

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG8/19
23 July 1990

Special Distribution

Group of Negotiations on Goods (GATT)
Negotiating Group on MTN
Agreements and Arrangements

MEETING OF 20 JULY 1990

1. The Group met on 20 July 1990 under the Chairmanship of Dr. Chulsu Kim (Republic of Korea).

A. The Agreement on Technical Barriers to Trade

2. The Group agreed that the Chairman could transmit to the GNG the report by the Chairman of the Informal Negotiating Group on Technical Barriers to Trade (ref. MTN.GNG/NG8/W/83/Add.3).

3. One delegation stated that it noted significant progress on key issues in the draft text, such as coverage of conformity assessment procedures. The text being transmitted had required hard work by delegations and reflected a very constructive attempt by the Chairman to assure that significant results were obtained. As the Chairman had correctly indicated in his transmittal note, one delegation was opposed to the Code of Good Practice. Being that delegation, it would continue to discuss in a constructive manner its concerns with the approach which another delegation was recommending on standards. The task would be to find an acceptable solution. At the same time, it expected others to participate constructively on remaining issues which were difficult for them, such as accreditation systems and processes and production methods. With an intensive negotiating schedule and with a sincere commitment, one could look forward to a successful conclusion of the work.

4. One delegation stated that it also appreciated the Chairman's efforts. Substantial progress had been made in the field of transparency. On the other hand, further discussions were needed on PPMs and Code of Good Practice and it would continue to participate constructively in those areas.

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

5. The Group agreed that the Chairman could transmit to the GNG the report by the Chairman of the Informal Group (ref. MTN.GNG/NG8/W/83/Add.4).

C. The Agreement on Government Procurement

6. The Group agreed that the Chairman could transmit to the GNG the communication from the Chairman of the Informal Group (ref. MTN.GNG/NG8/W/83/Add.2).

D. The Agreement on Import Licensing Procedures

7. The Group agreed that the Chairman could forward to the GNG the report on status of work received from the Informal Group dealing with this Agreement (ref. MTN.GNG/NG8/W/83/Add.1).

8. One delegation stated that in the status of work it would like to maintain the original text of Article 3(a) of the Agreement in the proposed draft. It added that it believed work on this Agreement was moving in the right direction; it would continue to co-operate towards arriving at a clean text.

9. One delegation stated that considerable progress had been made in this area. It reaffirmed that it would continue to co-operate constructively. It noted that it had, on earlier occasions, expressed its interest in pursuing the issue of procedures relating to export licensing. As in the case of import licensing procedures, it would like to ensure that export licensing procedures were implemented in a transparent and predictable manner and did not result in barriers which were additional to the restrictions they were designed to implement. Hence, it would like procedures relating to export licensing also to be covered by this Agreement and would pursue the matter further in the Group.

10. One delegation stated that it was pleased with the progress made but thought that more could and would be accomplished. Noting with interest the statement with respect to export licensing, it expressed particular interest in obtaining further explanation of the concrete issues which the delegation in question wished to discuss, and its underlying concerns. It was true that the issue of export licensing had been flagged early in the negotiations and that, throughout these, it had itself tried to get parties interested in the issue to clarify what they would like to see done. It was of some concern that at this very late stage it was being proposed that attention be turned to this issue without explanations being given. While it listened to any delegation's proposal in a constructive spirit, it thought it was fair to expect that those who made proposals gave adequate explanations, information and documentation, to assist other delegations in taking positions.

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

11. The Chairman noted that delegations had received a text submitted by the Deputy Director-General, Mr. Carlisle, on his own responsibility as Acting Chairman of the Informal Group dealing with the negotiations on Anti-Dumping. In the course of informal consultations, a number of participants had expressed the view that this paper lacked balance and therefore could not constitute a basis for negotiations. Other participants had indicated that they were prepared to negotiate from this paper. The Chairman suggested that under these circumstances the Group authorize him to forward the text to the GNG with a cover note from Mr. Carlisle which explained the situation above, and with an attached compendium of all

drafting proposals made by delegations for modifications to the Agreement. (The said cover note and the accompanying note from the Chairman to the GNG (MTN.GNG/NG8/W/83) were circulated in the Group).

12. The Group so agreed.

13. The representative of Brazil, speaking on behalf of the Informal Group of Developing Countries, stated that the Chairman's paper caused these countries serious concern because it was unbalanced and did not reflect the broad views that had been expressed in the Informal Negotiating Group. The purpose of the negotiations was to improve the existing anti-dumping rules, and not to create a new anti-dumping system. The Chairman's paper had introduced a number of new practices/concepts which would be found illegal under the existing rules and would expand the use of anti-dumping action beyond its present scope. What was most alarming was that the paper had incorporated almost all the very far-reaching proposals of one major participant, in spite of strong opposition raised in the Negotiating Group against these proposals. These new concepts were very far reaching; they could hamper development and act as barriers to foreign investment. On the other hand, the improvements in these areas of interest to these countries were mostly of a procedural and technical nature. While some of these modest proposals had been included, others had been included in such a diluted form as to reduce their practical value considerably.

14. The representative of Singapore, speaking on behalf of the ASEAN countries: Indonesia, Malaysia, Philippines, Thailand and Singapore, stated that while these countries could go along with the Chairman's proposal, it was deeply regrettable that, in spite of the fact that a large number of participants had expressed their serious concerns with the paper and that it should not go to the TNC in its present form, a decision had been taken to table it there. The ASEAN countries had very serious concerns with the Chairman's paper because it was unbalanced and did not provide the basis for further detailed negotiations. The purpose of this negotiation was to improve existing anti-dumping rules and not to create a new anti-dumping system. While they were not contesting the use of anti-dumping duties, these should not be used for purposes other than to strictly combat real dumping. The Chairman's paper was not the basis for negotiations because it did not reflect this objective. It expanded the use of anti-dumping duties by introducing several new concepts and practices which under the existing rules would be found illegal. What was most alarming was that the paper had incorporated all the very far-reaching proposals of one major participant, the United States, in spite of strong opposition raised in the Negotiating Group against these proposals. These new concepts were anti-development and anti-investment. It was true that the paper contained some improvements, but these were mostly relating to clarification of some grey areas or were re-establishing the original intent of the Code. Consequently, one was simply getting back what had been taken away through unilateral interpretation and practices, and a price was being demanded at the outset to renounce legal rights under the GATT and the Code, and to accept a further expansion of the scope of

anti-dumping measures. Some of the areas which caused the ASEAN countries serious problems were: (i) the expansion of the definition of "like product", the present definition of which was very narrow: "like in all physical respects". The paper had expanded the definition to include "quality differences, minor variations, and slightly altered or later-developed versions of a product", reflecting the United States and EEC proposals. This expanded definition would expand the use of anti-dumping action across the board, hitting small and big suppliers. Textiles would be an easy target for anti-dumping actions with this definition; and (ii) all the United States proposals on circumvention had been incorporated, with very far-reaching rules, for example: permitting anti-dumping duties to be imposed on parts/components when an original final product was found to be dumped; expanding the scope of application to situations where parties with "contractual arrangements" would be deemed to be circumventing. This could mean any sales situation as sales were based on contracts; the inclusion of the vague concept of "recurrent dumping" which significantly expanded the scope of so-called anti-circumvention; the introduction of the concept of so-called "input dumping", which had always been considered illegal and which only recently one participant had started to promote; and the inclusion of the concept of recidivist dumping, i.e. that once one had been accused of dumping, then there would always be a presumption that one would be dumping.

15. What was not acceptable was that the demands of one participant were fully reflected in the paper, including concepts which were inconsistent under the GATT and the Code. It was the ASEAN view that the Chairman's paper could not legitimize such practices. On the other hand, the improvements in those areas of interest to them were mostly of a procedural and technical nature. While some of these modest proposals had been included, others had been included in such a diluted form as to make them of little practical value. The section on injury determination, for example, was very weak; not many changes had been introduced although there had been some very positive proposals suggested to strengthen injury determination. The ASEAN countries reiterated that the Chairman's paper was not acceptable as the basis for detailed negotiations. Furthermore, they had also expressed the view that the paper in its present form could not be forwarded to the TNC. Now that this Chairman's paper was nevertheless being sent to the TNC, they wished to reiterate that it had to be revised substantially by the Chairman, to be rebalanced and to reflect the views expressed in the Informal Negotiating Group before it could be used as the basis for further negotiations.

16. The representative of Hong Kong endorsed the above statements, being amongst those who felt that the text circulated by the Acting Chairman of the Informal Group lacked balance and thus was unsuitable to use as a basis for further negotiations. His delegation held this view because the circulated text envisaged radical extension of anti-dumping actions into new areas on the one hand, while attempts to introduce greater discipline on the users of anti-dumping on the other hand were only partially reflected. In particular, the demands of one participant who was a major user of anti-dumping had been fully reflected, while the proposals of

others which had enjoyed far wider support in earlier discussions in the Informal Group had either been omitted or so diluted as to lose practical significance in many cases. Any negotiation based on this text certainly could not end in a result acceptable to his delegation. Accordingly, to include the text by the Acting Chairman in the Chairman's onward report gave it a status that did not reflect its transient significance in the deliberations of the Informal Group and the Negotiating Group itself. He reiterated that the paper was unsuitable as a basis for further negotiations in his delegation's view. Nevertheless, in a spirit of moving the negotiations forward and given the careful way in which the Acting Chairman had set out the context of the text, his delegation was prepared to agree that the method of onward reporting was acceptable. It looked forward to seeing the Acting Chairman's second paper in the near future and trusted that this would reflect a far better balance than the first.

17. The representative of the United States stated that his delegation did not share the views of any of the previous speakers with respect to the paper. As his delegation had said during the informal meetings, it too had strong reservations about many points in the paper, amongst which the most significant were, briefly: (i) the provision that would provide that sales below cost be disregarded only when the average price was below cost, and the volume of sales below cost represented a significant portion of all arm's length transactions; (ii) the provision on exchange rate which allowed margins to be reduced by foreign currency devaluation after prices were set, but prevented them from rising to reflect foreign currency value increases; (iii) the use of average export values, except in limited situations; and (iv) the requirement that domestic complainants provide "positive evidence" of domestic industry support for petitions. In addition to the above there were several other provisions on which his delegation had concerns. It understood that the Acting Chairman would revise the paper on the basis of recent informal discussions. It expressed its strong belief that any such revision maintain the balance that had been in the original paper. His delegation had been prepared to negotiate from the original text and it remained prepared to negotiate from any balanced text. In the spirit of compromise shown by previous speakers, it fully accepted the Chairman's proposal as to the report to be presented to the GNG.

18. The representative of the European Economic Community stated that though his delegation was not entirely satisfied with the paper, it believed that its being forwarded to the GNG meant nothing more, nor less, than to comply with what, in its understanding, was an agreement that nobody should repudiate any Chairman's text or profile. It had adhered to this agreement even in cases in which it really would have preferred not to. It welcomed the fact that other delegations were able to do the same. The Acting Chairman's task had been very difficult. Virtually all participants had complained about a lack of balance in his paper. This meant that there had to be, somewhere, a kind of overall balance and that the paper had not failed in this respect. It hoped that the new version would stick to this and not fall short of this.

19. The representative of Japan stated his delegation's appreciation for the efforts made by the Chairman. However, the text, in his delegation's view, had some fundamental problems. While several important points which his delegation had proposed were included, at least as headings of issues in the text, there seemed to be many exceptions to rules which could be big loopholes in disciplines. It believed many improvements concerning the contents of these disciplines were needed. Some other constructive suggestions by his delegation had been deleted from the text. Such proposals, however, should be incorporated into the revised text because they were supported by many delegations and would contribute to an improvement of the present Code. With respect to so-called new areas, particularly recurrent and repeated dumping, his delegation had very serious concerns about an inclusion of a certain delegation's specific proposals in the text. Discussions held relating to these issues had not convinced it of the necessity of their inclusion. To the contrary, many delegations had expressed serious concerns that the proposed anti-circumvention rules would seriously distort free trade and international investment. It was difficult to see even a slight degree of consensus on this matter. For these reasons, his delegation had thought it inappropriate to use the Chairman's text as a basis for negotiations, and had preferred that it not be transmitted to the GNG. However, in a spirit of compromise and co-operation, it was ready to accept the proposal made. It strongly hoped discussions would be conducted constructively and that the revised text would reflect the true picture of the discussions.

20. The representative of Korea stated that while his delegation appreciated the Acting Chairman's efforts, it also considered the text to be an unbalanced one. In particular, it was concerned about the provisions of Articles 10 and 12 concerning anti-circumvention measures and repeat dumping. While it was willing to discuss genuine circumvention issues it felt that issues such as recurrent injurious dumping and repeat dumping should not be incorporated into the text for the reason that such provisions did not fall within the purview of GATT Article VI. It also had reservations on the extension of the definition of "like product". Therefore, it hoped the Acting Chairman would put forward a new text as soon as possible that would take account of the serious concerns expressed by many countries so far.

21. The representative of Finland, speaking on behalf of the Nordic countries, expressed their appreciation of the efforts of the Acting Chairman and of the Chairman to proceed as had been agreed by the TNC to have profiles for the next TNC meeting. The Nordic countries were not entirely satisfied with the paper as presented but took a pragmatic approach. They hoped that the continued negotiations provided for would lead to a profile that would form the basis for negotiations that could be accepted by the participants. They welcomed that a compromise had been found for further negotiations in order to achieve the goals of improving and clarifying rules and disciplines.

22. The representative of India stated that while his delegation agreed with the suggestion of the manner in which information about developments and progress in the discussions be sent to the GNG and the TNC, it had serious concerns and difficulty with some of the issues contained in the draft text prepared. This document had incorporated all the far-reaching proposals from one participant virtually in their entirety which tended to make the text an unbalanced one. What was even more disturbing was that although serious concerns had been expressed on many elements of this proposal in discussions in the Informal Group, these had also been incorporated. Like a number of other participants, his delegation had expressed willingness to constructively participate in finding solutions to any real problems of genuine circumvention being experienced in a manner which was consistent with the principles of the General Agreement and the Code. Such a solution should be balanced and fully preserve the interests both of exporters and importers. His delegation was also concerned about attempts to increase the scope of anti-dumping action by expanding the definition of like product. It recognized that changes and improvements had been made in certain parts of the text relating to determination of dumping and determination of injury, in addition to some other areas. In many cases, however, the formulation was rather weak and should be considerably strengthened and made more definitive. It looked forward to receiving the revised text at any early stage so that progress in the negotiations could be expedited.

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

23. It was agreed to hold the next meetings on 17-18 September 1990, and in the week of 15 October 1990.

24. The Group noted that further informal meetings would be arranged as follows:

- Anti-Dumping	31 July - 2 August 1990
- Government Procurement	1 August 1990
- Import Licensing Procedures	4 September 1990
- Technical Barriers to Trade	18-20 September 1990
- Customs Valuation	15-16 October 1990