

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.TNC/W/69
26 February 1991

Special Distribution

Trade Negotiations Committee

PROGRAMME OF WORK

Proposal by the Chairman at Official Level

This note should be read in conjunction with the introductory remarks of the Chairman at official level at the meeting of the Trade Negotiations Committee on 26 February 1991, to be issued in the note on that meeting (MTN.TNC/19).

1. In his closing remarks at the Brussels Ministerial Meeting, Minister Gros Espiell requested me to pursue intensive consultations with the specific objective of achieving agreements in all the areas of the negotiating programme in which differences remain outstanding. These consultations will, he said, be based on document MTN.TNC/W/35/Rev.1, dated 3 December 1990, including the cover page which refers to the Surveillance Body and the communications which various participants sent to Brussels. He added that I would also take into account the considerable amount of work carried out at the Brussels meeting, although it did not commit any delegation.

AGRICULTURE

2. With respect to agriculture, my consultations confirm that participants agree to conduct negotiations to achieve specific binding commitments on each of the following areas: domestic support; market access; export competition; and to reach an agreement on sanitary and phytosanitary issues; and that technical work will begin immediately to facilitate these negotiations.

3. To assure progress in achieving the results I have just described, I can also confirm that participants are committed to pursuing consultations, as necessary, at senior policy-making levels to address outstanding aspects of the negotiation requiring such guidance.

4. All participants are committed to achieving reform of world agriculture trade through the framework approach set forth in the results on agriculture adopted by the Trade Negotiations Committee at its mid-term review as contained in document MTN/TNC/11.

5. I therefore propose as a tentative agenda for consultations, the following technical issues:
- (a) In the area of domestic support: a means of determining the policies that shall be excluded from the reduction commitment, the role and definition of an Aggregate Measurement of Support and equivalent commitments, a means of taking account of high levels of inflation faced by some participants, and the reinforcement of GATT rules and disciplines.
 - (b) In the area of market access: the modality and scope of tariffication, the modalities of a possible special safeguard for agriculture, the scope and modalities of implementation of a minimum access commitment, the treatment of existing tariffs, and the reinforcement of GATT rules and disciplines.
 - (c) In the area of export competition: a definition of export subsidies to be subject to the terms of the final agreement including the development of means to avoid the circumvention of commitments while maintaining adequate levels of food aid, and the reinforcement of GATT rules and disciplines.
 - (d) In the area of sanitary and phytosanitary measures, there is also scope for further refinement of a number of technical provisions and procedures.
 - (e) In each of these areas the particular concerns of developing countries, of net food importing developing countries, and those relating to food security will be examined.

TEXTILES AND CLOTHING

6. While much intensive work was done in Brussels, it is my understanding that the issues to be resolved in the area of textiles and clothing are essentially among those set out on page 239 of W/35/Rev.1 and in the text in the following pages of that document; that further work is to proceed within the framework established for the negotiations up to the end of the Brussels Meeting; that the work carried out at Brussels should be taken into account as appropriate.

7. Participants must now consider what work can usefully be undertaken at the present stage, recognizing, as I believe they must, that they need to begin by focusing on technical work in the first instance.

8. I suggest, therefore, that consultations should be held with a view to restarting work by reviewing the situation in the negotiations in this sector, so as to provide delegations with an opportunity to comment on the basis on which further work is to proceed on any technical aspects in relation to outstanding issues (e.g. annexes to the draft agreement), so that their results could be brought, at the appropriate time, into the process of substantive negotiations.

SERVICES

9. While much intensive work was done in Brussels it is my understanding that the issues to be settled in the area of services remain, in general, those set out on pages 328 to 382 of W/35/Rev.1.

10. I suggest that participants now make arrangements to restart negotiations on services. When doing so, I suggest that they ask themselves what can usefully be done at the present stage. In this respect, it would appear that there is agreement among participants to undertake work in three specific areas: the framework, initial commitments and sectoral annexes. My own suggestion is that consultations be held during which participants should first be given an opportunity (a) to take stock of the situation by assessing where we are in the negotiations on initial commitments, the framework text and on the annexes and (b) to explain how they see further developments in this work in terms of priorities and interrelationships.

11. I suggest that participants should also identify technical work that can be done in the coming weeks in each of the three main elements of the negotiations on services - commitments, framework and annexes. Such technical work might relate for example to the clarification and evaluation of offers and to the establishment of appropriate negotiating procedures, to further examination of arrangements and agreements of a general character for which exceptions from m.f.n. provisions might be sought, and to specific modalities for the application of m.f.n. in particular sectors.

RULE-MAKING

12. This heading deals with a number of negotiating areas, in particular: subsidies and countervailing duties, anti-dumping, safeguards, preshipment inspection, rules of origin, technical barriers to trade, import licensing procedures, customs valuation, government procurement and a number of specific GATT Articles. Issues in some of these areas are closely related to the main political problems facing the negotiations and in such cases political and technical questions overlap.

(a) Subsidies and countervailing duties

13. Pages 83 to 134 of MTN.TNC/W/35/Rev.1 contain a text on subsidies and countervailing duties and a commentary on that text which refers specifically to a number of communications from delegations. The issues that remain to be dealt with in this area are set out in that document.

14. I suggest that consultations be held during which participants should be invited to comment on the basis for their discussions and negotiations in this area, and on the way in which we should proceed. I would note that the commentary on page 83 of W/35/Rev.1 states that, while the text in that document requires a number of drafting changes, these can be done once

major political problems have been resolved. Until major political decisions are taken, I suggest that participants should focus on technical work. One example of an area on which technical work might be done is in the area of special and differential treatment for developing countries (Article 27 and Annex VIII of the draft on pages 118, 119, 133 and 134 of W/35/Rev.1).

(b) Anti-dumping

15. Participants will recall that MTN.TNC/W/35/Rev.1 does not contain a text on anti-dumping and this is therefore one area in which there is no basis for negotiations. The commentary on page 43 of that document merely listed out some (but not all) of the points on which basic differences continue to exist and stated that political decisions were needed to overcome these basic differences.

16. As in the discussions on other areas, I suggest that technical work should be restarted on anti-dumping and that participants first be given the opportunity of commenting on the basis of the discussions and negotiations in this area and on the way in which they should be tackled.

17. Participants will also, however, wish to identify those specific issues in this area which can usefully be discussed in the near future. In doing so, I expect that they will be taking up work carried out in Brussels.

(c) Safeguards

18. MTN.TNC/W/35/Rev.1 contains a detailed text on safeguards, which will be found on pages 183 to 192 of that document. The commentary on that text sets out the main points in that text that remained to be settled.

19. When consultations are held participants should be given an opportunity of commenting on where they stand now in the safeguards negotiations and where they should go from here, taking due account of work done in Brussels, as appropriate.

20. They will also consider whether there is any technical work we might usefully start on in this area. My own assessment of the situation is that negotiations are now faced with a number of major issues requiring substantive decisions and that, in this area, it is therefore unlikely that they will identify areas on which technical work is required or would be useful at the present stage.

(d) Preshipment Inspection

21. The text on preshipment inspection is reproduced on pages 31 to 42 of MTN.TNC/W/35/Rev.1. The commentary on page 30 of the document drew attention to the main decision that needed to be taken at the Brussels Meeting.

22. Substantial work appears to have been done in Brussels on this point.

23. When consultations are held participants should determine how far the progress made in Brussels should be confirmed. The legal form of the text will have to be examined but I suggest that this should be done, in this and in other areas, only at a later stage when discussions and negotiations on the Final Act are further advanced. Consultations have been going on between the International Chamber of Commerce and the International Federation of Inspection Agencies on whom we would be relying for the implementation of an important part of an agreement. In this area I suggest that a way be found of keeping them informed of any developments in the Uruguay Round which would affect their plans and that participants respond to the suggestions that ICC and IFIA have already made in this regard.

(e) Rules of Origin

24. The text on rules of origin is reproduced on pages 13 to 29 of MTN.TNC/W/35/Rev.1. The commentary on page 12 of the document drew attention to the issues on which an overall compromise needed to be found.

25. Here again, considerable work seems to have been done in Brussels. Participants should determine how far the progress made in Brussels should be confirmed.

26. The document recalls that the legal form of the text will have to be examined but I suggest that this be done, in this and other areas, only at a later stage when discussions and negotiations on the Final Act are further advanced.

(f) Technical barriers to trade

27. Pages 45 to 69 of W/35/Rev.1 contain the draft text of a new agreement on technical barriers to trade. The commentary on page 44 of W/35/Rev.1 drew attention to the questions which remained to be settled with respect to this text.

28. In Brussels substantial progress was made on the new text for Article 1.5 concerning the relationship of the Agreement to the Decision on Sanitary and Phytosanitary regulations and on the text on Consultation and Dispute Settlement Procedures (Article 14 and Annex 2). This remains dependent, however, on an agreement on the issue relating to the second level obligations (i.e. obligations on provinces, states and municipalities).

29. I therefore suggest that participants should first focus on the second level obligation issue. Further discussions may also be necessary on the proposal by one delegation for clarification of Article 2.2 (provisions relating to unnecessary obstacles to trade).

(g) Import licensing procedures

30. Pages 73 to 82 of W/35/Rev.1 contain the text of a new draft agreement on import licensing procedures which was agreed on an ad referendum basis prior to the Brussels Meeting. I understand that one delegation maintains a reservation on this text made prior to the Brussels Meeting and reflected on page 72 of W/35/Rev.1, pending agreement that a GATT Working Party be established to develop rules in the area of export licensing procedures in the post-Uruguay Round period.

31. Since the text was agreed on an ad referendum basis prior to the Brussels Meeting, subject to this one reservation, it would appear that no further technical work may be needed in this area unless the request for the establishment of a Working Party on export restrictions raises technical questions which can be clarified at the present stage.

(h) Customs valuation

32. Pages 135 to 137 of W/35/Rev.1 contain the texts of two draft recommendations from the CONTRACTING PARTIES to the Committee on Customs Valuation, and of an accompanying understanding which were accepted on an ad referendum basis prior to the Brussels Meeting. It would therefore appear that no further technical work is needed in the framework of the Round with respect to these texts.

(i) Government procurement

33. Page 138 of W/35/Rev.1 contains the text of an agreement on accession to the Government Procurement Code. This text, which was the result of consultations held prior to the Brussels Meeting, was accepted on an ad referendum basis in Brussels.

34. However, delegations should, of course, be given an opportunity for offering comments on this text which takes the form of a recommendation from the CONTRACTING PARTIES to the Committee on Government Procurement. However, it seems to me that further technical work is unlikely to be required in this area.

(j) GATT Articles

35. The state of the work on GATT Articles is precisely as set out in MTN.TNC/W/35/Rev.1. That document described, for each of the Articles which had been the subject of work in the Negotiating Group, the status of the draft agreement, where such a draft existed, and in the case of the balance of payments provisions the position reached in the discussions. It will be remembered that agreement had been reached ad referendum on Articles II:1(b), XVII and XXVIII; certain participants had maintained reservations on the draft decisions on Articles XXIV and XXXV; and it was understood that final decisions on Article XXV:5 and the Protocol of Provisional Application could only be taken in the light of results in other areas of the negotiations. On the Balance of Payments provisions it had not been decided whether or not to engage in negotiations.

36. Delegations will be given an opportunity to express their views on the way in which we should work in the GATT Articles area. My suggestion is that a start be made by discussing Article XXXV and maybe Article XXIV.

TRADE-RELATED INVESTMENT MEASURES AND TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

(a) Trade-Related Investment Measures

37. Unlike in most other areas of the negotiations, it did not prove possible to transmit a draft text of an agreement on TRIMs to Ministers in Brussels. The commentary on TRIMs on page 238 of MTN.TNC/W/35/Rev.1 simply enumerates the points on which basic divergences of view exist. These are: coverage; level of discipline; developing countries and restrictive business practices.

38. When consultations are held in this area, I suggest that delegations be given an opportunity to comment on the present status of negotiations on TRIMs. They should also try to identify technical work that can usefully be done in this area at the present stage of the negotiations.

39. On this latter point, I suggest that agreement could be assisted by discussions of a technical nature, building as appropriate on work already undertaken as reflected in the draft texts referred to in the commentary on page 238 of W/35/Rev.1. Technical discussions to elaborate a workable "effects test" would, for example, be a useful contribution in the level of discipline area.

(b) Trade-Related Aspects of Intellectual Property Rights

40. The text sent forward to Brussels in TNC/W/35/Rev.1 listed on pages 194-195 the outstanding issues on which decisions were required in the TRIPs negotiations. These issues remain unsettled, and the basis for future work is the draft text as contained in that document.

41. When work restarts on TRIPs, I suggest that delegations be given an opportunity to consider the present state of the negotiations in this area, taking into account the work done in Brussels, and to identify any areas in which technical work could usefully be undertaken at this stage.

DISPUTE SETTLEMENT AND FINAL ACT

(a) Dispute settlement

42. MTN.TNC/W/35/Rev.1 contains a detailed text on Dispute Settlement. This will be found on pages 289 to 305 of that document. A commentary on the text identified the three main outstanding issues.

43. Participants in consultations should be given an opportunity to comment on the present situation in the negotiations on dispute settlement and to identify work that can usefully be done in the phase of the negotiations that is just beginning.

44. It is my judgment that a number of the issues in this area will only be solved when governments are ready to take the political decisions necessary to bring the Uruguay Round to a successful conclusion. I would, however, suggest that there are areas in which technical discussions would be useful at the present stage: for example, the provisions concerning the maximum length of dispute settlement proceedings, and the procedures for dealing with non-violation complaints.

(b) Final Act

45. The Draft Final Act will be found on pages 2 to 5 of MTN.TNC/W/35/Rev.1.

46. The two main issues in this area are, in my view, whether the instruments resulting from the Uruguay Round should or should not be accepted as a single undertaking; and the form of the decision to be taken in respect of a new organizational structure to be implemented after the conclusion of the Round.

47. I suggest that delegations are likely to wish to concentrate on other areas of the negotiations before turning to consideration of the Final Act.

(c) FOGS text on Greater Coherence

48. The FOGS texts on Institutional Reinforcement of the GATT and Greater Coherence in Global Economic Policy Making will be found on pages 323 to 325 of MTN.TNC/W/35/Rev.1. An inspection of these texts shows that a number of issues remain to be settled.

49. These issues seem to me to require political decisions that are unlikely to be forthcoming until the final decisions on the Uruguay Round are taken. There does not appear to be scope for technical discussions on them at the present stage.

MARKET ACCESS

50. It was proposed that the results of the market access negotiations are to be annexed to the Uruguay Round (1990) Protocol to the GATT, the draft text of which will be found on pages 7 to 11 of MTN.TNC/W/35/Rev.1. The commentary which precedes this text makes it clear that this protocol will incorporate the results of the negotiations in a number of areas, including natural resource-based products and tropical products. This commentary also expressed the hope that the bilateral market access negotiations would be completed by the end of the Brussels Ministerial Meeting.

51. This hope was not realized. Consultations were held on the text of the draft Protocol in W/35/Rev.1. These revealed that two points in the Protocol remained to be settled. These are:

- (a) reference to the application of Article XXVIII in cases of modification or withdrawal of non-tariff concessions; and
- (b) period of implementation of tariff concessions.

52. Much remains to be done in the market access negotiations but some major political decisions will be required before these are brought to a successful conclusion. It is, nevertheless, my assessment that a lot of technical work still needs to be done.

53. I suggest that:

- (a) participants should pursue their bilateral and plurilateral negotiations as vigorously as they can in the present circumstances;
- (b) transparency should be achieved by further informal meetings of all participants in the access negotiations as well as meetings of the TNC, as appropriate;
- (c) participants review:
 - (i) the status of bilateral and plurilateral market access negotiations: under this item, delegations should be invited to give oral reports on their bilateral and plurilateral negotiations on market access which they have been holding before, at and since Brussels; it will be recalled that a total of 50 MTN participants have submitted proposals on tariffs and tropical products.
 - (ii) proposals and offers currently on the table, including in tropical products and NRBP: this item would provide for the continuation of the process of review and assessment of existing proposals and offers, a process which took place prior to Brussels, separately in the tariff and the tropical products groups. New proposals have been received or existing ones modified (mostly improved) since the process was discontinued in the two groups mentioned above. For these reviews, the secretariat would prepare up-to-date analytical background papers, and

- (d) further technical work would also relate to two points left open in the Market Access Protocol, i.e. reference to the application of Article XXVIII in cases of modification or withdrawal of non-tariff concessions; and period of implementation of tariff concessions (most delegations favoured five annual cuts, beginning 1 January 1992, some other delegations requested a longer period).