

MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

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Negotiating Group on Non-Tariff Measures

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COMMUNICATION FROM THE EUROPEAN COMMUNITIES

The following communication has been received from the delegation of the European Communities with the request that it be circulated to the members of the Group.

NON-TARIFF MEASURES

The European Economic Community has, in recent years, repeatedly drawn attention to the need to reduce or eliminate non-tariff and para-tariff measures which inhibit the expansion of world trade. The present submission is designed as a first contribution to that end and to the fulfillment of the negotiating objective as set out in the Punta del Este Declaration.

It is often claimed that, with the progressive reduction of tariffs during successive trade negotiations, the significance of non-tariff measures has grown to the point where their impact on the flow of trade between countries exceeds that of tariff measures. The time and effort devoted to NTMs in the GATT over a considerable number of years, and especially during and since the Tokyo Round, testifies to the importance which is attached to this subject, as does the voluminous material which has been assembled on QRs and other non-tariff measures. The negotiation in the Tokyo Round of a number of agreements and arrangements covering specific non-tariff areas is the most conspicuous recognition so far given to the problem of NTMs in GATT.

The history of GATT work and documentation in the NTM field is succinctly set out in NTM/GNG/NG2/W1. It is evident from this document, however, that the analytical work which the GATT Secretariat has been able to undertake on the basis of available data is limited, particularly as regards the evaluation of the impact on trade of particular measures or type of measures. Attempts have been made by other institutions, notably UNCTAD, to assess the impact of a vast range of measures which might be regarded as non-tariff measures. These endeavours have contributed to a better appreciation of the problem, but the coverage of measures is wider than any definition of non-tariff measures so far agreed in GATT. Moreover, these endeavours generally limit consideration to products thought to be the subject of particular NTMs, without any attempt to gauge the degree to which trade is actually inhibited. The Community is therefore of the view that the real economic and trade significance of non-tariff measures identified, for example, in the GATT Inventory of Non-Tariff Measures remains largely unknown.

The present submission should be understood as an attempt to create a better understanding of the significance of non-tariff measures, whilst at the same time providing a practical means for conducting negotiations in this field. It should therefore be seen, in the first instance, as a technical contribution to the work of the negotiating group, without prejudice to the more controversial issues of what should and should not be regarded as a non-tariff measure.

The Data Problem

The negotiating plan calls for the setting up of an adequate data base. As has been observed in the course of debate in the negotiating group, there is now an enormous volume of descriptive information, but its adequacy for negotiating purposes leaves much to be desired.

Non-tariff measures constitute an eclectic assembly of laws, regulations, practices and actions with only two common denominators: they are by definition non-tariff measures, and they are presumed to have a trade inhibiting and distorting effect. In most other respects non-tariff

measures are characterised by an absence of homogeneity as to their nature, their relationship to the General Agreement, their transparency, their effect on trade and the manner in which negotiations might be constructed for their elimination or reduction.

Undoubtedly, current efforts by the GATT Secretariat to establish an integrated data base will make an important contribution towards creating improved knowledge in one area of non-tariff measures (QRs). But even those endeavours will become of doubtful value unless a sufficient and sufficiently representative number of contracting parties participate in it.

A Negotiating Approach

The Community believes that, in the absence of a sufficient appreciation of the incidence of non-tariff measures on trade flows, it will be difficult, if not impossible, to engage in a systematic or formula-based trade negotiation to reduce or eliminate NTMs as required by the Uruguay Round Declaration. Even in the area of quantitative restrictions - arguably the most homogeneous and theoretically quantifiable NTM - the trade-inhibiting effect of different kinds of restrictions are very difficult to measure. It would therefore be unrealistic to seek to establish a standard procedure for tackling trade negotiations in this or any other sector of non-tariff measures where evaluation is currently subjective or entirely lacking.

Nevertheless, an essential division should be made as between a) non-tariff measures and practices which may best be tackled through multilateral action (e.g. the question of Preshipment Inspection) and, b) NTMs which lend themselves to bilateral or plurilateral negotiations on the basis of the request and offer technique.

For the former, the analytical work undertaken in the past by the GATT Secretariat (notably NTM/W/17) constitutes a sound starting point for further consideration. The Community believes that, especially as regards measures and practices tending to inhibit or retard customs clearance, there may be scope for multilateral action within the framework of GATT, possibly in conjunction with other organisations.

As regards measures suited to the bilateral/plurilateral negotiating process, the Community believes that, at this stage of the negotiations, the group's best chances of making substantive progress would be to focus attention on:

- NTMs and para-tariff measures not covered by NTM Agreements and Arrangements, except to the extent that they may be maintained by non-signatories of the agreements/arrangements concerned.
- NTMs and para-tariff measures not covered by the negotiating programmes in other negotiating groups.

In order to underpin the negotiating process with an operational instrument, and to enable substantive negotiations to be engaged in good time, the group should establish a Central Negotiating Register for NTMs. The Register would constitute the principal negotiating tool for measures, practices and actions as defined above, together with measures applicable horizontally without regard to product sectors. It should therefore become operational in time for the substantive phase of the negotiations.

The Central Negotiating Register for NTMs

The proposed Register would serve an entirely different purpose to that of the existing GATT data base (notably the Inventory of Non-Tariff Measures and the up-dated record of quantitative restrictions contained in NTM/W/6).

These data should, in any event, be up-dated and revised, to the extent necessary. But they are inappropriate negotiating instruments. The Central Negotiating Register for NTMs would, on the other hand, serve as the mechanism for registering notifications received from participants wishing to engage in the request and offer negotiating programme.

In order to ensure that the Central Negotiating Register for NTMs should serve a strictly operational purpose, it should only contain a relatively small number of key measures, and provide a minimum degree of in-depth appreciation and evaluation of the trade-inhibiting effects. Measures

whose trade-inhibiting effect cannot be readily demonstrated according to an agreed set of objective criteria should not be included in the Register. Thus, the Register should be "self-limiting" and would:

- serve to identify a selected number of NTMs in which an interest has been expressed for the bilateral/plurilateral negotiating programme;
- provide a vehicle for substantiating claims of the trade-inhibiting effects of the measures with supporting information drawn up according to an agreed format using objective criteria;
- provide a focal point for the bilateral/plurilateral negotiating process to facilitate transparency and multilateral surveillance of that process. (1)

In establishing a Central Register, it is not claimed that the group could create a ready yard-stick for measuring with precision the effect on trade of a selected number of NTMs. However, the absence, at the present time, of any agreed set of references enabling participants in the Uruguay Round to weigh, at least to some degree, the consequences on trade of particular measures can only retard progress in the work of the group.

The Community is ready to work with others to establish an appropriate format for such a Central Negotiating Register including an agreed set of references for assessing the trade-inhibiting effects of a given non-tariff measure.

(1)

It could be expected, for example, that participants also use the Register for notifying information on the progress of negotiations and any results achieved in the request and offer programme.