

MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

RESTRICTED

MTN.GNG/NG2/W/7
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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

I. Introduction

At its meeting of 15 October 1987, the Negotiating Group requested the secretariat to prepare a paper on the issues raised and the suggestions put forward so far at meetings of the Group or in written submissions, so as to assist the discussions which it has to carry out on the tasks which have been set for it in the initial phase (MTN.GNG/NG2/4, para. 13). The Group's main tasks 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 is 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

- The existing documentation on quantitative restrictions and other non-tariff measures could be used in the negotiations and should be kept up to date in accordance with the agreed procedures (MTN.GNG/NG2/4, para.2).

- 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).

- 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).

- The following specific improvements should be made to the data base:

(i) a standard format for notifications on non-tariff measures should be applied to notifications on non-tariff measures with a view to improving the documentation which relies on counter-notifications and is therefore less comprehensive than the documentation on quantitative restrictions. Up-to-date data on all non-tariff measures, including technical barriers to trade, voluntary export restraints, orderly marketing arrangements, variable levies, MFA restrictions etc., should be assembled (MTN.GNG/NG2/1/Rev.1, para.5, MTN.GNG/NG2/3, para.6 and MTN.GNG/NG2/4, para.3).

(ii) the documentation put together by the Group on Quantitative Restrictions and Other Non-Tariff Measures should be improved by the inclusion of the AG/DOC/-series (MTN.GNG/NG2/3, para.6).

b) Integrated data base

- This data base should be made available as soon as possible because it is necessary in the negotiations to look at the impact that tariffs and non-tariff measures could together have on individual products. As many countries as possible should participate in the integrated data base (MTN.GNG/NG2/2, para.5 and 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 necessarily offer a solution to the problem. While the existing data base is not entirely adequate and could be improved, especially with respect to measures which are of interest to developing countries, it can still be used in the negotiations as soon as agreement is reached on negotiating techniques (MTN.GNG/NG2/4, para.5).

- The question of the establishment of an integrated data base should be pursued in the Council to which the secretariat's proposals have already been submitted (MTN.GNG/NG2/4, para.2).

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

a) Issue: Whether export interest lists should be presented by participants to facilitate a decision on the techniques and procedures for the negotiations.

Suggestions:

- In order to identify how specific objectives can be best addressed, it will be necessary for participants to have a better sense of the particular problems to be negotiated as well as the potential scope of negotiations. To that end, participants should aim to submit by 1 December 1987, export interest lists to other participants (MTN.GNG/NG2/W/5, pages 3-4).
- A more realistic target date for the submission of such lists would be mid-1988 (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).

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. When negotiating on tariffs on a particular product one has to look at whether the value of a tariff binding might be impaired by special import charges, fees, surcharges, monopolies, import deposit schemes, delays in the issuance of import licences etc. In that sense, it is clear that negotiations have to be integrated. Export interest lists should therefore cover both tariffs and non-tariff measures in an integrated approach (MTN.GNG/NG2/W/5, page 3, MTN.GNG/NG2/3/para.9 and MTN.GNG/NG2/4, para.7).
- The GATT has always treated tariffs and non-tariff measures separately 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 would 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 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, in the context of each country's interests. The GATT-consistency or inconsistency of individual measures can then be debated on a country-by-country basis in an effort to have these barriers removed (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).

d) 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 is 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. MFA restrictions should be dealt with in the Negotiating Group on Textiles and Clothing, but other non-tariff measures affecting textiles and clothing should be taken up in the Negotiating Group on Non-Tariff Measures (MTN.GNG/NG2/4, para.10).

- The Negotiating Group should proceed to identify measures which could be taken up in other Negotiating Groups, on the basis of a classification to be done by the secretariat (MTN.GNG/NG2/4, para.10).

- 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).

e) Requests and offers

Issue: The negotiating plan appears to assume, in particular in its subsequent stages, that there will be requests and offers subject to procedures to ensure transparency. If this is so, the issue is what procedures should be adopted for them.

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. Multilateral scrutiny and transparency would also 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 (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).

f) Multilateral approaches and subjects to be dealt with multilaterally

Issue: Problems relating to a number of categories of non-tariff measures are being examined in other bodies. The issue is therefore whether or not there are subjects which should be taken up multilaterally by the Negotiating Group and the approaches which should be followed to deal with such subjects.

Suggestions:

- There are areas such as measures at the frontier or rules of origin which might lend themselves to multilateral action or rule-making. There are also newer forms of non-tariff measures which are not sufficiently covered in the Inventory of Non-Tariff Measures (Industrial Products) and which could be taken up in the Group (MTN.GNG/NG2/4, para.11).
- Certain measures, such as quotas or customs fees and charges, lend themselves to systematic formula approaches which have to be distinguished from rule-making (MTN.GNG/NG2/4, para.12).
- Formula approaches are not appropriate for non-tariff measures (MTN.GNG/NG2/4, para.12).