Meeting of 23-31 October 1991

Note by the Secretariat

1. The Negotiating Group on Rule Making and Trade Related Investment Measures held its fourth meeting on 23-31 October 1991 under the chairmanship of Ambassador G. Maciel (Brazil). The Negotiating Group adopted the agenda circulated in GATT/AIR/3253. It met in formal sessions on 23 and 31 October.

2. At the formal session held on 23 October one participant, speaking on behalf of a number of delegations, expressed concern that major players in the negotiations might perhaps not attach sufficient importance to the work in the area of the Uruguay Round covered by this Negotiating Group. As demonstrated by recent dispute settlement proceedings, there was an urgent need for a strengthening of multilateral rules. Small countries depended upon the existence of clear and effective multilateral rules to defend their interests. An outcome of the Uruguay Round which would not entail significant improvements in this area would therefore be unacceptable.1

3. One participant observed that the note by the secretariat on the meeting held on 30 September-4 October did not adequately reflect the reference made by the Chairman in his introductory statement at that meeting to future work on export licensing.2 He requested that a corrigendum to this Note be circulated and reiterated his delegation's interest in this matter.

4. The Negotiating Group took note of the statements made.

5. Regarding the draft text on preshipment inspection (MTN.TNC/W/35/Rev.1, pp.30-42), the Chairman noted that there was only one necessary technical correction which had been identified so far. This suggested correction appeared in an informal note by the secretariat dated 16 October 1991. He proposed that this correction be made in the text to be forwarded to the Trade Negotiations Committee (TNC). It was so agreed.

1 See also MTN.GNG/RM/W/6
2 See MTN.GNG/RM/3/Corr.1
6. During the course of the period 23-31 October informal consultations were held with a view to seeking solutions of outstanding problems in the areas covered by the Negotiating Group. These consultations covered subject-areas where only changes of a purely technical nature to the draft texts included in MTN.TNC/W/35/Rev.1 were necessary, as well as subject-areas in which problems of a substantive nature remained to be resolved. At the formal session of the Negotiating Group held on 31 October the Group was informed of the results of these consultations.

7. Regarding the draft text on technical barriers to trade, the Negotiating Group heard a report from Mr. Peter Williams on the consultations which he had carried out at the request of the Chairman in the period 25-29 October 1991. All participants in the Uruguay Round had been invited to attend these consultations. The results of the consultations were reflected in a text circulated to participants in document MTN.GNG/RM/W/7 dated 31 October 1991. As indicated in the introductory commentary to this text, the only issue which remained to be resolved related to the provisions in Articles 3 and 7 regarding local government bodies and non-governmental bodies. One drafting suggestion had been put forward with respect to this issue but it had not yet been possible to reach a consensus. Mr. Williams concluded his report by suggesting that the Negotiating Group consider at this stage how this issue was to be dealt with.

8. The Negotiating Group took note of the statement of Mr. Williams. One participant requested that consultations on the one unresolved issue in the draft text on technical barriers continue under the chairmanship of Mr. Williams. The Chairman said that he would request Mr. Williams to continue his consultations.

9. Regarding the draft text in document MTN.TNC/W/35/Rev.1 on import licensing (pp.72-82), the Chairman informed the Negotiating Group that in consultations chaired by Mr. Ramsauer the proposed technical corrections listed in the informal note of the secretariat dated 16 October had generally been accepted. It had been suggested, however, that two points might need to be reconsidered at a later stage. First, with regard to the provisions on Consultation and Dispute Settlement in Article 6 of the draft text, it had been agreed to replace the word "procedures" by the word "provisions", on the understanding that this was subject to a common terminology being adopted on this issue in all Uruguay Round texts. Second, regarding the final provisions, including the date of entry into force of the agreement, it was understood that these provisions would need to be considered when a decision was taken on the legal form of the agreement.

10. The Negotiating Group took note of the Chairman's statement on the results of the consultations held on the draft text on import licensing.

11. With respect to the draft texts in MTN.TNC/W/35/Rev.1 on various Articles of the General Agreement, the Chairman noted that two technical corrections had been agreed upon during informal consultations. In both
cases the need for a technical correction had arisen because of the fact that the Uruguay Round had not, as initially foreseen, been concluded in December 1990. Thus, in paragraph 2 of the text of the Understanding on Article II.1(b) (MTN.TNC/W/35/Rev.1, pp.282-283) it had been agreed to delete the reference to a date; the text would thus simply refer to "the date of the Uruguay Round Protocol to the General Agreement on Tariffs and Trade". Regarding the draft text of the Understanding on the Interpretation of Article XVII (MTN.TNC/W/35/Rev.1, pp.285-286, it had been agreed to revise the penultimate sentence to read as follows: "It shall meet within a year of the entry into force of this Understanding and thereafter at least once a year". No changes had been made during the consultations to the draft texts in MTN.TNC/W/35/Rev.1 on other Articles of the General Agreement. It was understood that the reservations expressed by participants and reflected in the commentaries in MTN.TNC/W/35/Rev.1 remained valid. It had been noted that there were outstanding decisions to be taken with respect to the draft texts on Article XXV and on the Protocol of Provisional Application but that these decisions could be taken only in the context of final results of the Uruguay Round.

12. The Negotiating Group took note of the Chairman's statement on the consultations held on the draft texts on Articles of the General Agreement.

13. The Chairman informed the Negotiating Group that the secretariat had recently received suggestions for corrections of a technical nature to the draft text on rules of origin (MTN.TNC/W/35/Rev.1, pp.12-29). These suggested corrections had been circulated in an informal note by the secretariat, dated 29 October 1991. Delegations had been invited to comment on these suggestions by 4 November.

14. The Negotiating Group took note of the Chairman's statement on the draft text on rules of origin.

15. Turning to the five most difficult subject-areas covered by the Negotiating Group (subsidies and countervailing measures, anti-dumping, safeguard measures, trade-related investment measures, and balance-of-payments provisions of the General Agreement), the Chairman observed that, while the difficulties encountered in each of these subject-areas were perhaps of a different nature, a common element was that there either had not been significant progress in the informal consultations, or the progress made was not of such a substantial nature that it could be reflected in text.

16. Regarding subsidies and countervailing measures, consultations had taken place with delegations on certain key outstanding issues in the draft text appearing in MTN.TNC/W/35/Rev.1, pp.83-134, including the provisions in Articles 2, 6, 8, 27, 28 and 29 of this text. While on a number of these issues new suggestions had been offered which might perhaps eventually help to overcome the current impasse, there was as yet not a sufficient basis to put forward a compromise solution on the major outstanding questions.
17. With respect to anti-dumping, the Chairman had requested Mr. Ramsauer to convene a group of delegations with the task of preparing a draft text which might serve as the basis for final negotiations in a larger forum. After three days of intensive work, based primarily on a draft text dated 23 November 1990, Mr. Ramsauer had informed the Chairman that this group had been unable to fulfil its mandate. On a number of less controversial procedural provisions some progress had been made but on the essential substantive issues positions were still far apart. Thus, the present situation with respect to anti-dumping had not evolved substantially since the Ministerial Conference in Brussels.

18. In informal consultations held on safeguards, an examination had been made of important legal drafting problems in the text which had resulted from the Brussels Ministerial Conference (MTN.GNG/RM/W/3) and some points had been clarified. Other issues of a more substantive nature had, however, not yet been resolved. Recognizing that further negotiations among delegations were required, particularly in light of the global linkages or trade-offs with other areas mentioned by some delegations, the Chairman had concluded that no significant progress was possible at this time and had closed his consultations.

19. With respect to trade-related investment measures, the Chairman said that informal consultations had taken place on the basis of a paper presented on 23 October. This paper was not over-ambitious, given the state of the Uruguay Round and the time constraints on negotiators, and represented an attempt by the Chairman to outline in a clear and simple manner the issues facing the negotiators. The Chairman had hoped that this paper would assist the Group in its further negotiations to provide him with adequate guidance in the preparation of a final text. Several participants had expressed their reservations on the approach outlined in the paper. Informal contacts and consultations with delegations and further reflection by the Chairman and the secretariat had shown that there was room for improvement of a technical and drafting nature to this text. As a result, a revised version of the text had been presented to participants on 30 October. This revision did not include any of the new proposals presented by some participants as these were of a substantive nature and had not been agreed upon by participants. The Chairman had made it very clear in his consultations that the revised paper did not commit any participant to the approach outlined in it and was not intended as a contribution, at this stage, of the Negotiating Group to the revision of document MTN.TNC/W/35/Rev.1. It was clear that there remained substantial divergencies on some very basic issues, including coverage, definition, disciplines and transition periods, and that these issues could be resolved only in the context of the Uruguay Round as a whole.

20. Regarding the consultations held on the balance-of-payments provisions of the General Agreement, the Chairman said that a paper containing a draft text of a possible decision on this matter had been shown to participants. This paper dealt for the most part with the procedures for consultations in the Balance-of-Payments Committee but also contained some elements dealing with the manner of application of balance-of-payments measures. The draft
had emerged as a result of intensive contacts with and between delegations from both sides of the argument and represented a serious effort to clarify the existing provisions and procedures without undermining the right to use balance-of-payments measures. The Chairman had made it clear to participants that it was not his intention to present this paper, at this stage, to the TNC. In view of the limited time available to participants to examine the paper, a full discussion of the paper had not been possible.

21. In concluding his report on the informal consultations, the Chairman said that he would promptly report to the Chairman of the TNC the status of work in the subject-areas covered by this Negotiating Group and that delegations would be advised by the secretariat on the future work.

22. One participant stressed the need to ensure that in the negotiations on trade-related investment measures, account be taken of the interests of least-developed countries.

23. One participant, speaking on behalf of a number of delegations, pointed to the importance of a reform of rules in the areas of anti-dumping, safeguards and subsidies and countervailing measures and expressed disappointment about the fact that major participants had not adequately responded to the flexibility shown by other delegations in these areas. This participant also emphasized that with respect to the work in trade-related investment measures and balance-of-payments provisions of the General Agreement, the interests of developing countries needed to be taken into account.

24. The Negotiating Group took note of the statements made.

25. The Chairman then closed the meeting.