

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG2/17
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Special Distribution

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

MEETING OF 21 MARCH 1990

Chairman: Ambassador L. Duthie (Australia)

Note by the Secretariat

1. The Negotiating Group held its sixteenth meeting on 21 March 1990. It adopted the agenda contained in GATT/AIR/2942.

A. Continued examination of categories of measures for which multilateral approaches have been proposed

Preshipment Inspection (PSI)

2. Introducing his delegation's communication on preshipment inspection (MTN.GNG/NG2/W/60), the representative of the European Communities explained that they would prefer a framework agreement rather than a detailed code. Such an agreement should include some principles, but their implementation should be left to national legislation. His delegation's proposal struck a balance between the rights of all interested parties and would form an adequate basis for negotiations. Obligations and rights arising out of a framework agreement would be applicable to contracting parties and not to private parties. He pointed to some of the elements contained in his delegation's submission, such as transparency, non-discrimination, confidentiality of business and proprietary information, and stressed that price-verification should be carried out without delay and according to some agreed principles. Their communication suggested, though not as a precondition, the exclusion of certain activities from PSI. However, if negotiations showed that the suggestion was not practicable, his delegation would not insist on it. The Communities believed it was extremely important that a dispute settlement mechanism be established to regulate disputes between the parties to PSI. However, provisions dealing with dispute settlement between contracting parties should not be finalized until negotiations in the relevant Group had been completed.

3. Introducing his delegation's proposal on the subject, (later circulated as MTN.GNG/NG2/W/61), the representative of Zaire recalled that it was Indonesia as a user country which had first suggested to the Negotiating Group in February 1988 that PSI be taken up by it. This showed that developing countries had wanted from the outset an understanding that would be satisfactory to all parties. However, he thought that it would be difficult to reach compromise solutions if participants tried to impose, as their proposals suggested, accession to the Customs Valuation Code. The reticence of developing countries in this regard was well-known. Restricting price comparisons to exports from one supplying country to one country of destination, or asking for the issuance of provisional reports of findings were not acceptable suggestions to his delegation, and probably not to other user countries. Many developing countries had agreed to structural adjustment programmes, but these could only be implemented if they had sufficient capital resources. Over-invoicing of imports deprived these countries of their limited resources. Trying to restrict developing countries' ability to protect their foreign exchange resources raised serious ethical questions because there were, in international trade, many price-fixing practices which PSI was designed to combat and which resulted in developing countries being deprived of their resources.

4. The representative of Switzerland made a statement, (later circulated as MTN.GNG/NG2/W/62) which set out his delegation's views on the objectives and elements of a multilateral framework to apply to PSI. Another delegation also recognized the right of countries to resort to PSI but stated that it should not constitute an obstacle to trade. An agreement on PSI should contain some basic principles such as non-discrimination, the need for transparency in national regulations, but notifications need not be too elaborate. PSI should not take place for small shipments. Dispute settlement procedures should be flexible and should not have a binding character. Some delegations reiterated the view they had expressed earlier that the objective of a GATT agreement on PSI should be to liberalize trade and thus to minimize or eliminate obstacles to trade, including administrative procedures. An agreement on PSI should not legitimize this practice on a permanent basis and should therefore provide for a phase out of mandatory PSI, though without a fixed date. These delegations held the view that an agreement on PSI should cover all government mandated PSI activities whether they were carried out by private enterprises or government authorities. They would not welcome the recognition in such an agreement that developed countries could resort to this practice too.

5. In response to these comments, the representative of Zaire did not agree that an instrument should have a phase out clause for mandatory PSI. Developing countries were not keen to maintain these programmes but were forced to do so by unethical practices in trade. An agreement on PSI needed to strike a balance between the interests of exporters and importers. The submission of the European Communities exempted from PSI exporters who had proved their good conduct but he did not think that their good conduct could be certified. Similarly, he did not think that such

factors as long-standing relationships between exporters and importers should be taken into account by preshipment inspection agencies as there might be illegal agreements between them. His view that there should not be a binding dispute settlement mechanism in an agreement on PSI was well-known, and he therefore had misgivings with Article 5(2.h) of the Community proposal which gave the impression that the conclusions of experts appointed to settle disputes between countries and PSI companies would be final. The representative of the European Communities replied that they were prepared to negotiate with a view to reaching an agreement which was satisfactory to all parties. The provisions on dispute settlement between exporters and PSI agencies aimed at an effective and rapid solution of problems which should be final. The representative of the United States stated that though accession to the Customs Valuation Code was desirable, their proposal did not envisage it as a prerequisite for an agreement on PSI or even for negotiating on the subject. In response to a point made on an earlier occasion, she reiterated the view that an agreement on PSI should contain obligations applying to contracting parties.

6. At the end of the discussion on preshipment inspection, the Chairman recalled that the Group had requested at its last meeting the secretariat "to attempt, in consultation with delegations, to put together in an informal paper, a text which would draw together all the suggestions proposed for inclusion in a draft agreement on preshipment inspection with a view to bringing out in a clear way the points of convergence and divergence" (MTN.GNG/NG2/16, paragraph 7). The secretariat had made a start at putting together a draft text, into which the new submissions presented at the present meeting would be incorporated. He also recalled that in the procedures for the negotiations adopted by the Group (MTN.GNG/NG2/15), it was agreed that "participants would retain the right to put forward at any stage of the negotiations, additional proposals". However, in order to start working soon on making progress towards compromise solutions, any additional major drafting proposals which could be incorporated in the secretariat's informal paper should be submitted as soon as possible, and preferably before 30 March 1990. At its July 1989 meeting, the Trade Negotiations Committee had informally agreed that in order to meet the time-table for the negotiations, the objective of this present phase must be "to build bridges between differing positions" (MTN.TNC/12, paragraph 11). To this end, he suggested that the Group establish an Informal Drafting Group, open to all interested participants, which would be convened and chaired by the secretariat and would draw up elements of a compromise text on preshipment inspection for submission to the Negotiating Group. It was so agreed.

Rules of origin

7. In response to questions put to it in connection with its submission on rules of origin (MTN.GNG/NG2/W/55), the representative of the

European Communities stated that there was no great difference between the concept of harmonization and that of approximation which appeared in their submission. The Communities believed that the objective of the exercise should be the harmonization of rules of origin, but since they did not know how far contracting parties wished to go, they had used the term approximation. They had no precise time-table for the exercise but they did not envisage that it would go on for too long. It might take 1-2 years, though a precise forecast was difficult to make. The Communities were interested in product-specific rules but, in order to be useful, the harmonization exercise should lead to one set of rules of origin for non-preferential trade, with as few exceptions as possible so that trade would not face uncertain situations. With respect to transparency, there might be a problem in cases where immediate action might be required. If one had to wait 120 days before putting a measure into effect because the rules of origin linked to it should be the object of lengthy consultations, a problem would arise, though it could be overcome. There was already clarity and transparency and a mechanism for consultation and dispute settlement in preferential rules of origin, which were the objectives sought for non-preferential rules. As far as GSP was concerned, this constituted an exception to the rules of the General Agreement, which could be taken up at a later stage in other fora. The representative of the United States felt that if clarity and transparency were already achieved with respect to preferential rules of origin, there was no reason to exclude them from the coverage of a GATT instrument which would contain such principles. Though there might be a problem in applying the principle of non-discrimination to rules of origin for preferential trade, other principles and procedures such as legal certainty, predictability etc. could apply to both preferential and non-preferential rules. One possibility was to adopt a grandfather clause for existing preferential rules and undertake to apply the GATT instrument to all future rules. In response to questions which had been put to her delegation, she wished to stress that their proposal envisaged an important role for the Customs Co-operation Council (CCC) in the harmonization work. In many areas, the CONTRACTING PARTIES of the GATT would simply approve the work carried out by the CCC. The GATT negotiations would focus on rules which had trade-policy aspects.

8. One participant wondered whether drawing up rules of origin in the GATT might not lead to the appearance of new restrictions to trade. His country already had a series of bilateral agreements providing for preferential trade, each containing its own rules of origin. If the GATT also started drafting rules of origin, it would be difficult for customs officers to unravel the maze of rules which would arise. Another participant stated that the objective of the negotiations was to prevent rules of origin from acting as obstacles to trade and ensure that they were easily understandable to customs officers.

9. The Chairman suggested that the secretariat be asked to prepare before the next meeting of the Negotiating Group, in consultation with delegations, a text which would go as far as possible in drawing together suggestions for inclusion in a draft agreement on rules of origin with a view to bringing out in a clear way the points of convergence and divergence. He also suggested that, as had been done for PSI, the Negotiating Group agree to set up an Informal Drafting Group, which would be open-ended, would be convened and chaired by the secretariat, and would aim at drawing up elements of a compromise text for submission to the Group. A participant said that further consultations would be necessary before he could agree to the establishment of a drafting group. The Chairman said that the informal consultations would be held and that no participant's position would be prejudiced by them.

B. Information on progress in request-offer negotiations

10. The Chairman informed the Group that the delegations of Australia, Canada, Czechoslovakia, European Communities, Hungary, Indonesia, New Zealand, Nigeria, Peru, Sri Lanka and Thailand had already submitted request lists and that the delegations of Egypt, Finland, Mexico, Norway, Pakistan, Philippines, Poland, Romania, Switzerland and United States had announced that they would be submitting their lists soon. The representatives of Japan, Sweden, Morocco, Yugoslavia and Uruguay stated that they would also be submitting lists to the secretariat in the forthcoming days. The representatives of Chile and Senegal asked that lists that they had submitted to the Negotiating Group on Natural Resource-Based Products be treated as if they had been submitted to the Negotiating Group on Non-Tariff Measures and informed the Group that they would be submitting additional lists in the near future.

11. The Chairman recalled that the procedures for the negotiations required the secretariat to circulate the request lists to all the participants except to those to whom the requesting participant objected. In the circulation of request lists, the GATT procedures on confidentiality would be followed, as indicated in the secretariat's technical note (MTN.GNG/NG2/W/59). He called on participants which had submitted request lists but which had not informed the secretariat on how they wanted their lists to be circulated, to do so as soon as possible. As indicated in the technical note, sufficient copies should be supplied of each list, to allow for the desired distribution. In the event that the lists were not submitted to the secretariat in quantities sufficient for the distribution desired by the party making the requests, they would be reproduced in the GATT and the costs would be billed to the requesting participant.

C. Examination of proposals on the security of concessions

12. A number of participants informed the Group that they were working on proposals relating to this question. The Chairman called on all such participants to circulate these proposals well in advance of the next meeting of the Group.

D. Examination of proposals on the recognition of liberalization measures

13. The Chairman called on participants which might be preparing such proposals to finalize them as soon as possible so that the Group could start examining them at its next meeting.

E. Any other business, including arrangements for future meetings of the Group

14. The Chairman suggested that the next meetings of the Group, for which tentative dates had already been set, be held on 1-2 May, 6-7 June and 17-18 July 1990. Some of that time might be spent in informal sessions. It was so agreed.

15. The Chairman also suggested that the agenda for the next meeting of the Group be the same as for the present one. After some discussion, it was agreed that the agenda would also provide for a discussion of the relationship between the rollback commitments and negotiations on non-tariff measures.