

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG7/W/47/Add.2  
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NEW ZEALAND SUBMISSION ON ARTICLE II:1(b)

The following submission, dated 21 June 1989, has been received from the delegation of New Zealand with the request that it be circulated to members of the Group.

Introduction

We had, in MTN/GNG/NG7/W/47 and W/47 Add.1, outlined the reasons why we consider that other duties and charges bound under Article II:1(b) should be recorded in GATT schedules in a manner comparable to the way in which bound ordinary customs duties are presently recorded. Some of the reasons could be summarised as follows:

- the contrast between transparency of commitment on ordinary customs duties and non-transparency of commitment on other duties or charges is in itself anomalous bearing in mind the terms of Article II:1(b);
- non-transparency relating to other duties or charges leaves scope for uncertainty as to whether those commitments are being maintained;
- such non-transparency could create an incentive for diversion of border charge mechanisms into the non-monitored other duties and charges category;
- lack of commonly agreed procedure for recording other duties or charges in schedules has led to varying ad hoc arrangements and these could proliferate further in the Uruguay Round;
- lack of a transparency arrangement makes the process of tariff concession negotiation more complex, and may even create a practical disincentive to ensuring that the onus of responsibility for clarifying the status of other duties or charges, which rests with concession "granters" rather than concession "recipients", is discharged;

Against that background, we had proposed that, for all future bindings a single harmonized concession rate figure (comprehending both the ordinary customs duty and other duties or charges) should appear in the present column 3 of the looseleaf schedules.

### Revised proposal

We have now had the opportunity to reflect on the comments made regarding the feasibility of expressing in a single rate what may, in some cases, prove to be quite varied measures in terms of character and purpose. For instance, some duties and charges on a single item may be calculated in an entirely different manner - e.g. as a percentage of cif value on the one hand and a flat fee on the other. We still consider that a harmonised rate for all charges on imports is a desirable objective. But we appreciate that it may prove more practicable to have the separate categories of ordinary customs duties and other duties or charges recorded distinctly, rather than to create a unified rate comprehending them all.

The main objective of our proposal has been to ensure transparency of GATT commitments and, accordingly, to provide greater security of and clarity concerning them. We have the impression that a separate recording of other duties and charges would remove a practical difficulty with the proposal envisaged by some participants. We can see that such a separate recording would still be consistent with the transparency objective and may even enhance it. We are amending our proposal accordingly.

Hence, we propose recording in the schedule (a) as at present, the ordinary customs duty, and (b), separately, any other applicable duty or charge for that particular item. To illustrate this, we have appended, in Annex A, a draft revised model of the looseleaf schedule of concessions.

The existing format would be modified simply by sub-dividing the existing column 3. This would allow a separate record of the ordinary customs duty and any other duty or charge that existed, at the date of the concession most recently established. (In practical terms, concessions established as the outcome of the Uruguay Round).

This modification is intended to remove the practical concern that has been raised. In other respects the proposal remains unchanged. We have, on previous occasions, sought to address other issues that have been raised. We provide some further elaboration on such points below.

### Extent of practices concerned

Questions have been asked concerning the extent of practices concerned. We have already indicated (W/47/Add.1, para. 21) certain examples. We have examined the issue further and it may be useful to give a further indication of the scope of the measures concerned.

Part V.B. of the Inventory of Non Tariff Measures, consists of notifications relating to duties and charges which could, were contracting parties to have or take on a binding, be potentially relevant for Article II:1(b) purposes. It is notable that 55 notifications have been made under this category alone, involving 29 countries. It is the largest single category of measures in notifications of NTMs other than QRs. This

number compares with e.g. 26 state trading notifications, 35 TBT notifications, 28 government procurement notifications and one rule of origin notification. The attached Annex B gives a sample indication of the types of measures that are potentially involved.

This is purely for illustrative purposes. It may well be that some notifications in fact related to Article VIII or Article III measures. On the other hand there would presumably be a greater range of measures which have simply never been notified. The point is that the inventory gives a broad idea of the scope of the measures in force.

#### Legal and practical implications

We have commented already (W/47/Add.1) at some length on various concerns expressed about what the proposal might mean for the legal status of charges and the practicalities of implementing the arrangements proposed.

In doing so we have noted that the issues are slightly different depending on whether there is a completely new binding or a new reduction from a previously existing binding.

We consider that the proposal should apply to both categories in order to lead to a balanced result. We see no need, however, to make any changes to the status of recording other duties and charges on existing bound items unless or until they are the subject of reduction. This is simply in order not to create an undue administrative burden. Over time it is to be expected, of course, that all existing bindings would become subject to reduction in any case.

In order to elaborate further why we consider the proposal to be feasible in respect of both these categories of bindings, we provide the following comments:

#### (a) New Bindings

A contracting party taking on a concession for the first time would be notifying explicitly that it considered the duty or charge concerned to be in the Article II:1(b) category.

Article II.1(b) - measures are those which discriminate solely against imports. The only other possible classes to which duties or charges would "belong" would be those provided for in Article II:2, most notably charges equivalent to internal taxes or fees commensurate with cost of services rendered. A contracting party is perfectly entitled to levy such charges and has no Article II:1(b) obligation in respect of them.

Accordingly, a contracting party applying II:2 charges would have no motive whatsoever to bind them in its schedule as carrying a II:1(b) obligation. Even if it should have happened in error, there would seem to be no negative practical or legal consequences. The importing contracting

party would be levying the same amount of charges as it would in any case, and it would be as legally entitled to do it under the GATT as it would have been, had it not recorded the charges concerned in its schedule.

It is correct that in making this explicit notification, any importing contracting party would be removing any uncertainty or ambiguity about its own view of the status of particular duties or charges. This is, in our view, entirely as it should be, bearing in mind the terms of Article II:1(b). A contracting party is entitled to know whether a given duty or charge is charged solely on imports or, rather, covered by II:2. Moreover, at any point in the process for negotiation of a concession, those seeking that concession are entitled to know what the other duties or charges to be covered by II:1(b) would be. The proposal would simply provide for a formal arrangement to secure that entitlement. It would not alter rights and obligations but simply render them clear and transparent.

(b) Reductions in existing bindings

In the case of new bindings, the matter is straightforward enough. In the case of reductions in existing bindings there is an additional factor to consider. The fact that prior bindings dating from earlier negotiations still retain a II:1(b) obligation regarding other duties or charges has to be taken into account. Under the New Zealand proposal, a concession grantor would specify in its schedule, for the first time, the other duty or charge that it considered applicable to the new Uruguay Round tariff concession.

That contracting party may, however, have granted earlier concessions dating back e.g. to the Dillon Round. Does this create any practical problems?

To begin with, the concession granting contracting party should be aware of what, if any, other duties and charges would be currently in place at the time of negotiation of a tariff concession in the Uruguay Round.

If the party concerned had no such duty or charge (and it may well be that this is likely to be the case for most items) there would be no further action required. That party would be binding its ordinary customs duty with no other duty or charge allowed for at the date of the binding. In that respect the contracting party concerned would be in a position no different from that of a contracting party negotiating a concession for the very first time.

If a contracting party had some duty or charge in effect, it would need to check its level now with that in force at the date of earlier concessions to ensure that its obligations on those earlier levels were not breached by its existing rate. One would, however, assume that, given the existing obligation to avoid such a situation, there would be few (if any) cases where any such breach had occurred. Certainly, given the terms of Article II:1(b), the onus of legal responsibility would be on the claiming

party to be able to demonstrate the validity of its claim in the face of any challenge. Hence any party would need to be in a position to show the grounds for its claim to be respecting its past obligations.

This latter aspect has its parallel from the point of view of concession "receivers". They would have the right to seek from the contracting party claiming a particular other duty or charge an indication of the grounds for that claim. There may be some cases where this may not be easily resolved. However, it seems doubtful that this would become a major problem.

First, as a practical matter, it would seem likely that the occasions on which a detailed request for verification would be made would probably be limited. If a duty or charge was either low or familiar to the exporting contracting parties concerned from past negotiations, there may not be much (if any) need to have the matter checked.

Second, it would be essential that, in the course of negotiating for the concessions concerned in the Uruguay Round, contracting parties would specify what the other duties and charges were that they intended to claim in relation to II:1(b). In practice, if the New Zealand proposal was to be considered acceptable this would probably happen naturally enough: participants engaged in negotiation would want to ensure that they were not taken by surprise. This would enable checking agreements to be made in respect of any particular claims. It would also seem helpful to that end to make some specific procedural arrangements to facilitate that process in the context of the tariff negotiations themselves, and New Zealand intends, at the appropriate point, to do so in the context of the Tariff Negotiating Group.

Third, it is conceivable, however, that in some cases the concession granting contracting party may not be able to satisfy the trading partners concerned of the legality of its claim. In most of such cases we would still think it likely that some kind of pragmatic arrangement would be arrived at in the course of the checking phase. However, it would remain a possibility that a mutually satisfactory resolution of the matter may not prove possible, perhaps due, as much as anything, to lack of time.

To make allowance for such a possibility there would be provision for an understanding that any other duty or charge claimed in this context would be recorded without prejudice to its legal status in relation to previous concessions. The recording of the existing other duty or charge rate in the schedule in such circumstances would not imply that trading partners had surrendered any future legal claim that such a rate breached an earlier concession. We would envisage this to be part of the understanding which we propose.

It should be added that such an approach would also be without prejudice to the issue of when a concession has first been incorporated in a GATT Schedule (column 6). If there was a substantive legal disagreement between a concession granter and its trading partners as to what its

relevant previous concessions were (i.e. when they dated from), the approach indicated above would be entirely neutral in respect of that point. New Zealand does have a very firm view on the question of how column 6 obligations should be interpreted, but does not see the limited proposal we have made here as in itself altering or resolving the underlying differences. These need, in our view to be resolved decisively in their own right. But that is another issue.

#### Nature of proposal

Finally, there is the question of the form or nature of the proposal. We do not consider that this proposal would involve any substantive alteration to the rights and obligations of contracting parties under the General Agreement. It is, essentially, simply a proposal to extend the information included in contracting parties' looseleaf schedules of concessions. Accordingly it would seem appropriate to us that the character of the proposal would be similar to that by means of which the looseleaf schedules were themselves created, i.e. decision by the Contracting Parties on a proposal (in the case of creation of the looseleaf schedules effected through a Council decision).

We would accordingly, envisage a decision involving the following key points. The full background to it is, of course, to be found in MTN.GNG/NG7/W/47, W/47/Add.1 and the above comments. Accordingly, the points below are not intended to be a final proposed text, but to give an indication of what such a proposal would essentially involve.

#### Elements of a proposal for decision

1. It has been decided that the schedules of tariff concessions be published in the form of a looseleaf system (C/107/Rev.1).
2. In taking that decision, the Council agreed on a format for the schedules which was motivated by, inter alia, the objective of ensuring as complete a transparency as possible of tariff concessions.
3. In pursuit of this objective it was agreed, for instance, that the schedules should make specific provision for recording the date of the instrument by which a concession was first made. This was agreed in order to clarify the obligation in respect of other duties or charges relating to a tariff concession.
4. Despite such recognition of the importance of the obligation relating to other duties or charges, there was no specific provision made for recording the actual amount of other duties or charges bound.
5. However, Article II:1(b) itself creates, in respect of a concessionary item, an obligation to ensure that both the level of the ordinary customs duty and the level of other duties or charges is not exceeded.

6. It would seem appropriate therefore that the administrative arrangements for monitoring and recording those commitments should be of equivalent scope. It is proposed, accordingly, that the looseleaf schedule of concessions should henceforth provide for recording the amount of other duties or charges as well as the ordinary customs duty. This would be carried out through adoption of the revised format for looseleaf schedules attached in the Annex.
7. In light of the above, it is proposed that, with effect from .....,
  - (a) for all concessions negotiated for the first time, the other duties or charges relating to the item concerned should be recorded in the looseleaf schedule; and
  - (b) for all concessions negotiated at a rate lower than the existing rate, the other duties or charges relating to that item should be recorded in the looseleaf schedule consistent with existing obligations.<sup>1</sup>

Accordingly, it would be understood that, in respect of such cases, the rate recorded for other duties or charges pursuant to paragraph 7(b) above is without prejudice to its legal status. The latter would be defined by any determination of the obligations deriving from the date of the instrument by which the concession on that item was first incorporated into the General Agreement.

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<sup>1</sup> It is recognised that past negotiated concessions have not always involved explicit notification or recording of commitments on other duties or charges. Thus, it may prove difficult, in some cases to verify the relationship of currently applicable other duties and charges to those in force at dates of previous concessions.

ANNEX A

PROPOSED MODEL<sup>2</sup>

(Date of the looseleaf)

SCHEDULE (number - country)

This schedule is authentic only in ...  
Part I/II

Most-favoured-nation tariff/Preferential tariff

Tariff item number	Description of product	Rate of Duty		Present concession established in	Initial negotiating right (INR) on the con- cession	Concession first incor- porated in a GATT schedule in	INR's on earlier concessions
		Ordinary customs duty	Other duty or charge in effect				

<sup>2</sup> The schedule number and country, the indication of Part I or II of the schedule and the page date should appear on all pages of the schedule.



ANNEX B

<u>Measures</u>	<u>Ref.</u>
1. Stamp tax 4% of import duty	V.B.2
2. Special customs tax .75% of cif value	V.B.2
3. Port improvement tax - 3% of cif value	V.B.3
4. Revenue tax	V.B.6
5. Revenue duties up to 91%	V.B.9.1.
6. Levy on dutiable value of goods 0.6%	V.B.9.1.1.
7. Landing tax	V.B.12
8. Consolidation of economic development tax 5-10% cif	V.B.13
9. Special retribution tax	V.B.20
10. Surcharge 50-400%	V.B.21
11. Commodity tax	V.B.22
12. Import tax 8-100%	V.B.25
13. Fiscal tax	V.B.26
14. Standard import tax	V.B.27
15. Fiscal tax 5-30% cif value	V.B.29
16. Maritime freight tax 10% of freight value	V.B.32
17. Revenue duty 10-70%	V.B.36
18. Stamp duty 1%	V.B.47
19. Port tax 5% cif duty	V.B.48
20. Repairs to ships abroad special duty 50%	V.B.49
21. Import surcharge up to 35%	V.B.56