

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG9/21
31 October 1990
Special Distribution

Group of Negotiations on Goods (GATT)
Negotiating Group on Safeguards

MEETING OF 26 OCTOBER 1990

Note by the Secretariat

1. The Negotiating Group on Safeguards met on 26 October 1990 under the chairmanship of Ambassador G. Maciel of Brazil.

I. Draft text of a comprehensive agreement

2. The Chairman recalled that he had circulated to the Group a draft text (Informal Note No. 2376 dated 3 October 1990) at the end of the previous meeting. He informed the Group that, using that note as a base, he had conducted intensive informal consultations from 22-25 October, the outcome of which was contained in MTN.GNG/NG9/W/25/Rev.3. It was his intention to circulate the text as a formal document after the Group's consideration of it at the present meeting.

3. As the cover note stated, the draft text represented the level of agreement that could be reached at this stage and the Negotiating Group would accept it as a working paper for the very final phase of the negotiations. It clearly stated that no part of the draft was necessarily accepted until the whole text was accepted, and that participants were free to present new suggestions and amendments. The Chairman said that it would be possible to incorporate in the text drafting proposals made at the present meeting, if there was consensus in the Group to adopt them. In the absence of a consensus, these proposals would be annexed to the note of this meeting to be prepared by the secretariat so that they could be taken up later on in the negotiations. After the Group's consideration of the draft text at the present meeting, he intended to forward it to the Chairman of the Trade Negotiations Committee as the basis for the final phase of negotiations.

4. Referring to the text itself, the Chairman said that the Group did not have any problems with the contents of the preamble. The legal form of the agreement, i.e. whether it would be a formal agreement, a protocol of interpretation or a decision of the CONTRACTING PARTIES, was to be decided at a later stage. In his view, it could take the form of a decision of the CONTRACTING PARTIES which would not amend Article XIX or any other Article

of the General Agreement. The square-bracketed parts of footnote 1 were alternative texts which had not been thoroughly discussed. The square brackets in paragraphs 5, [8] and [10a] indicated texts with substantial disagreements, while those in sub-paragraph 6(b) denoted texts on which agreement was lacking. The bracketed parts of the text in paragraph 8 indicated the lack of agreement on related provisions in paragraphs 15 and 16. The square brackets in paragraphs 9, 11, 12, 13, 23 and 25 were all related to periods of time on which agreement was lacking. These paragraphs, therefore, needed to be examined in conjunction with one another. There was no consensus on the provisions relating to developing countries. This explained why the entire Section V remained in square brackets. Paragraphs 24 and 25 were also in brackets as some representatives considered that the provisions therein were linked to bracketed parts of paragraphs 5, [8] and [10a]. The issues dealt with in these paragraphs required a more global solution of the problem. The Group did not have major problems with Sections VIII (Notification and Consultation), IX (Surveillance) or X (Dispute Settlement).

5. Many delegations said that they accepted the draft text before the Group as a basis for the final phase of negotiations. The draft, with square brackets highlighting the major issues, represented the level of agreement that could be reached at this stage. Although there were divergencies of view on a number of issues, they agreed that the text contained the seeds of a balanced agreement that would be acceptable to everyone.

6. Specific drafting amendments proposed by delegations at this meeting are annexed to this note. Proposals received from delegations subsequently are to be issued in the MTN.GNG/NG9/W/- series.¹

7. One representative explained the rationale behind his delegation's proposal relating to the suspension of counter-measures contained in paragraph 19 of the draft text. He said that his delegation, on the basis of its reading of the history of negotiations, had made the judgement that there would not be a consensus to introduce "selectivity" into the GATT in any form. However, this was not by itself a victory for the m.f.n. principle. If the safeguards agreement did nothing to change the status quo, Article XIX would effectively be a dead letter and countries would continue to resort to "grey-area" measures. It was necessary to work out another way of bringing the actual application of safeguards into line with the rules, without changing the rules to accommodate "selectivity". A way had therefore to be found of making it easier and more practical for countries to use the multilateral rules. Hence, the proposal contained in paragraph 19 to suspend retaliation for safeguard measures of a duration of less than three years was linked to the selective option contained in the

¹Proposals subsequently received from the United States are contained in MTN.GNG/NG9/W/31.

bracketed part of paragraph 5. This concession would make it possible for countries to use Article XIX rather than the "grey area". He said that the draft text, without the paragraphs relating to selectivity, established balanced conditions under which the major trading nations could actually live within the system. Proponents of "selectivity" should state whether they would agree to apply future safeguard measures consistently with this agreement and, if not, what particular features of the agreement would make it difficult for them to apply the rules, so that some other changes could be made. In his view, the provisions relating to "grey-area" measures in Section VII were too strict and needed to be brought into line with the basic political and economic realities. This Section needed to be revisited if those who had proposed a selective option were prepared to accept what was obvious and negotiate an m.f.n.-based safeguards agreement.

8. One representative referred to paragraphs 20-22 of the draft text and said that the interests of developing countries, especially those of small and less competitive ones, needed to be taken into account in any new safeguards agreement.

9. One representative said that it was important to reach a balance between the need for more discipline and transparency on the one hand and the need to solve real problems without unbearable costs on the other. In his view, "selectivity" did not belong to any such balance. While the provisions contained in Section VII dealing with "grey-area" measures could be modified so as to provide more flexibility, the Montreal Mid-Term Decision clearly called for the elimination of "grey-area" measures.

II. Other business

10. A great number of delegations expressed their appreciation of the way in which the Chairman had handled the work of the Negotiating Group. They said that he had conducted the negotiations with utmost competence, diligence, a high degree of patience and a sense of humour. They thanked him for the leadership provided to the Group during the past four years and said that the negotiations could not have made such progress without his able and competent guidance. The Chairman expressed his appreciation for the kind words and thanked all those who had been involved in the work of the Group for their cooperation.

ANNEX

Paragraph 2

Hong Kong - Fourth and fifth lines: Delete "absolute or relative to domestic production".

Pakistan - Sixth line: After "like", add "[and]".

Paragraph 4

Australia - Fifth line: Replace "200 days" by "90 days".
- Seventh line: Replace "should" by "shall".

Paragraph 8

Brazil - Fifth line: After the word "shall", insert "[and no tariff increases should]".

Paragraph 9

China - Add after the first sentence: "To ensure that the safeguard measures taken are temporary, the importing country which has taken safeguard measures shall undertake the obligation of taking appropriate domestic measures to facilitate adjustment of domestic industries."

Paragraph 12

India - Fifth line: Put "three years" within square brackets.

Section III

Australia - Insert the following as an alternative to the square-bracketed text: "The rights of participants under the Subsidies Code are not prejudged by this agreement."

Paragraph 19

Egypt - Put the entire text in square brackets.

Pakistan - Put "three years" in square brackets.

Australia - Add to the end of the paragraph: "This paragraph shall not apply in the case of provisional measures."