

MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

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Agreements and Arrangements

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COMMUNICATION FROM INDIA

The following communication was received on 16 September 1987 from the permanent delegation of India, and was circulated to the participants in the Group's meeting on 17 September 1987.

The Indian Delegation suggests negotiations on the issues indicated below in respect of Agreements and Arrangements negotiated in the Tokyo Round of Multilateral Trade Negotiations, without prejudice to the possibility of submitting additional proposals in the future.

(1) AGREEMENT ON GOVERNMENT PROCUREMENT

Special and differential treatment for developing countries.

Article 3 of the Agreement provides for special and differential treatment for developing countries. In particular, it is stipulated that in the course of the negotiations with respect to the lists of entities of developing countries to be covered by the provisions of the Agreement, the development, financial and trade needs of the developing countries shall be duly taken into account. However, so far only three developing countries have become Parties to the Agreement. Three of the four developing countries which had participated in the Tokyo Round Negotiations on Government Procurement did not become Parties. An examination should be made of the adequacy of the provision relating to special and differential treatment and it should be suitably expanded with a view to securing the adherence to the Agreement of a larger number of developing countries.

Accession

Paragraph 1(b) of Article IX of the Agreement envisages that any Government contracting party to the GATT may accede to it on terms to be agreed between that Government and the Parties. At its meeting held on 15 January 1981, the Committee on Government Procurement had adopted a text containing the procedures for accession of contracting parties to the Agreement. Again at the meeting of the Committee held on 24 February 1983, the procedures for accession were elaborated. The procedures require the consent of all the members of the Committee to the terms of accession including the list of entities before the acceding country can become a Party to the Agreement. This gives the individual Parties the power to block the accession of contracting parties to GATT desirous of becoming Parties to the Agreement on Government Procurement. This is not reasonable in view of the fact that in any case individual Parties to the Agreement have the authority to invoke the non-application provision contained in paragraph 9 of Article IX. Appropriate changes, therefore, need to be made in paragraph 1(b) of Article IX of the Agreement and the procedures adopted by the Committee in January 1981 and February 1983.

(ii) AGREEMENT ON IMPLEMENTATION OF ARTICLE VII

Burden of proof regarding transaction value.

Article 1 of the above Agreement mandates the acceptance of the transaction value as the customs value of the imported goods except under certain circumstances enumerated in the Article. Article 17 clarifies that the Customs Administration have the authority to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes. The burden of proof for establishing the inaccuracy of the declared price is placed on the Customs Administration. This gives rise to difficulties mainly in the following circumstances:

- (i) When the declared price is less than that noticed in a series of transactions immediately preceding the relevant one;
- (ii) when the declared price is less than that noticed for transactions involving identical goods imported directly from the country of manufacture.

Adequate flexibility needs, therefore, to be provided to enable the Customs Administration to shift the burden of proof to the importer at least in the cases of the type described above.

(iii) AGREEMENT ON IMPLEMENTATION OF ARTICLE VI

Determination of Injury.

Article 3 elaborates the concept of injury and inter alia enumerates the factors to be taken into account in determining it. However, it does not give much guidance for determining the point at which the degree of injury is to be regarded as material. One of the Parties has diluted the concept of material injury considerably by interpreting it as something more than inconsequential, immaterial or unimportant. As a result positive findings of material injury have been made even in cases in which the share of the market is a fraction of one per cent. The practice of cumulation of imports for the purposes of determining material injury has made the position worse and has exposed exports from the developing countries to vexatious investigations. Negotiations should, therefore, be held to arrive at an understanding on a minimum market share or a threshold of market penetration below which there would be a presumption of absence of material injury.

(iv) AGREEMENT ON TECHNICAL BARRIERS TO TRADE

Establishing a method of ensuring compatibility of standards issued by recognized national bodies and other standardizing bodies within the party.

This is being suggested with a view to help in operating GATT Standards Code provisions as far as local standards bodies are concerned. In many cases, the country has more than one body formulating standards and it becomes difficult to get information about standards being formulated by the different bodies in the country. Therefore, there should be a national system within the country so that the national body can be made responsible for providing information and ensuring compatibility of standards issued by other recognized bodies within the country.

Voluntary draft standards and their status.

Many parties are not notifying voluntary draft standards although these are national standards. In some cases, even though these are not national standards, their wide adoption by the local industry gives them status similar to that of national standards. Art. 2.5.2 requires notification of only technical regulations. Considering that many voluntary standards because of their wide adoption can hinder trade, it is essential that voluntary standards covering products of trade significance are also notified.

Information about voluntary standards being made mandatory by legislation

In some cases, voluntary standards are made mandatory as they are referred to in legislation. This information should be also notified to other parties. In many cases, statutory orders under different pieces of legislation, make standards mandatory. This information should be notified as this changes the status of the voluntary standards.