

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/W/28

29 July 1991

Special Distribution

Original: English

Group of Negotiations on Goods (GATT)

COMMUNICATION FROM THE CHAIRMAN OF THE GROUP OF NEGOTIATIONS
ON GOODS TO THE TRADE NEGOTIATIONS COMMITTEE

Please find attached the reports which I have received from the Chairmen of the following Negotiating Groups: Agriculture (Annex I, p. 2), Institutions (Annex II, pp. 3-4), Market Access (Annex III, pp. 5-7), Rule-Making and TRIMS (Annex IV, pp. 8-10), Textiles and Clothing (Annex V, p. 11) and TRIPS (Annex VI, pp. 12-13).

GATT SECRETARIAT

UR-91-0097

ANNEX I

REPORT BY THE CHAIRMAN OF THE NEGOTIATING GROUP ON AGRICULTURE
TO THE CHAIRMAN OF THE GROUP OF NEGOTIATIONS ON GOODS

The Negotiating Group on Agriculture has met four times since the last meeting of the Trade Negotiations Committee on 7 June 1991.

At each of the four meetings the Chairman informed the Group of the results of the intensive informal consultations that he had conducted. This information has been made available to participants in the negotiating group. The consultations have led the Chairman to circulate on his own responsibility a Note on Options in the Agriculture Negotiations (document MTN.GNG/AG/W/1).

Progress continues to be made on a range of technical issues in each of the three areas of Domestic Support, Market Access and Export Competition. Important political issues, however, remain outstanding and will have to be addressed urgently in order to move the negotiations to the final phase.

While all options remain on the table until common ground on the modalities for negotiation has been established, the Chairman intends to circulate, on his own responsibility but basing himself on the consultations which have taken place so far, further notes aimed at exploring various options in more detail. These notes will cover the following topics:

Product Coverage

Domestic Support

- Green Box
- Definition of the AMS
- Definition of Equivalent Commitments
- Special and Differential Treatment

Market Access

- Policy Coverage and Guidelines for Tariffication
- Minimum Access Commitments
- Special and Differential Treatment

Export Competition

- Export Subsidies to be Subject to the Terms of the Final Agreement
- Special and Differential Treatment

ANNEX II

REPORT BY THE CHAIRMAN OF THE NEGOTIATING GROUP ON INSTITUTIONS
TO THE CHAIRMAN OF THE GROUP OF NEGOTIATIONS ON GOODS

The Negotiating Group on Institutions was established as a part of the new negotiating structure replacing the previous Negotiating Groups No. 13 on Dispute Settlement and No. 14 on Functioning of the GATT System. The responsibilities of the Group fall essentially into three areas:

- the elaboration of rules and procedures for dispute settlement;
- the drafting of the final instruments to embody the results of the Uruguay Round negotiations;
- the elaboration of a new organizational structure to be implemented after the Round.

The Group has not yet met but it is envisaged that the Group will meet on 26 September to discuss dispute settlement issues.

The two main outstanding issues in this area - the commitment not to use unilateral measures and the counterpart: the automaticity in the Council's decisions on the establishment of panels, the adoption of reports and the authorization or retaliation - are not likely to be settled until the main results of the Uruguay Round are known.

There are, however, three areas where technical discussions at this stage may be useful:

- The provisions dealing with non-violation complaints. Some participants argue that the more automatic and legalistic procedures contained in the proposed Uruguay Round rules are not suitable for non-violation cases. The main points for further negotiations concern the definition of the types of cases that could fall under such special non-violation procedures and what such special procedures should be.

- The so-called "consolidated dispute settlement text". It has been tentatively agreed that at the end of the negotiations there shall be prepared a single text, consolidating into one all the various GATT dispute settlement texts (e.g. the 1966 text on cases involving developing countries, the 1979 Understanding, the 1982 Ministerial Declaration, and the new Uruguay Round text).

- The provisions concerning the maximum length of dispute settlement proceedings. There is general agreement on a twenty-one month limit but it is not agreed whether this limit should be absolute, or subject to a force majeure provision.

Another matter to be considered by the Group is the incorporation into the dispute settlement text, as it appears in document MTN.TNC/W/35/Rev.1, of some improvements that were discussed in Brussels but not formally approved there.

The Group will also consider what can be done in order to ensure that dispute settlement texts negotiated in various sectors of the Uruguay Round are harmonized as far as possible.

The Negotiating Group will at a later date consider other matters falling within the competence of the Group, inter alia concerning the final instruments and a new organizational structure.

Julio Lacarte-Muró
Chairman, Negotiating Group on Institutions

ANNEX III

REPORT BY THE CHAIRMAN OF THE NEGOTIATING GROUP ON MARKET ACCESS
TO THE CHAIRMAN OF THE GROUP OF NEGOTIATIONS ON GOODS

As you requested, and further to my letter of 24 June 1991 (MTN.GNG/MA/W/1), I am setting out below the status of the negotiations in the Market Access Group at this time, and the work which will have to be pursued in this autumn. Our work continues to proceed on the assumption that the negotiations should be concluded by the end of 1991.

1. Status of the negotiations

There have been two meetings of the Market Access Negotiating Group since the restructuring of the negotiating groups at the beginning of May. These were on 13-14 June and 26 July. Although participants have renewed efforts to develop a substantial and broad based package of liberalization results and are engaged in good faith bilateral negotiations, the problems identified in my letter of 24 June have not yet been resolved.

The situation in each of the areas covered by the mandate of the Negotiating Group is as follows:

On tariffs, participants are actively pursuing bilateral and plurilateral negotiations to reduce, harmonize or eliminate tariffs on a vast range of specific products. They have also started to address the problem of high tariffs and tariff peaks, the possibility of eliminating or substantially reducing or harmonizing tariffs in certain products groups, and the issue of tariff bindings. However, only limited progress has been made to date and I am concerned that unless some major bilateral negotiations make concrete progress soon, it will be difficult to accelerate the pace of other market access negotiations.

Participants at this stage have engaged in little result-orientated negotiations on non-tariff measures (NTMs), and there has been no substantial progress on product specific non-tariff measures. This is a matter of increasing concern to many participants. While it seems clear that certain NTMs are being addressed in other negotiating groups dealing with agriculture, textiles and rule-making, the elimination or liberalization of product specific non-tariff measures in the market access negotiations remains important to ensure that the value of tariff reductions is not eroded.

At present, the negotiations on tropical products are not making progress because many participants are still unwilling to offer further commitments beyond the results achieved in the Mid-Term Review until the agricultural negotiations progress. Achieving the Montreal ministerial objectives on tropical products remains a major element of a successful market access package for many participants.

The negotiations have made little progress to date on natural resource-based products because of the issue of the scope of the market access negotiations. Certain participants continue to consider that a number of these products should be dealt with in the agricultural negotiations.

The negotiations so far have resulted in the draft text of a Protocol (MTN.TNC/W/35/Rev.1, page 7) to which the results of the market access negotiations will be annexed. Two points in the Protocol remain to be settled: the application of Article XXVIII to the modification or withdrawal of non-tariff concessions, and the period of implementation of tariff concessions. In addition, the questions of credit for bindings and recognition for autonomous liberalization measures have been addressed on the basis of plurilateral consultations held by participants which have put forward proposals in this regard. However, these discussions have not yet resulted in a common understanding.

2. Future work

A new urgency has been given to completing the Uruguay Round by the end of this year. If that is to be done, however, a great deal of work needs to be accomplished from September onward in the market access negotiations.

- bilateral and plurilateral negotiations to reduce, harmonize or eliminate tariffs must not only be intensified, but the time has come when participants should begin to reach concrete ad referendum packages of results on the basis that the overall MTN will be completed as a single global undertaking. This is essential if participants are to narrow down the range of issues for resolution when the decisive push to conclude comes. This would also help to take account of limited resources available to many participants.
- even if the major outstanding issues were substantially narrowed down in the early fall, ways will need to be found to deal with the various substantive linkages established by many participants between different sectors of trade. In particular there are continuing constraints imposed on progress in the Market Access Group by the differences on scope of the negotiations. For example, the situation in agriculture impacts on progress in tropical products, natural resource-based products and product specific NTM's.
- the question of how to evaluate bindings and apply credit for them will need to progress concurrently with the substantive barrier reduction negotiations themselves. However, a solution to the related but separate question of recognition of autonomous trade liberalization measures still remains to be found.

Accomplishing these tasks means, of course, that the problems identified in my 24 June letter will have to be resolved. I intend to hold another meeting of the Market Access Negotiating Group in September and further meetings as required throughout the autumn.

At my July 26 meeting, I have stressed the urgency for participants to begin to achieve concrete results on an ad referendum basis. I have also stressed the need for participants to be prepared to play all their cards in the access negotiations after the summer break so that the shape of the overall market access package will reflect the interests of all participants.

If the Market Access Negotiating Group makes substantial progress in narrowing down the issues before it, and substantive negotiating linkage issues can be addressed, then I would envisage that comprehensive and intensive exchange of tariff and NTM's concessions at the bilateral and plurilateral level will be necessary in mid-autumn.

Germain Denis
Chairman
Negotiating Group on Market Access

ANNEX IV

REPORT BY THE CHAIRMAN OF THE NEGOTIATING GROUP
ON RULE MAKING AND TRIMS
TO THE CHAIRMAN OF THE GROUP OF NEGOTIATIONS ON GOODS

In preparation for the TNC meeting of 30 July 1991, I am writing to inform you of the status of work in the Negotiating Group on Rule Making and trade-related investment measures.

In assessing the status of the negotiations in this Group, it has to be borne in mind that in some areas covered by the Group a point has been reached where major political decisions are necessary to complete the negotiations. As such decisions can be expected only in the context of the final package of the Uruguay Round, the work in these areas at this stage is, necessarily, of a limited nature. My report should, therefore, be seen from this perspective.

The Negotiating Group met on 10-12 June and on 22-26 July 1991. At its first meeting the Negotiating Group noted the importance attached by participants to this area of the Uruguay Round negotiations and reviewed the progress made so far in the subject-areas covered by its mandate. In the light of the results achieved so far (both before and during the Brussels Ministerial Conference) in a number of these subject-areas where texts were in a very advanced stage, it was agreed that the Group should concentrate its attention on subsidies and countervailing measures, anti-dumping, trade-related investment measures, balance-of-payments measures, and safeguard measures and that the Group could revert at a later stage to certain issues (including questions of a purely technical nature) which remain to be settled with respect to the other subject-areas.

At its meeting held on 22-26 July 1991 the Negotiating Group evaluated the state of play in the areas of anti-dumping, subsidies and countervailing measures, trade-related investment measures and balance-of-payments measures and agreed how to proceed in these subject-areas in the near future. The Group also agreed to postpone, for the time being, any further examination of the draft text on safeguards.

Regarding anti-dumping I was encouraged by the fact that participants agreed on the importance of an agreement on anti-dumping as part of the overall package of results of the Uruguay Round negotiations. It would appear that, given the intensive discussions which have already taken place on anti-dumping during the course of 1990 and the draft texts prepared in the context of these discussions, the absence at this time of a single text as an agreed basis for the final phase of the negotiations is not perceived to constitute an important obstacle to the successful conclusion of the negotiations in this area.

It was agreed that, starting at the meeting of the Negotiating Group in the week of 30 September the Group will hold a discussion which will

address the relevant outstanding issues as a whole and serve to provide an opportunity for delegations to develop a sense of direction as to how an overall balance in the outcome of the negotiations on anti-dumping might be achieved. Furthermore, whenever necessary during the course of these discussions I shall call on experts from various delegations to give me advice on specific technical points. I hope that this process will help participants to prepare themselves for the political decisions which will have to be taken on a number of major matters.

With respect to the status of the negotiations on subsidies and countervailing measures I have noted that the draft text appearing in document MTN.TNC/W/35/Rev.1 continues to be accepted as the basis for the final phase of negotiations in this subject-area but that there are certain basic questions which will have to be resolved through political decisions at the appropriate point in time.

The consultations which I have conducted have given me a better idea of issues in respect of which further efforts are necessary in order to prepare these political decisions and find the basis for possible compromise solutions. At the same time, however, it has been confirmed to me that delegations do not intend to unravel the draft text or propose another basis for the work of the Negotiating Group in this area.

I intend to continue consultations on some of these issues during the meeting of the Negotiating Group in the week of 30 September 1991. While some of these issues can probably be resolved only through political decisions it would seem to me that some others could benefit from further technical work.

With regard to Trade-Related Investment Measures (TRIMs), my informal consultations with participants have enabled me to arrive at a better understanding of the status of work and of the major difficulties confronting the Group. As I indicated in this week's formal meeting of the Group, although important divergences remain on some very basic points of approach and substance, I think we can be reasonably optimistic about the prospects of intensifying the negotiations after the summer break. It was agreed that the intensification of the negotiating process would be based on a detailed consideration of the following list of issues, including those appearing in the commentary on TRIMs in the document sent to the Brussels Ministerial Meeting (MTN.TNC/W/35/Rev.1), which I presented to the Group: (i) Coverage of the agreement; (ii) Disciplines; (iii) Treatment of Developing Countries; (iv) Transition Periods; (v) Restrictive Business Practices; (vi) Other Issues. It is my hope that such a discussion would greatly assist me in the presentation, at the appropriate time, of a draft text which could form the basis of further negotiations on this subject.

With reference to the balance-of-payments provisions, I have held informal consultations with a number of delegations which I found helpful and constructive. Participants explained their current positions and their negotiating objectives and a number of them drew my attention to the changes that had taken place in the economic environment relating to these

provisions, and the need to take these into account in the future work of the Group on this subject. As I informed the Group at its meeting last week, the consultations have encouraged me to undertake a further round of informal consultations at the time of the next meeting of the Group in September with a view to seeking common ground on which to base further work on this subject.

George A. Maciel
Chairman
Negotiating Group on Rule-Making
and Trade-Related Investment
Measures

ANNEX V

REPORT BY THE CHAIRMAN OF THE NEGOTIATING GROUP
ON TEXTILES AND CLOTHING
TO THE CHAIRMAN OF THE GROUP OF NEGOTIATIONS ON GOODS

1. The first meeting of the Negotiating Group on Textiles and Clothing, since the establishment of the formal structure for conducting the negotiations in the final phase, was held on 5 July 1991.
2. The Chairman informed the Group of consultations he had conducted in March and April, in pursuance of the work programme adopted by the TNC in February. This had resulted in a paper compiling trade data provided by some participants; it was suggested at the July meeting that similar data be provided by others as well. The Group went on to discuss a programme for its work in the coming weeks and months with the objective of advancing the negotiation process in an orderly and constructive manner. The Group reaffirmed that the basis for further negotiations remained the draft text of an agreement as contained in document MTN.TNC/W/35/Rev.1, and the commentary attached thereto which identified the main points of divergence. It was also agreed that the objective of future work should be arriving at an agreement which was as clear and predictable as possible. In this context, it was decided that, in the first instance, a number of key topics like product coverage (Annex II) and the transitional safeguard mechanism (Article 6) should be taken up for technical level discussions through a combination of informal consultations and formal meetings.
3. On this basis, informal consultations were held on 15 and 16 July at which questions relating to the trade data provided and the proposal for additional data as well as aspects relating to the composition of Annex II were examined in detail. These discussions were held in an atmosphere of cooperation and good-will. The discussions also made it clear that these subjects should be re-visited for further examination before proceeding to the substantive negotiations.
4. The Negotiating Group was re-convened on 19 July, to receive the Chairman's report and to discuss the progress achieved thus far in the informal process. It was agreed that informal technical discussions should continue in July and in the early Autumn. One more such consultation was held on 22 July on the transitional safeguard mechanism (Article 6), and a number of specific points were raised by participants which could provide the basis for future works in this area.
5. The Negotiating Group itself will meet on or about 30 September.

ANNEX VI

REPORT BY THE CHAIRMAN OF THE NEGOTIATING GROUP ON TRIPS
TO THE CHAIRMAN OF THE GROUP OF NEGOTIATIONS ON GOODS

In preparation for the TNC meeting of 30 July 1991, I am writing to inform you of the developments in the TRIPS negotiations since the new negotiating structure was put into place on 7 June 1991.

The Negotiating Group on Trade-Related Aspects of Intellectual Property Rights including Trade in Counterfeit Goods met on 27-28 June. This meeting was devoted to both formal sessions and informal consultations. As I informed the Group at the end of the meeting, I was in general encouraged by the meeting and the consultations. All participants demonstrated a cooperative and positive spirit and reaffirmed their commitment to the negotiating process for which the Group is responsible. The meeting enabled: first, participants to take stock of the status of the TRIPS negotiations in the context of the state of play in the Uruguay Round as a whole; secondly, the re-establishment of the Group as a functioning negotiating unit; and, thirdly, the taking of necessary decisions on the organisation of the further negotiations.

I was in particular encouraged by the general emphasis on the importance of basing the further work on the text sent to the Brussels Ministerial meeting in document MTN.TNC/W/35/Rev.1 and also of ensuring that the work done in Brussels would be taken into account. In this regard, it was agreed that a detailed description on a point by point basis of the work undertaken in Brussels should be made available, in oral form at least, indicating the subjects discussed, any new ideas or proposals that had emerged and, where possible, any convergence of views or apparent common understanding or agreement. This is one of the tasks that the Group plans to undertake at its next meeting, scheduled for the week of 16 September.

Another common perception was that the rapidity of the progress that could be made in the TRIPS negotiations would depend on developments in other areas of the negotiations, since for the most part the work on TRIPS had been carried to a point where what remained were those decisions on key issues that could only be expected to be taken in the final phase of the Uruguay Round. There was nevertheless a general appreciation that the Group has the responsibility to ensure that all necessary preparations are made for these decisions, though their timing will be largely a function of considerations of globality.

In the light of what I have said, the Group has agreed on a work programme for its September meeting, account being taken of the need for flexibility so that the Group can act very quickly when the need arises. This work programme has three main elements. The first two consist of questions that, even though closely related to rather key political decisions, can be usefully further discussed so as to clarify further the

options, even if it proves too early in September to attempt to take those decisions. These two questions are, first, Article 73 of the draft Agreement on Trade-Related Aspects of Intellectual Property Rights including Trade in Counterfeit Goods (page 228 of MTN.TNC/W/35/Rev.1) concerning the extent to which the obligations in a TRIPS agreement would apply to existing intellectual property and, secondly, the issue of dispute settlement. It will be recalled that the draft Agreement on Trade-Related Aspects of Intellectual Property Rights including Trade in Counterfeit Goods sent to Brussels contains in an Annex three draft texts on dispute settlement, indicating the range of options before the Group. The reason for this is that the issue of dispute settlement is closely related to that of the institutional arrangements for the implementation of the results of the negotiations, on which there are different views, and which question has been specifically left for decision by Ministers when the results of the negotiations are established. Nevertheless, it is important, before these decisions can be taken, to clarify the technical implications of the options available.

The third item on the work programme for September is the remaining outstanding issues in the texts sent to Brussels as listed in the commentary to those texts (pages 193-195 of MTN.TNC/W/35/Rev.1). As mentioned above, one major purpose of this work will be to recall in some detail the work done in Brussels. It will also provide an opportunity for any further clarification of positions that participants feel necessary. It is my hope that it will be possible to go further than this and to start settling these outstanding issues; but, given that they are issues on which it is essentially a matter of taking key decisions rather than conducting technical work, the extent to which this will be possible will depend very much on perceptions of participants of progress in the Uruguay Round as a whole.

Since the Group met in June, the delegation of the Republic of Korea has tabled a proposal on the establishment of a Dispute Prevention System in respect of the Transfer of Technologies. This, then, will also be an item for consideration at the Group's September meeting.

As I have informed the Negotiating Group, I plan to circulate informally somewhat nearer the time of the Group's September meeting more detailed suggestions on the organisation of the work at that meeting, so as to help participants prepare for the meeting and thus maximise its utility. In these suggestions, I plan to include, for example, a checklist of the issues that have to be decided in connection with Article 73.

In conclusion, I am confident that, in line with progress in other areas of negotiations, it will be possible for the Group to complete the negotiations on TRIPS so that the results in this area can make their full contribution to the final Uruguay Round package.

Lars Anell
Chairman
Negotiating Group on Trade-Related
Aspects of Intellectual Property Rights
including Trade in Counterfeit Goods