

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG12/21
17 October 1990

Special Distribution

Group of Negotiations on Goods (GATT)

Negotiating Group on Trade-Related
Investment Measures

MEETING OF 8-12 OCTOBER 1990

Note by the Secretariat

1. The Group held its twenty-first meeting on 8-12 October 1990 under the Chairmanship of Ambassador T. Kobayashi. The agenda contained in GATT/AIR/3103 was adopted.

Agenda Item A

2. The Chairman said that it was his intention to continue informal consultations with interested participants on the basis of the informal working paper which he had distributed after the last meeting (ID Number 2219) and of NG12/W/27. He reminded participants that the Chairman of the TNC, in his summing up in July, had stressed the urgent need for the Group to settle on a single negotiating text. He invited comments under this Agenda Item.

3. The representative of Egypt, speaking on behalf of the delegations sponsoring NG12/W/26, expressed serious concern and disappointment that the Chairman's informal working paper did not incorporate the "C" text, which had been included in NG12/W/27. He said that during the formal and informal discussions held at the last meeting, many of the delegations sponsoring NG12/W/26 had emphasized that the "C" text should remain a part of any negotiating paper produced by the Chairman, since there was a fundamental divergence between the approach adopted in the "A" text, which aimed at disciplining and even prohibiting a number of investment measures, and the approach adopted in the "C" text, which sought to deal with the direct and significant adverse trade effects of investment measures, if any, on a case-by-case basis. The Group, which had been mandated to deal with only adverse effects of investment measures, should concentrate its efforts on that approach. He said that investment measures were employed by countries, particularly developing countries, as crucial policy instruments for promoting socio-economic growth and development, and that it would not be appropriate to prohibit or discipline them on a mere presumption that they caused adverse trade effects in all cases and under all circumstances. He urged the Chairman to incorporate the "C" text in the informal working paper so as to progress the negotiations in a meaningful manner with the participation of all interested delegations.

4. The representative of Nigeria associated his delegation with the statement made by the representative of Egypt. He said that it had become necessary for his delegation to restate that in any attempt to arrive at an

GATT SECRETARIAT

UR-90-0602

agreement on TRIMs, the sovereign rights of nations to formulate and regulate their investment régimes in line with the domestic priorities must be recognized. Any situation which compromised that basic principle would violate national sovereignty and be a barrier to development for a developing country such as Nigeria, and to that extent was unacceptable. He said that investment measures must not be looked at as just an attempt to increase imports or exports; the primary reason for such measures was economic development, enhancement of social services and maintenance of national security and sovereignty. Serious efforts should therefore be made to address issues addressed in the "C" text.

5. The representative of India associated his delegation with the statement made by the representative of Egypt. He thanked the Chairman for clarifying the point that NG12/W/27 continued to be an active part of the Group's negotiating documentation but urged that, in the interest of completeness and comprehensiveness, any paper that was to be used as a basis for continuing work forward should contain the "C" text. He said that there were many documents, submissions or proposals which had been put before the Negotiating Group, and that they all continued to form an active part of the Group's negotiating documentation. His delegation urged that any paper on the basis of which the Group started its future work, or which could be taken as a negotiating basis, should include the "C" text which had been put forward by a large number of delegations in the Group.

6. The representative of the United States said that his delegation was flexible with regard to the way that the Chairman chose to prepare the Group's documentation in the interests of progress in the Group, but requested that the "B" and the "C" texts be treated in the same manner in that documentation.

7. The Chairman took note of the statements made.

8. Following a series of informal consultations with interested participants in the Group, the Chairman announced that the consultations had permitted him to prepare a revision of his informal working paper. He distributed copies of that paper (ID Number 2474), along with copies of NG12/W/24 and W/26 containing submissions by the United States and by a group of developing countries that had formed the basis in NG12/W/27 of the "B" and the "C" texts, respectively. He explained that, without wanting to prejudge the legal form of the final outcome of the negotiations, he had decided to present his revised informal working paper in the form of a CONTRACTING PARTIES' Decision which he felt was more appropriate at this stage of the negotiations; consequently, he had felt it would be more useful for participants to be able to review alongside his revised informal working paper the "B" and the "C" texts in the original form that they had been submitted to the Group. He added that he was redistributing copies of NG12/W/24 and W/26 in response to requests by the delegations responsible for preparing them, and he emphasized that he considered those two documents, along with his own revised informal working paper, to be essential elements of the negotiating documentation at the next meeting.

9. The representative of Colombia thanked the Chairman for his efforts to come up with a basic document which would reflect basic positions and options in the Group and that could be used to move towards a consensus among participants, but said that his delegation tended to think that in spite of those efforts, there was still no sign of agreement on the substance and form of such a document. His delegation noted, however, that realism seemed to predominate here with a document which would be more concise and which all participants would be able to agree upon for this final stage of the Uruguay Round.

10. The representative of India said that his delegation was glad to note that along with the Chairman's revised informal working paper, copies of NG12/W/24 and W/26 had been distributed. His delegation had not had time to study the Chairman's revised informal working paper, but he said that since it presumably represented only an updated version of the "A" text, he considered that he would not be off the mark in presuming that the paper's basic premises and general direction had remained unaltered. He believed, therefore, that the following observations would still be pertinent since they were based on his delegation's perceptions arising from the trend of discussions that had been held in past weeks. He said that his delegation would once again like to emphasize that the "A" text, even in its subsequent updated versions, failed to reflect the essential elements of his delegation's position and it certainly did not bring out the fundamental differences in approach of participants. While his delegation appreciated the Chairman's efforts to synthesize the different texts, it was firmly of the view that the objective of preparing a single text, which seemed to be the direction in which the Chairman's efforts were being channelled, while no doubt desirable, should not be achieved at the cost of obscuring the fundamental differences in stance that had been adopted.

11. To illustrate the point, he said that including a reference in square brackets to the effect-oriented approach in a few paragraphs would, in the view of his delegation, not only fail to bring out the full thrust of his delegation's stance but would conceal it in the "A" text, particularly considering that many paragraphs and sometimes even full sections of the Chairman's informal working paper were irrelevant to that stance. His delegation therefore felt that the integrity of the "C" text had to be preserved in any new version of the paper that the Group might produce, since otherwise the Ministerial mandate to address only the adverse and distortive effects of investment measures might be lost sight of.

12. He said that his delegation had been participating, it hoped constructively, in the informal discussions of the "A" text and commenting on portions of it so as to highlight its fundamental difference of approach, but that could not be construed to mean his delegation's acceptance of, or a consensus for, the text as a whole. What was common to the different versions of the "A" text that had emerged, even after refinements in the light of the discussions that had been held, was a strong assertion in favour of disciplines, including prohibition, of many TRIMs. References to the effect-oriented approach were tucked away in square brackets in a few places. However, many delegations did not subscribe to the approach of discipline or prohibition, and his delegation

was of the view that even in its updated form the "A" text was one-sided and not a balanced presentation. His delegation strongly urged, therefore, that these observations be kept in mind in the Group's subsequent deliberations and that the integrity and basic thrust of the "C" text, if not the text itself, should be preserved. He added that the distribution of NG12/W/24 and W/26 along with the Chairman's revised informal working paper might not lead to any fruitful result if ultimately the Group was working towards a single paper which obscured the basic stand of his delegation along with that of many others who were supporting it.

13. He went on to say that his delegation had not asked for the distribution of NG12/W/26, but rather had requested that the Chairman incorporate it into his own informal working paper. His delegation understood now that the Chairman's revised informal working paper was the only paper on the table. However, that paper did not reflect the effect-oriented approach and it still continued to propose the prohibition of a large number of measures. A large number of developing countries had taken the position that the Group should abide by the mandate of addressing the adverse effects of investment measures and not deal with the measures themselves. Also, a large number of delegations had expressed their strong opposition to prohibiting measures on mere unsubstantiated presumption that they might be causing adverse effects under all circumstances. Since the effect-oriented approach was not reflected in the Chairman's revised informal working paper, and his delegation did not feel that the recirculation of NG12/W/26 made any difference in any way, his delegation felt that for the next meeting the Chairman should incorporate the effect-oriented approach in any informal working paper which would come before the Group. Otherwise, his delegation would consider the paper to be unbalanced, unobjective and one-sided and it would have great difficulty in pursuing discussions on the basis of it.

14. The representative of Egypt said that after reading quickly through the Chairman's revised informal working paper he had to state that his delegation was very much concerned that the effect-oriented approach was not reflected in an adequate manner and that it considered the revised paper was not balanced. His delegation had great difficulties in considering the paper as a basis for discussions at the Group's next meeting. He said that the distribution of NG12/W/24 and W/26 did not mean that the revised Chairman's paper was comprehensive; W/26 was not reflected in an adequate manner in that paper, and some issues contained in W/26 were not even referred to at all. He asked the Chairman whether he intended to do his best to reflect the effect-oriented approach in the Chairman's paper in a more adequate manner before the next meeting, and whether the Chairman considered that W/26 was an integral part of the revised paper that he had just distributed.

15. The representative of the United States said that he would like an opportunity to read the Chairman's revised paper before commenting on it, and to read it in a spirit of flexibility and in the recognition that this was a negotiation and that the paper presented by his delegation (W/24) could not be the only basis for negotiation in a large Group such as this. He expressed concern about the objections of another participant to the

inclusion of an option in the Chairman's revised informal working paper that would directly discipline the use of TRIMs, since he said that option was strongly supported by many delegations. He added that on a very cursory reading of the paper, it would appear that the effects-oriented approach was covered.

16. The representative of Morocco said his delegation was grateful for the Chairman's efforts to come up with a result which was concrete and substantial. He had very precise instructions and in the course of future consultations to arrive at a consensus text, he would have a good deal of encouragement to give the Chairman but also some concern to express.

17. The representative of Uruguay said that TRIMs could be looked at from the point of view of both governments and investors. Investors subject to TRIMs and governments applying TRIMs were maintaining a system of relative harmony, and the exercise of disciplining the adverse trade effects of TRIMs in GATT could cause an imbalance in trade. The negative effects of TRIMs on trade were the responsibility of governments and they had to bring them into line with their international obligations. However, his delegation was concerned that if an agreement such as that contained in the Chairman's revised paper were to be applied, there would have to be changes in many countries' legal frameworks for conducting negotiations between investors and governments. Such changes could imply a renegotiation of private or public contracts on which the establishment of existing investors was based. The approach adopted in the Chairman's paper could create an obligation to prohibit the application of some TRIMs because of their trade effects, and that could cause instability for established investors and for the investment climate in general. His delegation wished to express its concern over such an approach.

18. The representative of Australia said that his delegation had strongly recommended that the Chairman concentrate on just the one text and narrow the process down. It had done this in part because it saw its own position falling somewhere between the extremes of NG12/W/24 and W/26, and it was, therefore, one of those delegations which had relied on the Chairman to ensure that its position was adequately reflected in the course of the negotiations. He hoped that at the next meeting the Group could focus just on the Chairman's paper on the confident assumption that his delegation's views were adequately reflected in that paper.

19. The Chairman took note of the statements made, and reiterated that he considered NG12/W/24 and W/26 to be essential elements of the negotiating documentation for the Group's next meeting, along with his revised informal working paper.

Other Business

20. The Chairman announced that the Group's next meeting would take place on 22-26 October. During the course of that week, he said that he intended to hold a series of informal consultations in order to arrive, by 26 October, at what he hoped would be a single, agreed text for submission to the Ministers in Brussels.