

MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

RESTRICTED

MTN.GNG/NG8/21
29 October 1990

Special Distribution

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

MEETING OF 18 OCTOBER 1990

1. The meeting was chaired by Ambassador John M. Weekes (Canada).

A. The Agreement on Implementation and Application of Article VII
(Customs Valuation Code)

2. The Chairman stated that the Informal Group at the level of customs experts had met again on 15-17 October 1990, as a result of which document MTN.GNG/NG8/W/83/Add.4/Rev.1 was available. Recalling its content, he further stated that he had been informed that this ad referendum agreement was subject to the understanding that its adoption should make it possible for a number of developing countries to accede to the Agreement. Proposing that the NG8 took note of the results presented, he thanked the Informal Group for the work it had done and proposed that formal transmission to the GNG take place at the next meeting, when the text would be available in all three GATT languages.

3. One delegation stated that it should be made clear in the Chairman's report that it was the understanding of the Negotiating Group that the above would become effective on the basis that at the end of the negotiations as a whole a significant number of developing countries felt able to commit themselves to signing the Agreement.

4. Supporting this view, another delegation stated that it should be borne in mind that the outcome that was being contemplated had been prepared with the sole intention of increasing participation in the Agreement. The Parties to the Agreement had been willing to move from their positions on the understanding that this would lead to increased membership. Bearing in mind that the Round was a single undertaking and that requests had been made in other fora for more governments to adhere to the Agreement, they hoped that, through the results achieved, one would see a positive response to those requests.

5. One delegation stated that it was true that there had been an informal understanding that the deliberations that had led to this text were supposed to assist certain developing countries that, while having expressed the desire to accede to the Agreement, had also expressed certain concerns, the solution to which could be found by way of a decision. However, this understanding was not to form part of the statement.

6. The Chairman of the Informal Group noted that the ad referendum agreement was subject to the understanding that its adoption should make it possible for a number of developing countries to accede to the Agreement.

Views had been expressed as to whether this could be done before the final decision at the Ministerial meeting. He noted that it might be difficult to envisage that decisions by a number of governments would be taken in such a short time. He suggested that the NG8 allow for informal consultations with interested delegations, to arrive at a language that might reflect the two points of view.

7. One delegation stated that one of these views appeared to prejudge the decision of those contracting parties that were presently not members of the Agreement.

8. Another delegation stated that as Party to the Agreement it would welcome a greater number of developing countries adhering to it. It did not think, however, that one should make the results of the Informal Group conditional upon such acceptance.

9. The delegation referred to in paragraph 3 above reiterated that the discussions had been held against the clear background that any work done in this area would lead to a situation where developing countries would be able to indicate more clearly their intentions regarding acceptance of the Agreement. Noting that it had not used the word "conditional", it argued that wording of the nature suggested had to be included in acknowledgement of the background for the work undertaken.

10. The Chairman suggested that further consultations be held on the exact form the Chairman's statement should take. While not agreeing to the text until its next meeting, the Negotiating Group's understanding was, however, that the technical work of drafting amendments to the Agreement had been completed and that the deadline imposed by the TNC for completing a text had been met.

11. The Group so agreed.

12. The Chairman of the Informal Group added that one might bear in mind that the document presented contained three texts; the one dealing with burden of proof reflected points raised by Parties to the Agreement. The two other texts, dealing with minimum values and importations by sole agents, sole distributors and sole concessionnaires, were of particular interest to non-Parties.

B. The Agreement on Import Licensing Procedures

13. The Chairman stated that the Informal Group set up to deal with this Agreement had held two more meetings since the last meeting of the NG8, and had presented the text contained in MTN.GNG/NG8/W/83/Add.1/Rev.3.

14. One delegation stated that during the discussions in the NG8 and in the Informal Group, it had expressed the view that the sole purpose of this Agreement was to ensure that import licensing procedures did not have additional trade restrictive effects beyond measures they were designed to implement. The same objectives were equally applicable for export licensing procedures also. While recognizing that contracting parties might have legitimate reasons for imposing export restrictions, it was necessary to ensure that the licensing procedures themselves were trade neutral. Moreover, recognizing that Article XI of the GATT treated import

and export licensing restrictions in a balanced way and in order to ensure transparency and restore balance it had proposed that the Agreement on Import Licensing Procedures be extended to cover export licensing procedures. This proposal had been discussed briefly in the Informal Group where a number of delegations had said that the proposal had been tabled belatedly. Although it did not share this view, given that a similar proposal had been before the NG8 for nearly three years, it had recognized this point and had proposed that a decision be taken by the NG8 to recommend to the TNC for setting up a working party to address this issue within a limited time schedule in the work programme for the post Uruguay Round period. Even this proposal had not been agreed to. Since it considered this issue to be important and felt it should be addressed appropriately, it had placed a reserve on the matter.

15. One delegation stated that it regretted that the delegation concerned felt the need to place a reserve on the agreement reached on import licensing procedures, into which much work had gone. While it understood the desire to keep the issue of export licensing on the table it did not see it as helpful to make such a linkage. The proposal by another delegation which had been referred to had occurred on the checklist of issues a long time ago, but - as repeatedly stated in NG8 meetings - it had not been possible to evaluate that issue before it was presented in more detail. Eventually, this item on the checklist had not been pursued to become a proposal. Having itself experience in the complexities of implementing export licensing, it considered it necessary, before entering into an obligation, to know exactly what was being contemplated. It would not suggest an opinion as to whether it was reasonable or not to request the establishment of a working party, but one of the reasons why it had not been in a position to consider that request was that it had been made only on 18 October 1990.

16. The other delegation stated that while it did not have the experience of administering export licensing régimes itself, it had had experience with export licensing régimes being implemented by other governments. This was the reason why it wanted the procedures for such régimes to be covered by this Agreement, so as to ensure also that export licensing procedures were in no way more restrictive than the measures they were designed to implement. The suggestion was not to discuss the underlying measures but the procedures only. In its view the proposal tabled three years ago by another delegation as well as its own proposal, was a simple one, i.e. to extend the current Agreement to cover export licensing procedures also. The reasons why it had not requested a working party be set up to examine and address this issue earlier, was that it had felt confident that the Group would be able to address this issue during the course of the Uruguay Round. Since it had become clear to it only on the morning of 18 October 1990 that, the Informal Group would not be able to suitably address the issue given the time schedule it had been able to make a request for setting up a working party only on that date. In response to a question from the Chairman as to whether it was putting a reserve on the actual text presented, it noted that what was being discussed was the work accomplished by the Informal Group on the Agreement on Import Licensing Procedures as well as the proposal to extend this Agreement to export licensing procedures. Its reserve, therefore, included both these aspects.

17. One delegation sought clarification as to what would be the conditions that had to be fulfilled for the delegation concerned to be able to lift its reserve, i.e. whether a recommendation to set up a working party would suffice or whether such a body had actually to be set up. The Chairman stated that the authority to actually set up a working party was not vested in the Negotiating Group. The delegation concerned added that, given the importance it attached to the issue of export licensing procedures, it wanted that it should be addressed in an appropriate manner. It had not mentioned any other conditions.

18. The Chairman stated that the formal transmission to the GNG of the revised text of this Agreement would have to take place at the next meeting, when it would be available in the three official GATT languages. This should leave time to discuss, as necessary, the matter raised by the delegation referred to in paragraph 14 above with respect to the issue of export licensing procedures. As he understood it, however, the drafting work on amendments to the Agreement had been completed insofar as the Uruguay Round was concerned, and the delegations which had participated in the work felt that this was the final product. Therefore, the negotiators had met the deadline established by the TNC.

19. The Group so agreed.

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

20. The Chairman stated that intensive informal consultations were being held under the chairmanship of Mr. C.R. Carlisle and that every effort would be made to bring these to mutually satisfactory solutions on the outstanding issues by 26 October 1990, the deadline adopted for the completion of this work at the Informal Meeting of the TNC held on 3 October 1990. At the Negotiating Group's next meeting it should be possible to adopt the results of the work done by the Informal Group.

D. The Agreement on Government Procurement

21. The Chairman recalled the Chairman's statement at the previous meeting, to the effect that no progress had been made on any of the issues referred to in the text transmitted to the GNG in July 1990 (MTN.GNG/NG8/W/83/Add.2), and that attendance had been very small at an informal meeting which had been held on 1 August 1990. He had been informed that following consultations with delegations which had put forward proposals relating to (i) a possible "transparency and predictability mechanism", and (ii) "facilitation of further membership", it had been decided not to hold any further informal meetings on government procurement prior to this meeting. It would appear, therefore, that the proposals made in the NG8 with regard to this Agreement were not being further pursued by their proponents.

22. The Group so agreed.

23. One delegation stated that his Government had submitted amendment proposals in January 1990 (MTN.GNG/NG8/W/90), with the aim of facilitating accession of developing countries. While regretting that little interest had been shown by other participants, it had concluded that, in the circumstances, it was not desirable to pursue its proposal further in the Uruguay Round. However, it believed that the basic objective of the provisions in the current Agreement for preferential treatment of developing countries, which was also the basic objective of its own proposal, should be implemented in a more workable manner, to expand the membership of developing countries. It hoped that the gradual accession of these countries would continue to be discussed in the Committee on Government Procurement at a later stage.

E. The Agreement on Technical Barriers to Trade

24. The Chairman stated that the Informal Group had met on 18-20 September, 8-10 October and 17-18 October 1990. A revised version of the draft text (MTN.GNG/NG8/W/83/Add.3/Rev.1) incorporated the result of the consultations held. It was his understanding that most of the issues had now been solved and that the text represented a substantive improvement, clarification and expansion of the Agreement. However, the following points required further attention: (i) Articles 3 and 7 concerning the obligations of Parties with respect to the activities of local government bodies, on which difference of substance remained, and on which further examination was needed; (ii) Article 14 on dispute settlement procedures, which would need to be reconsidered in the light of the work in the Negotiating Group on Dispute Settlement; (iii) the relation of the instrument to the outcome of the negotiations on sanitary and phytosanitary measures under the Negotiating Group on Agriculture, which would also need to be addressed subsequently; and (iv) Article 15 concerning the final provisions and the form of the final instrument, which would need to be reverted to at an appropriate time.

25. The Secretary General of the International Standards Organization made a statement on behalf of this organization, as well as of the International Electrotechnical Commission (both observers), in which he submitted a position that, in the view of the members, officers and presidents of the two organizations, there was a fundamental principle with respect to the application of a code of good practice for the voluntary standardization community¹ which they requested be taken into account in the GATT. While emphasizing and exemplifying that the ISO and the IEC had an objective identical to that of the GATT in working towards the improvement of the international trading system, and while noting that the code of good practice as formulated corresponded in a general way to common practice within the ISO and IEC community, the ISO/IEC felt that they should have a part in defining what was good practice for their own profession. The fundamental principle applying to the voluntary standardization community was that all affected interests should be given full opportunity to participate in the development of consensus agreements that they would be expected to adhere to. This principle was very important and greatly increased the probability of voluntary adoption of resulting agreements.

¹Reference Annex 3 of MTN.GNG/NG8/W/83/Add.3/Rev.1

They hoped a way could be found so that this could be applied to an eventual GATT code of good practice. The ISO and IEC Governing Bodies felt themselves fully competent to organize and achieve, as a matter of priority, a code of good practice within the framework of the GATT intent. Distributing to the Negotiating Group the formal position he had been requested to deliver on behalf of the ISO/IEC Presidence Group on Policy and Organization, he noted that they agreed that the time was right to develop an explicit worldwide consensus on how standardization work at national and regional levels could best be conducted to minimize potential barriers to trade, and to promote marketplace utilization of international standards and standardization work, to the maximum practical extent. As far as the code would eventually regulate the work of standardization bodies, they believed that its preparation should be undertaken as an activity of ISO and IEC together with their national members, and in consultation with governments. They suggested that consideration be given to supporting the work of ISO and IEC to develop a worldwide consensus on a code of good practice, based on what they would understand to be the essential objectives already identified within the framework of the GATT. They believed those fell in the three major categories: (i) procedural transparency, having to do with the flow of information about ongoing standardization work throughout the total system; (ii) responses to comments, on which they had experience between the international, regional and national levels (ref. ISO/CEN and ISO/ILAC); and (iii) the commitment to international standards and standardization work, which was a very important element to pursue. They argued that to the maximum extent possible within the framework of exercising public policy prerogatives, the standardizing bodies themselves should be involved in the preparation of what was to be defined as their "good practice". The ISO and IEC believed they represented a very broad constituency of all interested in voluntary standardization - government, industry, academia, consumer, labour groups, etc. Also, ISO/IEC members represented all voluntary standardization structures in the world, some of which being entirely governmental, some entirely private, and some being in between. Thus, their memberships were uniquely well positioned to understand and provide a continuing evolution of a code, in response to global trading needs. Their structures were already in place on a global level, to administer adherence to a code of good practice; the knowledge based in their system concerning the preparation, adoption and application of standards was unmatched anywhere. In addition, as the ISO/IEC would develop a code of good practice in a consensus way, they believed that the end result would not only apply to the GATT signatory countries, but also to about fifty other countries. In the view of ISO/IEC, the main point was that there was a great benefit to be achieved by involving the voluntary standards community itself in developing what would be seen as the code of good practice for the 90s. They hoped that the GATT negotiations could find a way to give that responsibility - through the ISO and the IEC - to the voluntary standards community. They recognized that the level of obligations of the Parties to the GATT Agreement, in ensuring such a code, and the instruments that those Parties would use to ensure themselves that results were forthcoming, were up to these Parties to decide on. What the ISO and the IEC offered and would encourage was to give the voluntary standards system every opportunity to define and perform in a way that could be called "good practice".

26. One spokesman welcomed the interest the ISO and the IEC showed in the work in the GATT and their willingness to work with a code of good practice to be incorporated in the Agreement on Technical Barriers to Trade. He agreed that the code developed in these negotiations on this point had been prepared in close co-operation with the ISO and IEC. He believed that it would take time for the ISO/IEC to prepare their code of good practice; therefore, the best partner for these organizations would continue to be the Committee on Technical Barriers to Trade. He was convinced that the Committee would welcome and carefully consider the ISO/IEC code once it was available. He understood the ISO/IEC considerations, as expressed, to mean that these organizations would be prepared to co-operate with the GATT in implementing the GATT code, as proposed in Annex 3 of the draft Agreement. The NG8 could only note and welcome the considerations stated, and refer the discussions of this issue and the further co-operation between ISO/IEC and the GATT to the Committee on Technical Barriers to Trade.

27. One delegation stated that a very good relationship had developed between ISO, IEC and the GATT and that both the ISO and IEC had contributed to shared objectives over the years. This was valuable and had encouraged delegations in the NG8 to give great consideration to the work of ISO and IEC and to ideas or suggestions from their side. ISO and IEC had been present in the negotiations and had had all opportunities for providing suggestions and it was grateful that they had done so. Noting that the proposal for a code of good practice had been tabled more than two years ago, it expressed surprise at a new approach being presented at such a late stage. The fact that standards could create obstacles to international trade was the reason why public authorities had taken their responsibilities in these matters in the framework of GATT, and had created the Agreement on Technical Barriers to Trade, which contained obligations for governments with regard to private bodies. The Punta del Este Declaration had called for a strengthening and expansion of this, and this had been done, as expressed in the code of good practice. Public authorities had to take care of international trade problems even if created by private bodies. What had been suggested was the minimum needed and he understood that the observers could agree that this corresponded in a general way to common practices. Negotiations had reached a consensus to which this delegation did not wish to revert. On the other hand, if the ISO and IEC could envisage to be more ambitious, on a private level, in respect to similar ideas, this could be interesting and would come in addition to the public authorities' initiative. This delegation hoped that one could count on the ISO's and IEC's continued positive contribution, for the implementation of the code of good practice.

28. One delegation stated that its interpretation was somewhat different from that expressed above. However, it was fully committed to the text developed. It was interesting to be presented with this new information, which should enhance and support the work which was close to being completed. A concern of this delegation had always been that there was a risk, as it related to the private bodies, that these would not be pleased that their governments were telling them to adhere to a prescribed code of good practice that they might more reasonably be able to achieve themselves. It was interested in preserving the close relationship that

had existed with the ISO and IEC and that had been the expectation in drafting the Code. It was also positive that the observers had not viewed this document as being inconsistent with their own objectives and principles; in no way should one attempt to stop the work that had been initiated recently in the ISO. It supported the idea to take a more deliberate and careful look at the outcome of their work at an appropriate time in the Committee on Technical Barriers to Trade. It was impressed by the ability of the ISO and other international organizations to act as quickly as they had done in response to the results of this Group, which reflected a careful balancing; it looked forward to a quick conclusion of their work.

29. One delegation thanked the ISO for the co-operation over many years. It was encouraged to see the ISO's interested in the implementation of the Agreement. Its country had a national standards system and its standardizing body was a member of the ISO and the IEC. This body would play a major rôle in the implementation of this Agreement and it looked forward to close co-operation between the Committee on Technical Barriers to Trade and the ISO/IEC, as well as its own body.

30. Thanking the Secretary General of the ISO for his contribution to the meeting, the Chairman suggested that the NG8 take note of the text in MTN.GNG/NG8/W/83/Add.3/Rev.1.

31. The Group so agreed.

F. Other business

32. The Group agreed to meet again on 29-30 October 1990.