MULTILATERAL TRADE NEGOTIATIONS THE URUGUAY ROUND

RESTRICTED

MTN.GNG/NG7/W/47/Add.1
11 November 1988

Special Distribution

Original: English

Group of Negotiations on Goods (GATT)
Negotiating Group on GATT Articles

NOTE ON NEW ZEALAND SUBMISSION ON ARTICLE II:1(b)

Addendum

The following communication, dated 31 October 1988, has been received from the delegation of New Zealand with the request that it be circulated to members of the Group.

---

1. This note is an attempt to respond to a range of questions that have been asked in respect of the New Zealand proposal on Article II:1(b) (MTN.GNG/NG7/W/47). It is divided into two parts. The first deals with questions concerning issues raised in the New Zealand proposal on items bound for the first time. The second part deals with questions raised in relation to application of the principles of the proposal to existing bound rates which could be further reduced.

PART A : NEW BINDINGS

Would this proposal mean that GATT inconsistent charges are more likely to find their way into schedules?

2. The problem does not really arise. Any contracting party proposing to take on a binding commitment would, under our proposal, simply be committing themselves to bind the sum of all duties and charges on imports at a fixed rate. It is useful, in this regard, to bear in mind the distinctions between three categories of "duties and charges". First, there are "ordinary customs duties". These are usually what appear currently in the "rate of duty" column in Schedules. Second, there are the specific classes of fees, charges and duties referred to in Article II:2. These are charges equivalent to internal taxes, anti-dumping and countervailing duties, and fees/charges commensurate with the cost of services rendered. They are exempted from coverage by the II:1(b) obligation. Third, there is the residual category, i.e "all other duties or charges of any kind imposed on or in connection with importation".

3. In respect of other duties and charges in this third category, the issue of "consistency" arises essentially in relation to the question of whether the level existing at the date of the concession has been breached. Article II:1(b) does not enumerate the possible candidates for coverage by the description, because there is no point in doing so: the essential issue is not their form, but their level. This characteristic is shared

with "ordinary customs duties" which are bound, and it was for that reason that we have considered it useful to propose a single harmonised concession rate, ensuring greater transparency. Consequently, the only duties or charges that would be "consistent" would be either (a) those which when applied did not breach that rate, and (b) those which fall within the terms of Article II:2. In respect of the former, it is less likely that there will be breach of commitments due to greater transparency. In respect of the latter, the legal situation is unchanged.

Would it not be preferable to elaborate an "illustrative list" of relevant other duties or charges?

4. One would probably never be able to devise an exhaustive list. But, in any case, for the reasons indicated in answer to the first question, it would not be necessary because the essential question is the level of charges. No matter what their character, as long as they are not covered by Article II:2, any duty or charge on imports is covered by Article II:(b).

5. Under the New Zealand proposal, a contracting party would ensure that its concession rate provided it with sufficient room to cover all relevant duties and charges, whatever their domestic character. In any given case, it would simply be a matter of checking whether the schedule commitment was being breached.

Would the proposal weaken the scope for challenging practices which are considered to be GATT inconsistent?

6. In legal terms the situation would remain unchanged. But in practical terms, we think the situation would actually improve. At present, because "other duties and charges" are not actually recorded in schedules, it is difficult to monitor whether an obligation in relation to them is being discharged. On our proposal, this would be monitored effectively. As a consequence, it would become a straightforward matter to establish whether a GATT inconsistent charge existed. That would still leave open the question of whether, in any given case, what is alleged as a breach of a binding can be covered by resort to, e.g. Article VIII. But that is a different category of issue which could arise in any case under the present arrangements.

Would the proposal create difficulties as far as base rates for these negotiations are concerned?

7. In our view, it would actually improve the transparency of the process. Under the present system, in order to assess a tariff offer, another contracting party would want to know what both the ordinary customs duty and the other duties and charges are. It is, however, sometimes extremely time-consuming to ascertain the latter. The New Zealand proposal would have the effect of ensuring that all "other duties and charges" are brought before contracting parties with which the negotiation is taking place. A contracting party considering taking on a binding will know that the duty rate it is going to specify will constitute the totality of

permissible import charges. Thus it will need to ensure that the figure it specifies covers all its charges. By contrast, under the present system, it has no incentive to do this. It need only bring the ordinary customs duty to the direct attention of other contracting parties.

Is the proposal inconsistent with the objective of reducing or eliminating other duties or charges wherever possible?

8. In legal terms, the situation would be unchanged, for the reasons outlined above. In practical terms it would seem to remove obstacles in the way of pursuing such an objective. In making them visible and giving contracting parties an incentive to specify them in the process of negotiation, it would make them more accessible to negotiation. Moreover, the notion of a single concession rate in the GATT may actually facilitate the restructuring of domestic rates into a single duty rate also.

Would there not be some "other duties and charges" not easily expressed as a single rate?

9. We have a general preference for ad valorem rates when it comes to expressing customs duties. But we appreciate that there are varying ways of expressing charges on imports, e.g. use of specific duties. There would have to be a careful examination to see how in any given case the unity of duties and other charges could be expressed. The important matter is the principle of the unity of a figure to express the totality of import charges.

PART B: EXISTING BINDINGS

10. Our original proposal was made in relation to bindings which would be taken on for the first time. We still consider that to be feasible and desirable in its own right. We had originally confined ourselves to dealing with this precisely because in these cases there would be no administrative complexities deriving from past practice.

11. However, a number of questions had been asked in relation to the extent to which the same principles could be applied to existing bindings. Our comments on this appear below.

12. In cases like this where, e.g. existing bound rates are to be further lowered, the unity of a single rate could still be the aim. It may well be that in many cases, there would be no relevant "other duty or charge" that is applicable in terms of Article II:1(b). In those cases there would seem no obstacle to moving to a "true concession rate". However, there are likely to be a number of items where a contracting party with an existing binding has an "other duty or charge" to which it is entitled to have recourse in light of past negotiations.

13. In this case, a more ad hoc arrangement would seem appropriate. In order to deal with this situation it would seem appropriate to specify what the other duty or charge was so that it could be recorded separately in the

schedule. This could be specified in the course of negotiations. It might be preferable to do this simply because it may prove to be administratively easier. Consolidation in a single rate may otherwise require a complex rectification and renegotiation procedure and could in fact lead to the result of a concession that appears higher than that which previously existed.

Would there be particular complications in relation to the question of GATT legal/illegal "other duties and charges"?

14. Again, the legal situation would remain unchanged, although the opportunity to safeguard rights would be enhanced in practical terms. A contracting party claiming a right to levy "other duties or charges" would be obliged to specify them, with a reference to the relevant date and measure. The main issue would relate to whether or not a claimed rate of "other duty or charge" was in excess of that which existed at the relevant date of the binding. The advantage of this procedure is that CONTRACTING PARTIES would for the first time have the opportunity to have specified and to be able to check the status of alleged other duties or charges.

Would this weaken the scope for challenging practices which are to be considered GATT inconsistent?

15. As noted above, the capacity to check breaches of obligations on levels would be enhanced. But could other "illegal categories" creep in?

16. On this, it is hard to know what these might be. To begin with, anything that fell under the description of Article II:2 would not need to be brought forward, and no contracting party would appear to have a motive for doing so. In principle, anything else that was a duty or charge and existed on the date of the concession would be covered in any case.

17. In any case, if there were any instances in which other CONTRACTING PARTIES considered that a claimed "other duty or charge" was not covered, they would be as perfectly free as they are currently to contest its legality under the relevant provisions of the GATT. Finally, any contracting party that rejected a claim would retain the safeguard, which it presently has, of not accepting in a schedule a measure which they considered to be illegal, pending any decision to formally contest its status.

Would this cause problems in relation to base rates for negotiating purposes?

18. The base rate for negotiations would remain the ordinary customs duty (as in the past). Where a contracting party considered that a relevant "other duty or charge" should be registered it would also have to specify it. But their existence should not interfere with the conduct of negotiations. For those contracting parties which have no "other duty or charge" in relation to a given binding, negotiations would proceed perfectly normally. For those contracting parties which had the right to

levy "other duties or charges" they would simply be brought before other contracting parties and checked. Subsequent to that they would be recorded in schedules. If a contracting party did not specify "other duties or charges" the negotiation outcome would mean that the normal duty rate constituted the totality of charges permissible.

SUMMARY

19. Finally, there is the question of whether the practices concerned are really widespread. We have the impression that there are certainly enough cases to warrant a relatively minor adjustment of the kind proposed.

20. We have made a brief survey of existing GATT documentation to gain an impression of the scope of the practices concerned.

21. To begin with, there are at least four cases of negotiations for accession where specific arrangements have been made to deal with these practices. Second, a preliminary examination of various GATT documents has indicated to us that at least twelve contracting parties have made relatively extensive use of a range of "other duties and charges" within the period since the Tokyo Round. This has covered, e.g. "import deposits", "import surcharges", "stamp duty", "Economic Development Tax" and "Special Import Tax". In the majority of these cases, the items concerned were not bound. This gives an indication that the use of these measures is quite extensive, suggesting that in the case of new bindings it would be a matter that will have to be dealt with. Third, in relation to existing bindings, nobody is really sure of what, in relation to countries with existing bindings, the other duties and charges are. Part of the value of this proposal is that it would simply settle that once and for all, and remove that uncertainty.

22. Thus, we see the proposal as regards bindings as being essentially administrative. In the case of new bindings, the proposed rate would become the single acceptable rate. In the case of existing bindings which are further lowered in the course of negotiations, we would anticipate that for many of these the same situation would in fact apply (i.e., there are no "other duties and charges"). For those cases where a relevant "other duty or charge" exists, that could be registered, if it was so wished, in a separate column. We think that this would be, in total, a much more transparent and practical way to structure schedules of concessions.