

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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Group of Negotiations on Goods (GATT)

Negotiating Group on Non-Tariff Measures

MEETING OF 19 MAY 1989

Chairman: Ambassador L. Duthie (Australia)

Note by the Secretariat

1. The Negotiating Group held its tenth meeting on 19 May 1989. It adopted the agenda contained in GATT/AIR/2767. Before the Group proceeded to a discussion of the different points set out in the agenda, the Chairman brought to its attention a letter he had received from the Chairman of the GNG, which related to proposals made by the least-developed countries (MTN.GNG/W/14/Rev.1). He recalled that the principles and guidelines which the mid-term review agreement required the Group to take into account when establishing a framework for future negotiations, included the principle relating to the problems of the least-developed countries, which is contained in Part I.B.(vii) of the Punta del Este Declaration.

I. Implementation of paragraph 3 of the decision on non-tariff measures adopted by the Trade Negotiations Committee (MTN.TNC/7(MIN), page 6), which reads: "Recognizing the importance of receiving proposals from both developed and developing countries, Ministers agree that the Negotiating Group will:"

2. Before proceeding to examination of the specific tasks set out in paragraph 3 of the mid-term review agreement relating to non-tariff measures, the Negotiating Group heard statements from the delegations of Sweden, on behalf of the Nordic countries, and Switzerland in which they introduced their submissions to the Group, contained in MTN.GNG/NG2/W/32 and MTN.GNG/NG2/W/33 respectively. Both submissions contained indicative lists of measures put forward for multilateral and request-and-offer approaches.

- (a) With regard to the categories of measures for which multilateral rule-making approaches are proposed, examine relevant provisions in the General Agreement and in other agreements and consider how to deal with the problems raised;

3. The representative of Zaire introduced his delegation's communication on preshipment inspection (MTN.GNG/NG2/W/30). He noted a divergence of views between exporting countries and importing countries maintaining PSI but said that to the latter PSI was a fundamental instrument at their level of development. Their main objective was to reach an understanding on PSI which would preclude resort to unilateral measures. In their opinion, PSI did not constitute a non-tariff measure and they had therefore requested participants which thought otherwise to put forward a concrete list of their complaints. This had not yet been done. Nevertheless, in its communication, his delegation had suggested the adoption of an appeal mechanism consisting of representatives of exporters, inspection agencies and an impartial element. However, this mechanism should not substitute itself for governments nor infringe on sovereign rights. It should, therefore, not have binding powers.

4. A number of representatives of countries maintaining PSI supported the statement of the delegation of Zaire. They did not consider that PSI, which was a temporary measure, constituted a barrier to trade, but instead thought that it enabled their purchasing power to be raised and abuses in trade to be corrected. Nevertheless, they supported the adoption of the appeal mechanism put forward by Zaire.

5. Other participants welcomed the spirit of dialogue demonstrated by the communication of Zaire, which constituted a useful element for future work on the specific problems caused by PSI. One participant, which was supported by others, identified these problems as follows:

- (i) price verification procedures: these were considered to be non-transparent and to result in uncertainty for exporters, thus forcing them, in some cases, to lower legitimate prices;
- (ii) delays in shipments: these delays which affected 40 per cent of trade subject to PSI, averaged 20 days and were particularly trade-distortive;
- (iii) protection of confidential information: unnecessary pricing information was collected and adequate safeguards for the protection of confidential business information were lacking. This was of particular concern in industries where pricing and production information was sensitive;
- (iv) increased administrative costs: PSI added to the costs of business with countries maintaining it because of the need for second inspections, charges incurred for letter of credit discrepancies, for delaying freight, etc.
- (v) lack of adequate appeal and dispute settlement procedures: in the absence of impartial procedures, many exporters were reluctant or unable to challenge findings.

6. The same participant considered that there existed legitimate problems which led countries to hire PSI agencies but that the trade distortions

faced by exporters went beyond the legitimate functions of PSI and constituted a non-tariff measure. The guidelines of the International Federation of Inspection Agencies (IFIA), which were supported by the delegation of Zaire, constituted a useful first step, but many of their provisions were vague and did not provide adequate disciplines. Detailed guidelines would have to be developed to make multilateral agreement on PSI meaningful. Such an agreement would have to meet the concerns of both exporting and importing countries and safeguard their sovereignty. It would also need to provide for an effective, swift and enforceable dispute settlement mechanism which would deal with disputes between exporters and PSI agencies. Another participant wondered whether regulating the activities of private companies, even though they were mandated to carry out trade-related services on behalf of governments, might not break new ground since GATT rules only applied to governments. One participant noted that PSI was a service. Because it was not clear whether PSI resulted in obstacles to trade, this participant thought it premature to discuss the possibility of arriving at a GATT agreement on PSI. In response to these comments, a participant replied that the services rendered by PSI agencies were performed in other countries by the customs authorities of these countries, in a way which was subject to multilateral disciplines.

7. Some participants expressed interest in the question of harmonizing rules of origin. The discretionary application of rules of origin had a serious impact on the rights and obligations of contracting parties and could distort the flow of trade and investment. There was therefore an urgent need to ensure uniformity in their application. One possibility favoured by a number of participants was the adoption by all contracting parties of the change in tariff heading criterion. Some participants said that there should be certain basic guidelines which would ensure that rules of origin were not applied in such a manner as to act as a barrier to trade. Non-discrimination, transparency, fairness, objectivity and predictability were considered essential. The rules should be simple and there should be procedures for prior notification, consultation and dispute settlement similar to those contained in the MTN agreements and in Article X of the General Agreement. A number of participants announced that they would put forward detailed submissions containing their approach to these problems.

8. Other participants, while welcoming the calls for transparency and harmonization in the elaboration of rules of origin, wondered whether the Customs Co-operation Council (CCC), rather than the GATT might not be a more appropriate forum for dealing with the issues raised since substantial work had already been carried out in the CCC on this subject which had resulted notably in the Kyoto Convention. Information was required about specific problems faced by those delegations which complained about arbitrary or discriminatory rules of origin. Some participants replied that the CCC would have a rôle in any negotiations conducted on rules of origin in the GATT, as had been the case in the negotiations leading to the adoption of the Customs Valuation Code.

- (b) Examine proposals made for multilateral formula approaches with a view to reaching an understanding on the applicability and, if appropriate, scope and procedures for such negotiations;

9. The delegation of Australia introduced its communication which advocated application of formula approaches to the liberalization of non-tariff measures (MTN.GNG/NG2/W/31). Supported by another participant, it stated that, in its experience, the formula approach was the fairest and most effective method of reducing non-tariff measures and was preferable to bilateral approaches which were selective, haphazard and offered scope for discrimination. Formula approaches could be applied linearly to price and quantity-related measures. For example, they could be used to reduce differences between support and world prices, or to ensure the phased expansion of quotas. What was needed was a commitment by participants to apply a system which embodied the same principle or involved agreement on the rate of reduction of protection. This approach would need to be used in combination with a rule-making approach, which could be applied to such issues as PSI, and with request-and-offer approaches, which would have a residual rôle.

- (c) Review the secretariat's sorting of indicative lists of non-tariff measures for which request-and-offer approaches are proposed with a view to reaching an understanding on the scope and procedures for such negotiations;

10. A number of participants stressed that request-and-offer approaches, together with multilateral ones, were their preferred method for liberalizing non-tariff measures. They regretted the fact that many participants had not contributed submissions to the Group. The Chairman also invited more participants to submit indicative lists of measures which they would like to see liberalized, as called for by the Negotiating Group in its decision of 25 February 1988 (MTN.GNG/NG2/6/Annex).

11. One participant noted from the secretariat's classification document (MTN.GNG/NG2/W/19/Rev.1) that some participants had suggested formula approaches for particular categories of measures, while others had put forward request-and-offer approaches for the same categories. A consensus should be reached on how to deal with measures. Another participant thought that the documentation provided sufficient basis for arriving at an understanding on the scope and procedures for various negotiating approaches.

12. One participant considered that flexibility should be shown and that there was interest in all three of the modalities for negotiations. However, it thought that the request-and-offer approach was the most effective method for negotiating on product-specific measures because it lent itself to an integrated approach with tariffs. It also provided the security of benefits and mutual concessions necessary to encourage maximum

participation in the negotiations. This participant announced that it intended to submit, before the summer, initial request lists comprising tariffs and associated non-tariff measures. These would be given to participants which had provided trade and tariff data and no concessions would be made to participants which did not fulfil this basic requirement for negotiations. Similar requests from other participants would be welcome and would be analysed with a view to preparing this participant's offer list which could be forthcoming later in the year. Another participant drew attention to the principles and guidelines adopted at the mid-term review which the Group was required to take into account in establishing a framework for the negotiations.

- (d) By June 1989, aim to establish a framework for future negotiations, including procedures, taking into account the ... principles and guidelines [referred to in paragraph 2 of the Decision], so as to initiate detailed negotiations

13. The Chairman suggested that the Negotiating Group reflect on the discussion which had taken place on the previous three items and that the question be taken up at the next meeting of the Group. It was so agreed.

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

14. Following suggestions from some delegations, the Negotiating Group requested the secretariat to prepare;

- (i) a background note on export restrictions;
- (ii) a note to bring the existing background note on pre-shipment inspection (MTN.GNG/NG2/W/11) into line with notes prepared on other subjects, by outlining any relevant provisions in the GATT and other international agreements.

15. At the suggestion of the Chairman the Negotiating Group agreed to hold its next meeting on 27, 28 and 30 June 1989, with the same agenda. Prior to the meeting, the Chairman would hold consultations with a view to facilitating the establishment of a framework for future negotiations.