of co-operation was an issue of political direction and will, not a legal problem that could be solved by creating an MTO.

32. The submission stated that membership of the Tokyo Round Codes varied and in some cases was limited to a few contracting parties only, and that separate membership entailed a risk of fragmentation of the multilateral trading system. Her delegation believed that legal structure was not and would not be the cause of the "fragmentation" of the trading system. The fundamental problem was political; some countries refused to accept new obligations or clarifications of old obligations. The mere creation of an MTO could not force any country to accept an obligation which it was not otherwise willing to accept, and it could not therefore solve this problem.

33. The submission stated, with regard to dispute settlement, that an MTO was needed since there was no competent body to examine a matter in the light of all applicable multilateral agreements. Her delegation did not believe that an MTO was needed to solve that problem. There were ways for a dispute settlement agreement, within the GATT context, to create jurisdiction of a single process over all relevant multilateral agreements. That issue had been taken up in the Dispute Settlement Negotiating Group.

34. The submission stated that, at least with respect to trade in services, it would be difficult if not impossible to integrate the results of the negotiations into the General Agreement through a CONTRACTING PARTIES' decision of the CPs or a protocol amending the GATT, and that this accentuated the need for a common institutional framework. Her delegation questioned the view that the GATT was not legally competent to address the issue of trade in services. It would require only political will to embody a services agreement in the GATT, since the legal mechanisms for such action were clear. For example, the CONTRACTING PARTIES could reach agreement in the form of a decision under the joint action provision of



Article XXV, aimed at "furthering the objectives of the Agreement". Alternatively, the CONTRACTING PARTIES could amend the GATT. The problem of adopting and implementing a services agreement within the GATT framework was therefore a political, not a legal problem, and it did not require the creation of an MTO.

35. In conclusion, she said that the submission based its claim for the need to establish an MTO on three false arguments: to provide a solution to problems which were not really problematic, such as the provisional nature of the GATT; to provide a solution to legal problems, which were in fact political, not legal, problems; and to provide legal solutions to problems when in fact legal solutions could already be found within the GATT framework. There might be good reasons for establishing an MTO, but the submission had not demonstrated them, and until December the Group should focus on matters of substance which represented the real problems facing world trade.

36. One participant said that now was not the time for substantive discussions on the creation of an MTO; it could best be addressed later, preferably after the Round.

37. One participant said it was important to recognize the fragmentation of the system of multilateral trade rules, and to ask what would be the nature of disciplines under the MTO for countries which had not acceded to the Tokyo Round Codes. Regarding procedures, he asked when the Communities expected the Group to discuss the substance of the proposal and whether mention of it should be made in the Group's July profile. In his view it was logical to express concern over the approach proposed in the submission with respect to the institutional situation of the Tokyo Round agreements. Generally speaking, a formal or institutional structure depended to a great extent on a clear perception of what the final outcome of the substance, by way of disciplines and standards, would be. At this stage of the Uruguay Round, such results could not yet be clearly perceived, and participants should be cautious in addressing issues of institutional structure.

38. One participant said that the thrust of the proposal accorded closely with his delegation's own thinking, which had been made known to other delegations informally in the context of the Uruguay Round, and would be elaborated on at the appropriate time. An MTO-type of result should be seen in the context of a large substantive outcome to the Uruguay Round. His delegation also would like to see such a decision taken at the end of the year, although it would be necessary to elaborate details later. It believed that a great number of issues needed to be discussed in regard to the proposal, but that the Group should not be distracted from producing a profile of substantive results before the end July. He hoped that the kind of issues requiring discussion could take place in the autumn. With regard to the best forum for discussing the matter, he hoped that a pragmatic solution could be found.

39. One participant said the issue of establishing an MTO should not be allowed to deflect attention from the essential objectives of the

negotiations. However, that issue might be raised one day and his delegation certainly looked favourably upon the proposal.

40. One participant said that the issue seemed not to be of concern exclusively or even primarily to the work of this Group. He noted the remarks of the representative of the European Communities that it would be a matter for discussion in the months ahead and that the discussion should not necessarily take place in this Group, and said that those were important considerations in view of the comments of a number of delegations questioning the strict relevance of the proposal to the Group's mandate. His delegation did not want to take a narrow legalistic point of view, but there were aspects of the proposal which could only be addressed appropriately in a wider context. Institutional mechanisms could not be a substitute for improved adherence to GATT rules and obligations, or for the clarification and strengthening of those rules. Also, his delegation would be viewing the proposal from the perspective of what the establishment of an MTO would imply as far as the development process was concerned; taking account of the development and trade needs of developing countries was a major issue which needed flagging at this stage.

41. With regard to certain details of the proposal, he said that while his delegation did not have any reservations about strengthening the GATT system, it was not certain that improving the mandate of the Secretariat could contribute to that end and it had the greatest of reservations in doing so without sufficient examination or justification. It would have to be established that the disappointing adherence to GATT rules and disciplines could be attributed to the lack of a rôle for the Secretariat. It was the improved functioning of the multilateral trading system based upon the GATT that was the Group's primary concern, and not how the Secretariat handled its functions, whether efficiently or otherwise. His delegation had reservations about suggestions to strengthen GATT as an institution if that was interpreted to mean strengthening the Secretariat's rôle and establishing a certain relationship with other organizations at the secretariat level.

42. His delegation also had reservations about paragraph 3(a) of the proposal, where it spoke of adopting dispute settlement procedures in principle applicable to all separate multilateral trade agreements. Non-signatories had no influence on the functioning of the rules of multilateral trade agreements that were legally separate from the GATT and much further thought needed to be given to this issue. His delegation considered that participants in the negotiations were still far from making decisions on where various aspects of the Uruguay Round would be implemented, what dispute settlement mechanisms there would be, and what linkages would exist between them. His delegation had strong reservations about cross-linkages between different aspects of the negotiations.

43. This participant commented also on proposals concerning greater coherence in global economic policy-making contained in NG14/W/40. Coherence involved efforts far greater than institutional co-operation; substantive policy formulation was required. The democratic basis of the functioning of the GATT had to be preserved. In the international

financial institutions, decisions were made mainly by the creditor countries. The GATT Secretariat did not yet have the status of a fully-fledged international organization with independent functions. Against the background of these considerations, NG14/W/40 had some positive features. The suggestion for a joint declaration, containing guiding principles on the conduct of trade, monetary and financial policies could be acceptable to his delegation if those principles could also include the aspects enumerated on pages 4 and 5 of the submission. As regards formal agreement on institutional co-operation between the GATT and the financial institutions, the submission seemed to contain several safeguards in respect of the dangers his delegation had foreseen on the basis of the Director-General's report. However, more care was needed in dealing with such suggestions as the formal agreement on institutional co-operation, which envisaged technical co-operation among the staffs as regards the preparation of country reviews and on the trade policy component of loan programmes.

44. One participant said that his delegation was ready to envisage the creation of an MTO and it was looking forward to a substantive discussion on this issue if and when the substantive results of the negotiations warranted the creation of such an institution.

45. One participant said he had mixed reactions to the proposal. It seemed to suggest that at the end of the Round there might be such a range of substantive agreements and so many disputes and conflicts arising out of whatever was agreed to that a new administrative system would be required to operate them coherently. That outcome, he believed, was not realistic. His delegation welcomed the proposals in paragraphs 5 and 6 as they were less far reaching than what was suggested in paragraph 3. His delegation had been concerned in particular about the implications of paragraph 3(a), which suggested the establishment of a legal basis for actions to ensure the effective implementation of the results of the negotiations; however, it noted that what was being suggested in the final paragraphs of the proposal was merely to consolidate the results achieved in the Round and to consider the establishment of the new GATT as a multilateral trade organization, one of the main elements of which would be a legal basis for taking actions concerning the implementation of the results. His delegation also noted from the last paragraph that substantive rights and obligations of existing multilateral trade agreements would not be altered, but that the new organization was proposed to ensure that questions of administration and implementation of the different agreements would be dealt with in an effective and coherent manner. His delegation therefore had an interest in the proposal, but considered that this was not the time to enter into substantive discussion. It noted the implicit recognition by the Communities that at the end of the Round this was a possible way of tying up the results of the negotiations.

46. One participant welcomed the proposal and was open to discussion of the issue. Many questions still needed to be addressed, especially when the final outcome of the Uruguay Round was known. His delegation could not accept any new international trade organization which was established on the lines of the IMF or World Bank which reserved special rights for some

countries and marginalized others. His delegation would probably favour a universal international trade organization with membership of all countries. However, as other delegations had already pointed out, it was not the time to discuss this proposal in detail.

47. One participant considered that the matter should be discussed after the successful and satisfactory conclusion of the Uruguay Round negotiations. He sought clarification regarding paragraph 6 of the proposal which stated that Ministers should consider the establishment of a new GATT, and asked specifically whether this was intended to cover the possibility of Ministers taking a decision to set up such an organisation.

48. One participant said the proposal had far-reaching implications and would require careful consideration of complex institutional, legal, and constitutional issues such as those raised in paragraph 6 of the proposal. Her delegation's first priority was to work towards a substantive outcome of the Round by December.

49. One participant said that her delegation's priority was the successful completion of the substantive negotiations, including on systemic and rule-making issues currently before this and other Groups. It was prepared to examine carefully proposals for significant changes to the GATT system in the light of the emerging profile of the December results and in relation to tidying up and tying up those results, but it would not be prepared to see a major institutional result distract from or substitute for substantive results across all the areas of the negotiations.

50. One participant said this was an issue which would have to be faced at the end of the Round, but it should not distract now from the main objective which was the successful outcome of the Round.

51. The representative of the European Communities said that he did want a reference to the proposal in the Group's July profile. However, he said that it would not be the FOGS Group that would work out all the details enabling an MTO to be created. That work would be done later. The preliminary comments of participants on the proposal had so far been positive but somewhat cautious. The proposal was not to undertake anything particularly revolutionary, but rather to establish a purely organizational treaty; this would not alter any substantive rights or obligations under existing multilateral trade agreements. It proposed some legal and institutional conclusions on the Uruguay Round in order to ensure, as far as possible, a degree of coherence in the implementation and administration of the results of the negotiations and also in dispute settlement. A forum was needed in which to discuss issues across-the-board, relating to the various multilateral agreements which existed and which might come into existence, such as a services agreement which in all likelihood would be separate from the GATT. There was a widely held view in the Negotiating Group on Dispute Settlement that unified dispute settlement rules were needed as far as possible. His delegation believed that it might be possible to establish the appropriate procedures at the level of a future MTO, which would be referred to under the various substantive agreements.

That would not modify existing rights or obligations, but it would facilitate in particular the resolution of jurisdictional problems, such as those which had arisen in the past. An umbrella-type organizational framework such as that proposed would have an overall political responsibility to ensure coherence in the implementation and administration of the results of the negotiations and perhaps legally separate multilateral agreements.

52. He stressed that the proposal was never intended to divert attention in any way from the substantive negotiations in the various Groups. However, substantive rules and procedural mechanisms were to some extent interlinked: substantive rules without a proper institutional back-up were often fairly weak. His delegation believed that this was the proper Group in which to put forward these ideas; since it dealt with the functioning of the GATT system, part of its mandate was to strengthen the institutional side of GATT and that was what his delegation was proposing. His delegation was open to discussing the proposal also in other appropriate fora, but it did not believe that it was useful to debate what those fora might be. The proposal was a logical consequence in order to ensure coherence with a minimum of effort.

53. With respect to the question of whether the GATT exists as an institution, he recalled that GATT's legal advisor had concluded that it did not. The GATT was an Agreement that entered into force on a provisional basis. It did not have a proper institutional basis, although that of course did not mean that it did not function effectively in a pragmatic way. The proposal was not to undertake a fundamental institutional reform, but to provide an organizational umbrella for legal agreements that were separate from the GATT. At this stage he did not want to prejudge the form of the decision which his delegation hoped would be taken in Brussels on this issue; it would depend on the progress made in examining the proposal and the ideas of others. At the end of the day, his delegation was hoping for an organizational agreement or an organizational treaty which established the new GATT. The WIPO was an example of the kind of common organizational umbrella for different international agreements which his delegation was looking in this regard. It was very much a legal issue; there were political aspects to it, but these were often exaggerated.

54. The Chairman consulted with the Group on drafting the profile of the negotiations. He also invited all interested participants to consult informally with him on that profile, and proposed that the Group should hold a further meeting, as necessary, on 20 July 1990 to agree formally on the profile that would be submitted to the GNG.

ANNEX I

IMPROVEMENT OF NOTIFICATION PROCEDURES

THE CONTRACTING PARTIES,

DESIRING to improve the operation of notification procedures under the General Agreement, and thereby to contribute to the transparency of national trade policies and to the effectiveness of surveillance arrangements established to that end,

RECALLING their existing obligations under the General Agreement to publish and notify, including obligations assumed under the terms of specific Protocols of Accession, waivers, and other agreements entered into by the CONTRACTING PARTIES,

DESIRING to reinforce the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance adopted by the CONTRACTING PARTIES on 28 November 1979,

Have agreed as follows:

I. General obligation to notify

1. Contracting parties reaffirm their commitment to existing obligations under the General Agreement regarding publication and notification.
2. Contracting parties recall their additional undertakings set out in the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance of 28 November 1979. With regard to their undertaking therein to notify, to the maximum extent possible, their adoption of trade measures affecting the operation of the General Agreement, such notification itself being without prejudice to views on the consistency of measures with or their relevance to rights and obligations under the General Agreement, contracting parties agree to be guided by the annexed list of measures. Contracting parties therefore agree that the introduction or modification of such measures is subject to the notification requirements of the 1979 Understanding.

II. Central registry of notifications

3. A central registry of notifications shall be established under the responsibility of the secretariat. While contracting parties will continue to follow existing notification procedures, the Secretariat shall ensure that the registry records such elements of the information provided on the measure by the contracting party as its purpose, its trade impact, and the requirement under which it has been notified. The registry shall cross-reference its records of notifications by country and obligation.

4. The central registry shall inform each contracting party annually of the regular notification obligations to which that contracting party will be expected to respond in the course of the following year.

5. The central registry shall draw the attention of individual contracting parties to regular notification requirements which remain unfulfilled.

6. Information in the central registry regarding individual notifications shall be made available on request to any contracting party entitled to receive the notification concerned.

### III. Review of notification obligations and procedures

7. The CONTRACTING PARTIES will undertake a review of GATT notification obligations and procedures. The review will be carried out by a working group, membership in which will be open to all contracting parties. The group will be established immediately after the end of the Uruguay Round.

8. The terms of reference of the working group will be:

- to undertake a thorough review of all existing notification obligations of Contracting Parties established under the General Agreement, with a view to simplifying, standardizing and consolidating these obligations to the greatest extent practicable, as well as to improving compliance with these obligations, bearing in mind the overall objective of improving the transparency of national trade policies and the effectiveness of surveillance arrangements established to this end, and also bearing in mind the possible need of some developing Contracting parties for assistance in meeting their notification obligations;

- to make recommendations to the Council by 31 December 1991.

ANNEX

Indicative list<sup>1</sup> of notifiable measures

- tariffs (including range and scope of bindings, GSP provisions, rates applied to members of free trade areas/customs unions, other preferences)
- tariff quotas and surcharges
- QRs, including VERs and OMAs affecting imports
- other non-tariff measures such as licensing and mixing requirements; variable levies
- customs valuation
- rules of origin
- government procurement
- technical barriers
- safeguard actions
- anti-dumping actions
- countervailing actions
- export taxes
- export subsidies, tax exemptions and concessionary export financing
- free trade zones, including in-bond manufacturing
- export restrictions, including VERs and OMAs
- other government assistance, including subsidies, tax exemptions
- rôle of state-trading enterprises
- foreign exchange controls related to imports and exports
- government-mandated countertrade
- any other measure covered by the General Agreement, its annexes and its protocols.

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<sup>1</sup>This list does not alter existing notification requirements in specific GATT Articles and in agreements and arrangements negotiated under GATT auspices.