

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED
MTN.GNG/NG2/4
30 October 1987
Special Distribution

Group of Negotiations on Goods (GATT)

Negotiating Group on Non-Tariff Measures

MEETING OF 15 OCTOBER 1987

Chairman: Ambassador L. Duthie (Australia)

Note by the Secretariat

1. The Negotiating Group held its fourth meeting on 15 October 1987 and adopted the agenda set out in GATT/AIR/2477. The Chairman welcomed the observers from the Customs Cooperation Council and UNCTAD who were attending a meeting of the Group for the first time, in accordance with the decision adopted by the Trade Negotiations Committee on 3 July 1987.

Establishment of an adequate data base for the negotiations

2. The Chairman suggested that the existing documentation on quantitative restrictions and other non-tariff measures, kept up to date in conformity with the relevant decision of the CONTRACTING PARTIES (L/6100), could be used in the negotiations. Contracting Parties should therefore continue to notify the quantitative restrictions that they maintained and be encouraged to make reverse notifications for inclusion in the Inventory of Non-Tariff Measures (Industrial Products). In line with the recommendation of the CONTRACTING PARTIES (L/6073, para 28 and L/6100), non-contracting parties which were participating in the negotiations should be asked to make similar notifications of the quantitative restrictions that they maintained, according to the agreed procedures but without prejudice to their legal status under the General Agreement. The Inventory of Non-Tariff Measures should also be opened to notifications relating to non-contracting parties participating in the Uruguay Round. The Council would be informed of this development, since the documentation had been built up in pursuance of decisions taken by the CONTRACTING PARTIES. The question of the establishment of an integrated data base would be pursued in the Council to which the secretariat's proposals had already been submitted (C/W/521). Delegations would retain the right to pursue the suggestions which they had made in the Negotiating Group, for the collection of additional data or its reorganization. He drew attention to the fact that the documentation had recently been reissued by the secretariat (NTM/W/6/Rev.4 and NTM(TG)/W/3).

3. Delegations welcomed the Chairman's call for enlargement of the data base to all participants in the Uruguay Round. Some delegations pointed to the need to update it since much of the information contained in the Inventory of Non-Tariff Measures (Industrial Products) was no longer valid. Many of the measures mentioned in it were contested by the maintaining

countries and were not of prime negotiating interest to participants in the negotiations because the Inventory had not been drawn up with negotiations in mind. Many measures were not identified at the tariff-line level. The Inventory was not linked to the data base on tariffs. Some delegations suggested that the Group therefore should ensure that the data on which the negotiations would be based covered the most serious problem areas such as import prohibitions, quantitative restrictions, VERs, variable levies, MFA restrictions and non-automatic licensing, and that it was relevant, current and accurate.

4. Several delegations were of the view that an integrated data base would be a valuable tool for the negotiations and that if efforts to establish it were to fail, the work of the Negotiating Group would necessarily be set back considerably. They considered that as many countries as possible should participate in an integrated data base, though in the meantime all participants should be asked to update their existing quantitative restrictions notifications by providing information based on the Harmonized System which many countries were expected to start implementing in the near future and which would be the point of departure for the negotiations.

5. Other delegations considered that, while the Negotiating Plan called for the establishment of an adequate data base for the negotiations, it did not mention an integrated data base, which might not necessarily offer the solution to the problem. They considered that, while the existing data base was not entirely adequate and could be improved especially with respect to measures which were of interest to developing countries, it could still be used for the negotiations as soon an agreement was reached on negotiating techniques.

Proposals from the participants setting out the particular problems which they want to address and the techniques which they consider should be used to deal with them

6. Many delegations stressed the need for bilateral negotiations to be held under multilateral scrutiny. This would enable all interested participants to join in requests and at the same time ensure that any resulting liberalization measures were implemented in a non-discriminatory fashion.

7. Some delegations recalled the proposal made earlier (MTN.GNG/NG2/W/5) that export interest lists, covering both tariffs and non-tariff measures in an integrated approach be submitted by 1 December 1987. One delegation stated that a more realistic target date for the submission of such lists would be mid-1988. Another delegation, supporting the integrated approach, suggested that when compiling lists of export interests, which would be drawn up without regard to the GATT consistency of measures included so that the Group could have a realistic account of the extent of non-tariff measures, participants might, in addition, nominate their preferred technique or basis for negotiation on the measures. If requests were made

on a standardized basis, a pattern would emerge of measures capable of being sorted according to preferred modalities. The three categories suggested were as follows:

- i) Measures which the notifying party wishes to negotiate upon systematically including via a formula;
- ii) Measures not to be dealt with in the Negotiating Group but which could be dealt with elsewhere;
- iii) Measures which the participant wishes to negotiate on a request and offer basis.

8. Many participants viewed this suggestion with interest, and expressed the wish to reflect on it. Some delegations had reservations about the integrated approach, because the GATT had always treated tariffs and non-tariff measures separately, though there would be cross-references at a later stage of the negotiations. Delegations also stated that an integrated approach might lead to the substitution of a tariff for a non-tariff measure, which would go against progress achieved in seven rounds of tariff cutting negotiations. Other delegations considered that in many instances, improved market access could not be achieved if an integrated approach was not followed, because of the existence of multiple barriers to trade, such as tariff quotas, combinations of tariffs and standards, tariffs and import licensing, tariffs and government procurement. Trade offs could also be considered between reductions in tariffs and accession to existing MTN Arrangements or instruments which might yet be negotiated. 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.

9. Several delegations recalled that the mandate of the Negotiating Group was to reduce or eliminate non-tariff measures, without prejudice to any action to be taken in fulfilment of the rollback commitment. As a starting point the Negotiating Group could consider measures taken under waivers or Protocols of Accession to the GATT. Negotiating techniques which might be developed would have to take into account the key distinction between GATT-consistent and GATT-inconsistent measures. It was not possible to defer a decision on the question as had been suggested, because this would not help the conduct of the negotiations or fulfil the requirements of the Ministerial Declaration of 1986. One solution was for the Negotiating Group to refer to the Surveillance Body all measures whose GATT-consistency had 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.

10. Other delegations stated that the Surveillance Body was a political forum and could not take on the dispute settlement function of the CONTRACTING PARTIES. As long as there was doubt about the GATT-consistency

of a measure, it could legitimately be taken up in the Negotiating Group. Some delegations considered that the coverage of the Negotiating Group was limited to subjects not taken up elsewhere. Measures covered by the MTN Agreements and Arrangements could only be discussed in the Negotiating Group on Non-Tariff Measures if they affected 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. The Negotiating Group could proceed to identify measures which would be taken up in other Negotiating Groups, on the basis of a classification to be done by the secretariat.

11. Several delegations believed that the negotiating procedures should provide for the holding of multilateral negotiations. There were areas such as measures at the frontier or rules of origin which might lend themselves to multilateral action or rule-making. There were also newer forms of non-tariff measures which were not sufficiently covered in the Inventory of Non-Tariff Measures (Industrial Products) and which could be taken up in the Group.

12. Some delegations did not believe that formula approaches were appropriate for non-tariff measures as had been suggested. There were, however, other delegations which considered that certain measures such as quotas or customs fees and charges lent themselves to systematic formula approaches which had to be distinguished from rule-making. For instance, one could envisage formula type negotiations on state-trading without necessarily drawing up new disciplines to strengthen Article XVII.

13. At the end of the discussion, the Chairman concluded that a further examination of the issues raised and the suggestions put forward was necessary so that the Negotiating Group could move towards the common understanding referred to in the Negotiating Plan: at the next meeting, the Negotiating Group would focus on this, with the help of a paper to be prepared by the secretariat.

Other business, including arrangements for the meetings of the Negotiating Group during the initial phase

14. The Chairman recalled that at its meeting of 12 October 1987, the GNG had agreed that the next meeting of the Negotiating Group on Non-Tariff Measures would start on 17 November 1987, unless a major problem arose which required a modification of the schedule of meetings.