

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG12/19
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Group of Negotiations on Goods (GATT)
Negotiating Group on Trade-Related
Investment Measures

MEETING OF 12-13 JULY 1990

Note by the Secretariat

1. The Group held its nineteenth meeting on 12-13 July 1990 under the Chairmanship of Ambassador T. Kobayashi. The agenda contained in GATT/AIR/3041 was adopted.
2. The Chairman announced that the representative of Sri Lanka had expressed his government's wish to be added to the list of sponsors of MTN.GNG/NG12/W/26.
3. The Chairman circulated a paper which, he said, he intended to submit to the GNG meeting on 23 July as his Report on the Status of Work in the Negotiating Group. He described the contents of the cover note to that Report. He emphasized that the "A" text as a whole remained in square brackets and that further opportunities would be given to participants to clarify and elaborate their positions with respect to the elements it contained. He asked for comments on the paper, and said that, depending upon the nature of those comments, he would take them into account by reflecting them in the text of the paper itself or by referring to them in the cover note. He said that he intended himself to add a footnote to the word "Agreement" in paragraph A2 as follows:

Use of the term Agreement does not prejudice, in any way, whatever particular legal form may eventually prove to be most suitable.
4. The representative of the United States suggested for the Chairman's consideration the inclusion of the words "or manufacture" in paragraphs A6(a) and A9(d) of the paper.
5. The representative of Uruguay said his delegation wished attention to be drawn to Part I:B(iii) of the Punta del Este Declaration, since various directions for the negotiations were signalled in the Chairman's paper and it was not yet clear which of them the Group would take.

6. The representative of Australia said that an important element of her delegation's position was the need for investment measures to be assessed in the context of their purposes and the policies that surrounded them. An investment measure could have different effects under different conditions and could result in either a net increase in protection, particularly where it was used to maintain an inefficient industry, or a net decrease in protection where it was used as a tool for industrial restructuring. That was recognized in other areas of the negotiations, such as subsidies, and her delegation would be seeking recognition in the disciplines being contemplated for TRIMs that investment measures could be used for structural adjustment purposes. She therefore suggested that the following paragraph be reflected in the "A" text:

Contracting Parties shall also be able to introduce new, or maintain existing, measure(s) provided it can be demonstrated to the TRIMs Committee that such measure(s) facilitate positive structural adjustment and that the overall effect of such measure(s) taken in combination with other related policy measures has the effect of contributing to a greater liberalization of the industry and/or lower overall industry assistance.

7. She added that her delegation did not feel comfortable with the direction taken in the Chairman's Report, and it did not believe that the negotiating task would be made easier by providing three alternative and conflicting draft texts. The incorporation of texts by the United States and a group of developing countries had served only to highlight the two negotiating extremes; neither of those texts reflected her delegation's position. Her delegation had never accepted the approach of categorizing particular TRIMs as inherently trade distorting and therefore subject to prohibition. However, while opposing prohibition and agreeing with the view of the majority of countries that the focus of negotiations should be on the adverse trade effects of investment measures, her delegation did not subscribe to the more extreme views put forward in the developing countries' text, for example that TRIMs were both an appropriate means to counteract trade distorting practices and a valuable general tool in promoting economic development.

8. The incidence of various types of trade-distorting investment measures and investment-distorting trade measures varied across countries and those different measures could have similar trade distortive effects. Her delegation was concerned that in order for Ministers to take a balanced view of the extent to which such trade distortions had been satisfactorily addressed across the board in the Uruguay Round, the results from several Negotiating Groups (Subsidies, Safeguards, NTMs and TRIMs) would need to be assessed together. There was, therefore, a need for results in such areas to be consistent and capable of being considered by Ministers at the end of the Round in the context of a comprehensive and coherent overall package.

9. On that basis, her delegation saw the following as the key elements of its approach to the TRIMs negotiations: (i) GATT disciplines should be made fully applicable to all potentially trade-distorting investment measures and should not involve a differentiated approach aimed at singling

out some investment measures for special treatment; (ii) investment measures should be assessed in the context of their purpose and the policies surrounding them. For example, the same investment measure could have different effects under different conditions by resulting in either a net increase or decrease in protection; (iii) prohibition of a few investment measures would likely lead to their substitution by other, possibly less transparent measures. In practice, in the view of her delegation, it would be relatively easy to redesign a particular investment measure or substitute alternative investment measures to bring the measure outside the scope of any prohibition provision but without significantly altering the basic economic and trade impact; (iv) there was a range of other measures (pertaining to both trade and investment) which had similarly distortive effects on trade and were of direct concern to Australia, but which her delegation did not feel confident would be addressed adequately in the Uruguay Round.

10. The negotiating process beyond the July meeting should be made more manageable and productive through concentrating on exploring the options contained in the "A" text of the Chairman's Report. That text met some of her delegation's concerns as it selectively incorporated some important language, albeit in square-bracketed options, which had moved it closer to reflecting her delegation's views that disciplines in this area should be effects-oriented and determined on a case-by-case basis. However, the text contained many options which her delegation could not accept in the outcome from negotiations. It represented a snapshot of the range of views in the Group and indicated the extent of disagreement over the best approach to disciplines in this area. Her delegation believed that for there to be a positive outcome by the end of the year, the negotiating effort after the summer would have to be made at both ends of the spectrum of views on TRIMs to reach a compromise which was capable of effectively disciplining the adverse effects of these measures in a way which was realistic, fair, consistent with disciplines applying to other trade distorting measures, and which maintained a balance of rights and obligations. Her delegation was prepared to work with the Chairman and other participants to that end.

11. The representative of South Africa said that his authorities shared very largely the views expressed by the representative of Australia.

12. The Chairman said that he would transmit his Report to the GNG.

13. The Chairman announced that the next meeting of the Group was scheduled tentatively for the week of 10-14 September. He suggested that the Group concentrate its efforts at that meeting on three issues:

- The operation of GATT Articles related to the trade restrictive and distorting effects of investment measures (paragraphs A3-12, B7-8, and C3-4).
- the specific criteria which should be used to determine "trade restricting and distorting effects" of TRIMs (paragraphs A11 and A13, B15 and C5).
- transparency provisions (paragraphs A25-32, B22-26, and C9-11).