

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG2/W/7/Rev.1

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Group of Negotiations on Goods (GATT)

Negotiating Group on Non-Tariff Measures

NON-TARIFF MEASURES

Issues raised and suggestions put forward

Note by the Secretariat

Revision

I. Introduction

At its meeting of 17-19 November 1987, the Negotiating Group asked the secretariat to revise the note it had prepared on "Issues raised and suggestions put forward" (MTN.GNG/NG2/W/7), with a view to reflecting the points made in the discussions which had taken place since the paper was issued, as well as the additional proposals which had been submitted (MTN.GNG/NG2/5, para. 19). In the present paper, the suggestions which have been put forward are summarized to the extent possible and references are included to the relevant written submissions or the secretariat's notes on the meetings of the Negotiating Group.

The Group's main tasks in the initial phase can be summarized as follows:

- Establishment of an adequate data base for the negotiations;
- Examination of proposals by participants with a view to reaching a common understanding on appropriate techniques and procedures (bilateral requests and offers, subject to procedures to ensure transparency; multilateral approaches) and on subjects to be dealt with multilaterally;
- The Group was also to examine the relationship between the negotiations in the area of non-tariff measures and other areas of the negotiations (MTN.GNG/5, page 6).

II. Establishment of an adequate data base for the negotiations

Issue: Whether the existing data base is adequate for the negotiations and, if not, how it should be improved. Whether an integrated data base, covering tariffs, non-tariff measures and trade flows should be used for the negotiations.

Suggestions

(a) Existing data base and suggested improvements to it

- The existing documentation on quantitative restrictions and other non-tariff measures could be used as basic resources in the development of request lists and should be kept up-to-date in accordance with the agreed procedures (MTN.GNG/NG2/4, para. 2; and MTN.GNG/NG2/W/4, page 4).
- All participants should be asked to update their existing quantitative restrictions notifications by providing information based on the Harmonized System (MTN.GNG/NG2/4, para. 4).
- Specific improvements should be made to the data base. A standard format should be applied to notifications on non-tariff measures with a view to improving the documentation which is less comprehensive than the documentation on quantitative restrictions (MTN.GNG/NG2/1/Rev.1, para. 5; MTN.GNG/NG2/3, para. 6; and MTN.GNG/NG2/4, para. 3);
- Supplementary information on the effects of non-tariff barriers on the trade of developing countries should be gathered because it is needed for the implementation of the principle of differential and more favourable treatment to developing countries (MTN.GNG/NG2/5, para. 14).
- The existing data base should be opened to notifications relating to non-contracting parties which are participating in the Uruguay Round. The Council would be informed of this development, since the existing data base has been built up in pursuance of decisions taken by the CONTRACTING PARTIES (MTN.GNG/NG2/4, para. 2 and 3).

(b) Integrated data base

- The question of the establishment of an integrated data base should be pursued in the Council which has adopted the proposals submitted to it by the secretariat (MTN.GNG/NG2/4, para. 2; and MTN.GNG/NG2/5, para 14).
- This data base should be made available as soon as possible and as many countries as possible should participate in it (MTN.GNG/NG2/2, para. 5, MTN.GNG/NG2/4, para. 4).
- While the Negotiating Plan calls for the establishment of an adequate data base for the negotiations, it does not mention an integrated data base which might not offer a solution to the problem (MTN.GNG/NG2/4, para 5).

III. Examination of proposals by participants with a view to reaching a common understanding on appropriate techniques and procedures (bilateral requests and offers, subject to procedures to ensure transparency; multilateral approaches) and on subjects to be dealt with multilaterally

- (a) Issue: The mechanisms to be adopted for the submission of measures which would be dealt with by the Negotiating Group.

Suggestions:

- Participants should aim to submit by mid-1988, export interest lists to other participants. This would help them and the Group identify how specific objectives can be best addressed, give a better sense of the problems being negotiated and a perspective on the potential scope of the negotiations (MTN.GNG/NG2/W/5, pages 3-4; and MTN.GNG/NG2/4, para. 7).
 - When drawing up export interest lists, participants should nominate their preferred technique or basis for negotiations on the measures (MTN.GNG/NG2/4, para. 7).
 - The procedure of requests and offers should be rejected in favour of multilateral approaches. Export interest lists should therefore not be submitted (MTN.GNG/NG2/2/5, para. 17).
 - A Central Negotiating Register for non-tariff measures would serve as the mechanism for registering notifications received from participants wishing to engage in the negotiating programme. In order to ensure that the Central Negotiating Register serves a strictly operational purpose, it should only contain a relatively small number of key measures whose trade-inhibiting effects can be readily demonstrated according to an agreed set of objective criteria (MTN.GNG/NG2/W/9, pages 5-6; and MTN.GNG/NG2/5, para. 16).
- (b) Issue: Whether negotiations should deal with tariffs and non-tariff measures in an integrated approach or only with non-tariff measures.

Suggestions:

- All countries should put themselves in a position to negotiate the broadest and deepest possible package of trade liberalization covering all goods and including the elimination of tariffs and non-tariff measures on a reciprocal and balanced basis. In many instances improved market access could not be achieved if an integrated approach were not followed because of the existence of multiple barriers to trade (MTN.GNG/NG2/W/5, page 3; MTN.GNG/NG2/W/4/Add.1, page 2; and MTN.GNG/NG2/4, para. 7 and 8).

- It is doubtful that one could integrate all market access problems in the fields of tariffs and non-tariff measures. The GATT separates tariffs and non-tariff measures in a specific way and there is no reference to an integrated approach in the negotiating objectives of the Groups on Tariffs and Non-Tariff Measures. An integrated approach might also lead to the substitution of a tariff for a non-tariff measure, which could go against progress achieved in several rounds of tariff cutting negotiations (MTN.GNG/NG2/3, para. 9; and MTN.GNG/NG2/4, para. 8).

- (c) Issue: Whether an integrated approach can be used for the assessment of offers made during these negotiations as well as of the result of these negotiations.

Suggestions:

- The negotiated outcomes in the reductions of both tariffs and non-tariff measures in accordance with the Uruguay Round Declaration should be assessed by individual countries in terms of the size of the reduction in levels of overall industry assistance, covering tariffs and non-tariff measures, including subsidies which have a trade effect (MTN.GNG/NG2/W/8).

- (d) Requests and offers and multilateral approaches

Issue: The negotiating plan indicates that for the subsequent stages of the negotiations, there would be requests and offers, subject to procedures to ensure transparency and also that some subjects would be dealt with multilaterally. The issue is therefore what procedures should be adopted for the negotiations.

Suggestions:

- For particular measures of concern to individual participants, the most appropriate procedure is the exchange of requests and offers subject to multilateral scrutiny in the Negotiating Group, since bilateral agreements could have effects on third parties (MTN.GNG/NG2/2, para. 6; and MTN.GNG/NG2/4, para. 6).
- The procedures should provide for the application of the principle of differential and more favourable treatment for developing countries, by ensuring that developed participants should, inter alia:
 - (i) implement in advance concessions accorded to these countries,
 - (ii) avoid concessions which are not compatible with the trade, development and financial needs of developing countries, and
 - (iii) remove as a starting point measures which affect their exports (MTN.GNG/NG2/2, para. 2).
- All contributions made by developing countries in terms of trade liberalization throughout the duration of the negotiations should be acknowledged as concessions, especially in the area of market access,

and should be accompanied by liberalization in the markets of developed countries, in favour of developing countries (MTN.GNG/NG2/5, para. 15).

- There are areas such as measures at the frontier, practices tending to inhibit or retard customs clearance, preshipment inspection or rules of origin which might lend themselves to multilateral action or rule-making. There are also newer forms of non-tariff measures which could be taken up in the Group (MTN.GNG/NG2/4, para. 11; MTN.GNG/NG2/W/4/Add.1, page 2; and MTN.GNG/NG2/W/9, page 4).
 - Negotiations on some types of non-tariff measures will focus on quantities, expressed in either value or volume terms. For example, certain measures such as quotas or customs fees and charges, lend themselves to systematic formula approaches which have to be distinguished from rule-making. There will also be certain measures, not susceptible to formula treatment, which are within the ambit of existing Codes and for which the Negotiating Group on Non-Tariff Measures could work to identify areas in which the Code needs to be improved. There will be some issues for which the negotiation of new GATT rules or Codes might be undertaken as foreseen in the Uruguay Declaration (MTN.GNG/NG2/4, para. 12; and MTN.GNG/NG2/W/3, page 3).
 - Formula approaches are not appropriate for non-tariff measures (MTN.GNG/NG2/4, para. 12).
- (e) Issue: Whether the procedures should deal with all products and all non-tariff measures or only those not dealt with in other Uruguay Round bodies.

Suggestions:

- The coverage of the Negotiating Group should be limited to subjects not taken up elsewhere. Measures covered by the MTN Agreements and Arrangements should only be discussed in the Negotiating Group on Non-Tariff Measures if they affect non-signatories of these Codes. It would not be appropriate for the Negotiating Group on Non-Tariff Measures to take up measures which fell within the coverage of the sectoral groups, i.e. agriculture, textiles, tropical and natural resource-based products, though some overlap would be inevitable (MTN.GNG/NG2/4, para. 10).
- The reintegration of the MFA régime into the GATT is a matter for the Negotiating Group on Textiles and Clothing, and issues related to that would not be taken up in the Negotiating Group on Non-Tariff Measures, which would only deal with other non-tariff measures affecting textiles and clothing (MTN.GNG/NG2/5, para. 12).
- The Punta del Este declaration recognizes that "aspects of one issue may be discussed in more than one negotiating group". Delegations are

entitled to raise in the Negotiating Group on Non-Tariff Measures matters related to agriculture or any of the other Negotiating Groups (MTN.GNG/NG2/5, para. 6).

- The Negotiating Group should proceed to identify measures which could be taken up in other Negotiating Groups, either on the basis of sorting out existing measures according to an agreed classification, or on the basis of a classification to be done by the secretariat (MTN.GNG/NG2/4, para. 10; and MTN.GNG/NG2/W/3, para. 6).
 - Flexibility should be maintained in all approaches, and the possibility should be preserved of referring to the Negotiating Group on Non-Tariff Measures, for bilateral requests and offers, issues which might appear to come within the coverage of Code Committees or other Negotiating Groups (MTN.GNG/NG2/4, para. 8).
- (f) Issue: Whether the negotiations should only deal with measures which are consistent with the GATT, or with all measures, regardless of their GATT-consistency.

Suggestions:

- In conformity with the Punta del Este declaration, negotiations should only be held over measures which are consistent with the GATT. The Group therefore has to distinguish between those measures which it would take up and those which would be covered by the rollback commitment and referred to the Surveillance Body. The GATT-consistency of a measure is an issue for the CONTRACTING PARTIES (MTN.GNG/NG2/1/Rev.1, para. 3).
- Parties should not have to pay for the elimination of illegal practices. However, this issue cannot be resolved at the outset of the negotiations without unnecessarily delaying progress. Parties can proceed with negotiations and address the issue of illegal practices on a case-by-case basis at a later point in the negotiating process (MTN.GNG/NG2/W/4, pages 2-3).
- It is not possible to defer a decision on the question, because this would not help the negotiations or fulfil the requirements of the Ministerial Declaration of 1986. The Negotiating Group should start with those measures whose GATT-consistency is not questioned, such as those maintained under waivers or Protocols of Accession (MTN.GNG/NG2/4, para. 9).
- One solution is for the Negotiating Group to refer to the Surveillance Body all measures whose GATT-consistency has been questioned in the existing data base. The Surveillance Body would seek to reach agreement on the GATT-consistency of measures which had been referred to it (MTN.GNG/NG2/4, para. 9).

- The Surveillance Body is a political forum and cannot take on the dispute settlement function of the CONTRACTING PARTIES. As long as there is doubt about the GATT-consistency of a measure, it could legitimately be taken up in the Negotiating Group (MTN.GNG/NG2/4, para. 10).