

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG2/11/Add.1

9 August 1989

Special Distribution

Group of Negotiations on Goods (GATT)
Negotiating Group on Non-Tariff Measures

MEETING OF 27 AND 30 JUNE, AND 26 JULY 1989

Chairman: Ambassador L. Duthie (Australia)

Note by the Secretariat

Addendum

1. A brief note on the meeting of the Negotiating Group held on 27 and 30 June, and 26 July 1989 can be found in MTN.GNG/NG2/11. The present note summarizes the statements made at that meeting whose agenda is contained in GATT/AIR/2794.

I. Presentation of Indicative Lists

2. The representative of the Republic of Korea introduced the communication of his delegation (MTN.GNG/NG2/W/27/Rev.1) which included categories of measures considered appropriate for rule-making approaches and updated the earlier list of indicative measures (MTN.GNG/NG2/W/27) put forward for request-and-offer approaches. The representative of Hong Kong introduced his delegation's indicative list (MTN.GNG/NG2/W/38) which contained measures for rule-making and formula approaches.

3. The representative of Hungary introduced his delegation's indicative list of measures (MTN.GNG/NG2/W/37) which contained measures for which request-and-offer approaches were suggested.

II. Implementation of paragraph 3 of the decision on non-tariff measures adopted by the Trade Negotiations Committee (MTN.TNC/11, page 6)

(A) Multilateral rule-making approaches

4. Some delegations said that the Group should examine categories of measures for which multilateral approaches were proposed and discuss the question of whether these were appropriate before establishing a negotiating framework and procedures as envisaged in Item I(D) of the agenda. The Chairman recalled that the Trade Negotiations Committee in

its mid-term review agreement had instructed the Group to aim to establish by the end of June 1989 a framework for future negotiations, including procedures.

5. A delegation from a country implementing preshipment inspection (PSI), which was supported by others, considered that participants which were complaining about the effects on trade of PSI fell short of adopting a constructive approach to negotiations on PSI. In particular their insistence on identifying PSI as a non-tariff measure and on a binding dispute settlement mechanism constituted a serious obstacle to an eventual agreement between importing and exporting countries. This delegation considered that the Code of Practice and Price Comparison Principles drawn up by the International Federation of Inspection Agencies (IFIA) were appropriate elements for a multilateral understanding. It could not accept the creation of a binding mechanism for dispute settlement but was prepared to examine constructive suggestions put forward by other delegations, such as the one relating to the supply of technical assistance in customs matters to developing countries employing PSI, though many of the PSI programmes did not have a customs dimension. Other delegations from countries which implement PSI explained that development considerations required them to resort to this practice and stressed that PSI could not be examined without bearing this in mind. They considered that PSI, of which price verification was an important element, had in fact facilitated the transit of goods through customs in their countries and did not therefore have a trade-restricting effect.

6. Some delegations considered that PSI, which they perceived as a barrier to trade, should be brought under multilateral disciplines. While they did not challenge the sovereign rights of developing countries to resort to the services of PSI agencies, they felt that this had to be on a temporary basis. They welcomed the spirit of constructive dialogue evidenced by statements from developing countries maintaining PSI. Many exporters complained about the delays and costs associated with PSI especially when disagreement arose between the exporters and the agency concerned. One per cent of a country's exports were affected by PSI, which was concentrated regionally and constituted the tip of the iceberg. Some exporters had ceased to export to certain countries because of the burdens arising out of PSI. Complaints had been made about the arbitrary nature of price comparisons and other aspects of PSI. The representative of a group of delegations set out his authorities' approach in a statement later issued as MTN.GNG/NG2/W/39. He stressed the importance they attached to the elaboration of a multilateral framework for PSI, and welcomed the readiness demonstrated by countries implementing PSI to consider such a framework. A dispute settlement procedure which would be elaborated in the GATT as part of rules relating to PSI would not apply to problems arising between individual exporters and PSI agencies. Such problems had to be settled differently, for instance through the establishment of a body similar to the one envisaged by the importing countries which would rapidly provide an opinion on the matter at hand. A GATT dispute settlement

procedure would deal with problems between contracting parties relating to the principles which would apply to PSI.

7. The representative of Japan introduced his delegation's communication on rules of origin (MTN.GNG/NG2/W/36). He described some of the problems, summarized in the secretariat's latest report on "Developments in the Trading System" (C/W/590), which his authorities faced through the arbitrary formulation and application of some of their trading partners' rules of origin. Articles I, II, III, VI, IX, XI, XIII and XXIV of the General Agreement were relevant to the determination of the country of origin of a traded product which was of fundamental importance to the rights and obligations of contracting parties. In view of the trade-restrictive or distorting effects that the arbitrary use of rules of origin could have, his delegation considered it highly desirable to establish harmonized and/or uniform international criteria to identify the origin of goods, in cooperation with the Customs Cooperation Council (CCC). In this connection, a mechanism for notification, consultation and dispute settlement relating to rules of origin should also be elaborated, preferably before the end of the year.

8. The representative of a group of delegations was of the opinion that rules of origin were a highly technical matter which did not fall within the purview of the Negotiating Group. Any action relating to this matter had to take place within the CCC.

9. Other representatives considered that rules of origin had trade effects and that this justified efforts aimed at elaborating rules of general application for the determination of origin, preferably in cooperation with the CCC as had been done in the past when the Customs Valuation Code had been drafted.

10. The representative of the European Communities introduced the study which his authorities had prepared on consular formalities for the Working Party on the Facilitation of International Trade Procedures of the United Nations Economic Commission for Europe, which had been made available to the Group (MTN.GNG/NG2/W/34). The CCC was dealing efficiently with customs formalities and he invited participants which had not yet adhered to the Kyoto Convention to do so. Some specific problems on customs and consular formalities might be taken up bilaterally. He also invited participants to contribute to completing the information contained in the study. He explained that his authorities had carried out an examination of the question of fees, dues and other charges on imports and had reached the conclusion that work should concentrate on charges for services rendered. They could suggest that the Group work towards the drawing up of an interpretative note to Article VIII of the General Agreement. Another representative noted from the study contained in MTN.GNG/NG2/W/34 that only developing countries appeared to be resorting to consular formalities and wondered whether there might not be developed countries which used such formalities. He thought that this question was also linked to that of

visas because exporters could not operate unless they could visit their markets. One representative did not think that the consular formalities described in the study constituted restrictions to trade covered by the Punta del Este Declaration since they were automatic and non-discriminatory in most cases.

11. During the discussion, suggestions were made for three additional papers by the secretariat which would (a) bring together the points made in relation to PSI, so that the Group could identify the issues to be negotiated; (b) summarize information on national provisions relating to rules of origin and problems caused by differences in these provisions; and (c) update the information relating to the implementation of the 1957 Recommendation on Consular Formalities (BISD 6S/25). The Chairman stated that the Group would take up these suggestions at its next meeting.

12. A number of delegations announced that they would put forward before the Group's next meeting written submissions containing specific proposals with respect to particular categories of non-tariff measures.

(B) Multilateral formula approaches

13. The representative of Australia recalled that his delegation had set out in a submission to the Group (MTN.GNG/NG2/W/31), its ideas on how formula approaches could be effective in liberalizing non-tariff measures having price or quantity elements and stated that specific techniques could be applied to tackle specific types of measures. A formula could be employed across different product sectors to promote a transparent and multilateral approach which would lead to a substantial outcome to the negotiations as required under the Mid-Term Review Agreement. Procedures should be developed for this purpose which would promote a broadly based negotiating process in which all participants could pursue their interests. Progress in achieving reductions in non-tariff measures could be assessed using a combination of traditional GATT data and techniques, including tariff line coverage, value of trade affected by reductions, size of the cut in overall assistance to industry, etc. His delegation expressed a strong preference for the Group and the secretariat to be given an active rôle in the assessment of the outcome of the negotiations.

14. Other representatives considered that formula approaches could be applied to some categories of measures such as quotas, provided that these approaches did not have a limited sectoral coverage. However, some considered that multilateral rule-making and request-and-offer approaches were more likely to lead to a substantial reduction of non-tariff measures.

(C) Request-and-offer approaches

15. The representative of Chile, referring to the indicative list submitted by Switzerland (MTN.GNG/NG2/W/33), stated that the import

licensing system maintained by his country was automatic and therefore did not constitute a barrier to trade. Price lists were not required for pharmaceutical products. These products were subject to testing and certification requirements consistent with WHO regulations which also applied to domestic production and had no trade-restrictive effects. He therefore requested the delegation of Switzerland to modify its submission to the Group accordingly. The representative of Switzerland stated that his authorities would study this point and take the matter up bilaterally with Chile in due course.

(D) Framework for future negotiations, including procedures

16. The Group had before it the Chairman's suggestions for the framework and procedures for future negotiations (MTN.GNG/NG2/W/35). After some discussion held with the help of these suggestions, the Negotiating Group requested the Chairman to revise his suggestions and submit them to a resumed meeting of the Group held on 26 July 1989.

17. Introducing his revised suggestions (see Appendix) at the resumed meeting of the Group, the Chairman stated that they constituted a compromise text which was not fully satisfactory to any single delegation, but that he hoped the Group would be able to adopt it and move to the substantive phase of the negotiations as it was requested to do by the Mid-Term Review Agreement.

18. Many delegations agreed with the Chairman that the text he had presented constituted a compromise and stated that, although it failed to meet all of their concerns on such matters as transparency, they were prepared to accept it as it stood. They pointed out that in the absence of procedures, the negotiations would be stalled or would be held non-transparently. They also felt that that the text should preserve the balance set out in the Punta del Este Declaration. Some delegations gave notice that a greater degree of transparency is needed in procedures for tariff negotiations and said that their acceptance of the suggested procedures for negotiations on non-tariff measures would not prejudice their position on procedures for tariff negotiations. One delegation was disappointed that procedures were still being discussed six months after the Mid-Term Review while progress was made in areas of interest to developed countries and hoped that progress similar to that reached in negotiations on tropical products could be made in negotiations on non-tariff measures.

19. During the discussion, a number of amendments were suggested to the text. One delegation, supported by others, proposed the addition of the words "wishing to do so" after "participants" in the first sentence of sub-paragraph (a) of Section C. This delegation considered that the Chairman's suggestions constituted a step backwards compared to the procedures which had been followed in the Tokyo Round, in that they did not

put more emphasis on rule-making approaches which had been preferred in those negotiations. The objective of this delegation's suggestion was to make it quite clear that participants were not obliged to take part in request-offer negotiations if they did not wish to. Other delegations thought that no single negotiating approach could solve all the problems related to non-tariff measures and that this was recognized by the Mid-Term Review Agreement which provided for the use of different approaches. Another suggestion, supported by a number of delegations, was made in relation to this sentence. Its objective was to make it clear that it was participation in request-offer negotiations, and not the use of an agreed format, which was optional, and accordingly it envisaged that the sentence should be modified to read: "By 15 October 1989, participants wishing to do so will submit initial request lists according to the attached format (Annex I)".

20. Another delegation, supported by others, suggested that the words "having regard to their individual development, financial and trade needs" be deleted from the fifth sentence of Section A; that the words "except to those to whom the requesting participant objects" be deleted from the fourth sentence of paragraph (b) of Section C; and that the second half of paragraph (h) of Section C be amended to apply to all developing countries and not just to least-developed ones. It considered that the language used in paragraph vii of Part I:B of the Punta del Este declaration should be preserved in these procedures.

21. Following these suggestions a delegation proposed that the words "including paragraphs iv-vii of Part I:B of the Declaration be added after "Uruguay Round" in the third line of the introductory paragraph of the text and that the other references to this Part of the Declaration be deleted from Sections A, B and C of the text. Similarly, this delegation suggested that the fifth sentence in Section A end after the words "agreed time-frames", that paragraph (h) of Section C be deleted and that paragraph (c) of Section C be merged with Section E in such a way as to make the concept of recognition for liberalization measures apply to all three negotiating approaches. This delegation considered that by including the reference to Part I:B of the Ministerial Declaration in the introductory paragraph of the text, it would be possible to avoid discussions as to how this principle could be reflected in each of the three negotiating approaches. However, other delegations considered that these suggestions indicated that this delegation did not feel bound by the commitment to apply special and differential treatment for developing countries, as required by the Ministerial Declaration. They felt that unless the points to which they attached importance were reflected in the text, it would not be possible for them to adopt it.

22. Out of concern to ensure transparency in the negotiations, one delegation which was supported by others, suggested that the second, third and fifth sentences in paragraph (b) of Section C be deleted and that the last sentence in Section F be amended to make it clear that the information

available to the Negotiating Group on offers would be the same as that on requests.

23. A number of delegations considered that the Punta del Este Declaration recognized a distinction between developing and least-developed countries and that therefore the second sentence in paragraph (h) of Section C should not be modified. The concept of advance implementation of concessions for least-developed countries, which would not really have an important effect on the trade of developed countries, so small was the share of the least-developed in world trade, had been recognized by the GNG.

24. The delegation of Brazil made a formal reservation to the text because its position with regard to special and differential treatment for developing countries was not reflected. Following the inclusion of its country in the so-called "priority foreign country list" in the context of Section 301 of the United States Trade Act, this delegation had expressed its serious concern with respect to the future of the Uruguay Round at the recent special and ordinary sessions of the Council. It had highlighted that the United States attempt to impose unilateral trade restrictions improved its negotiating position and distorted the negotiating process. The United States was radically changing the traditional system of give-and-take of multilateral negotiations by the creation of a situation in which a country was compelled to eventually make concessions in order to avoid retaliation. The United States was seeking the removal of measures covered by Article XVIII:B of the General Agreement. These measures had been notified to and justified by the appropriate GATT bodies, namely the Balance-of-Payments Committee and the Council, with the endorsement of the United States. The reasons for the adoption of these measures were well known. They were applied because of balance-of-payments difficulties and were being progressively reduced. The announcement of the application of Super 301 against Brazil was a concrete fact. The threat of retaliation could not be seen as a mere hypothesis. The situation created by these facts left Brazil no choice but to express formally its legitimate right to reject negotiations under the threat of retaliation. It therefore was not in a position to join in a consensus on the procedures. However, in order to be coherent with the Brazilian tradition of working constructively in all multilateral fora, it would not stand in the way of consensus. Nevertheless, Brazil would not feel itself committed to dates and procedures which might be adopted by the Negotiating Group. It reserved the right to take other measures as the present situation developed.

25. Other delegations considered that the procedures could not ensure the conduct of truly multilateral negotiations if they were not applicable to all participants and if all participants did not consider themselves committed to the principles and guidelines contained in the Mid-Term Review Agreement. The representative of the United States disagreed in its entirety with the statement of the delegation of Brazil and drew attention to the minutes of the recent sessions of the Council which reflected his delegation's position on the questions raised in that statement. The GATT

system could only prosper if all parties applied its rules. If they deviated from them, the system would be weakened and contacts between countries would be needed in order to set things back on track. He doubted that all participants in the negotiations shared his delegation's commitment to the principles and guidelines contained in the Mid-Term Review Agreement and to the objective of substantial market access liberalization. This commitment was a central element of a successful conclusion of the Uruguay Round negotiations. His delegation had hoped that the procedures would have allowed this commitment to be translated into action. In the absence of detailed procedures, the negotiations would be governed by the principles and guidelines contained in the Mid-Term Review Agreement.

26. The Chairman stated that further efforts would need to be made with the help of his suggestions so that the Group could agree on procedures at its next meeting which would be held on 28 September. In the meantime, he hoped that delegations would go ahead with the preparation of specific proposals, which may take the form of initial request lists or of specific proposals for multilateral action so that they could be submitted by 15 October 1989.

III. Other business, including arrangements for the next meeting of the Group

27. The Chairman suggested that the Group hold its next meetings on 28 September, 24-25 October and 30 November-1 December 1989. It was so agreed.

APPENDIXFRAMEWORK AND PROCEDURES FOR THE NEGOTIATIONSChairman's SuggestionsRevision

In the negotiations, participants will observe the principles and guidelines set out in the Ministerial Declaration launching the Uruguay Round, the Negotiating Plan for non-tariff measures (MTN.GNG/5, page 6) and the Mid-Term Review Agreement on non-tariff measures (MTN.TNC/11, page 5). They adopt the following procedures for the conduct of the negotiations, which would be without prejudice to any action to be taken in fulfilment of the rollback commitments contained in Part I.C of the Ministerial Declaration launching the Uruguay Round:

A. Multilateral rule-making approaches

Participants wishing to do so should submit by 15 October 1989 proposals setting out each category of measure which they would like to see covered by rule-making approaches and their specific proposals with regard to each such category. The participants will retain the right to put forward additional proposals at any stage of the negotiations. The participants will examine these proposals with a view to reaching agreement on rules of general application. In the elaboration of these rules, participants will bear in mind Part I.B, paragraphs iv-vii of the Ministerial Declaration. Rules of general application may be implemented immediately or over agreed time-frames which, having regard to their individual development, financial and trade needs, may be longer for developing countries.

B. Multilateral formula approaches

Participants remain free to bring forward proposals for the application of multilateral formula approaches to particular measures. The Negotiating Group will examine proposals made.

Where understandings are reached in the Negotiating Group concerning the appropriateness, applicability and scope of application of formula approaches to particular measures, the necessary procedures will be elaborated taking into account Part I.B, paragraphs iv-vii of the Ministerial Declaration.

C. Request-and-offer approaches

The following procedures will be applied, taking into account Part I.B, paragraphs iv-vii of the Ministerial Declaration:

- (a) Participants should submit by 15 October 1989, initial request lists according to the attached format (Annex I). Such initial request lists can be modified or supplemented at any time. These lists may be submitted in any official GATT language.
- (b) Initial request lists will be submitted to the participants concerned and will also be made available to the secretariat at the same time. The secretariat, in consultation with the party making the request, will prepare summaries of each request list which will be made available to the Negotiating Group. These summaries will include information such as number of tariff lines, indication of product coverage and indication of non-tariff measure categories. The secretariat will also circulate the initial request lists to individual participants, except to those to whom the requesting participant objects. The secretariat will consult with the participant making the request before circulating that participant's initial request lists. Requests circulated would be in accordance with the normal GATT procedures on confidentiality.
- (c) Participants which have adopted liberalization measures will receive appropriate recognition for them. Accordingly, participants seeking recognition for liberalization measures should give details of the measures that they have adopted and the precise recognition that they are seeking.
- (d) The participants concerned will consult bilaterally as necessary on these initial request lists, with a view to clearing up any technical points which may arise.
- (e) Plurilateral discussions, involving participants which have shared interests, are to be encouraged. In this regard, participants may consult to identify areas of shared interest.
- (f) Initial offers made, inter alia, in response to initial requests should be submitted so that negotiations begin as soon as possible and no later than 15 January 1990. These offers will be made according to the attached format (Annex II). They may be submitted in any GATT language and will at the same time be given to the secretariat.
- (g) Participants may offer to implement some measures either immediately or over time-frames to be agreed.

- (h) In the submission of offers, special attention will be given to the requests emanating from developing country participants. Participants will ensure special treatment for the least-developed countries, which may take the form of advance implementation for them of liberalization measures.

D. Security of concessions

Participants are invited to submit by 15 January 1990 proposals aimed at ensuring that concessions to reduce or eliminate non-tariff measures are not subsequently nullified or impaired. The examination of these proposals by the Negotiating Group will begin preferably by 15 February 1990.

E. Recognition of liberalization measures

Participants seeking recognition for liberalization measures are free to put forward proposals which will be examined by the Negotiating Group preferably by 15 February 1990.

F. Action by the Negotiating Group

Recognizing the importance of achieving substantially improved market access, the Negotiating Group will meet to ensure that the objective, principles and guidelines adopted for the negotiations are met. To this end, the Chairman will provide the Negotiating Group with a list of participants having made requests and/or offers. He will also request all participants to inform the Negotiating Group on developments in the negotiations. This will include, inter alia, with respect to requests, indications as to the participants of which requests have been made and, for each request list, indications as to the number of tariff lines, NTM categories and product categories involved. With respect to offers, this will include indications as to whom these have been made.

ANNEX I

REQUEST LIST

Requested by [participant] from [participant]

| Tariff line (if possible) | Product description | Non-tariff measures | | Remarks |
|------------------------------|------------------------|--|---------------------|---------|
| | | Measures on which action is requested | Action requested | |
| 1 | 2 | 3 | 4 | 5 |

ANNEX II

OFFER LIST

Submitted by [participant] to [participant]

| Tariff line (if possible) | Product description | Measure on which action was requested | Offers | Other non-tariff measures applied to the product | Remarks |
|------------------------------|------------------------|---|--------|---|---------|
| 1 | 2 | 3 | 4 | 5 | 6 |
| | | | | | |