

MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

RESTRICTED
MTN.GNG/NG7/12
28 July 1989
Special Distribution

Group of Negotiations on Goods (GATT)

Negotiating Group on GATT Articles

NEGOTIATING GROUP ON GATT ARTICLES

Note on Meeting of 5 and 6 July 1989

1. The Negotiating Group on GATT Articles held its twelfth meeting on 5 and 6 July 1989 under the Chairmanship of Mr. John M. Weekes (Canada). The Group adopted the agenda contained in GATT/AIR/2799.

2. The Chairman informed the Group that document NG7/W/30/Corr.4 had appeared since the last meeting. It contained an up-dated list of Contracting Parties between which Article XXXV presently operated.

Agenda item A: Consideration of Issues arising from the Examination of Specific Articles

(I) Article II:1(b)

3. Introducing this agenda item the Chairman said that the discussion would be based on a new contribution by New Zealand circulated as document MTN.GNG/NG7/W/47/Add.2. For the assistance of the Group he recalled some of the main issues which had emerged in earlier discussions.

- (i) New Zealand's basic contention had been that the transparency and security of tariff bindings should be improved by agreement that schedules of concessions should in future show not merely the bound rate of the ordinary customs duty but also any "other duties and charges" maintained under Article II:1(b). This proposal had aroused a good deal of interest and sympathy, though questions had arisen concerning its practical and legal implications.
- (ii) One such question concerned New Zealand's suggestion that all future bindings should be expressed as a single rate comprising both the ordinary customs duty and all other duties or charges, which would involve converting other duties and charges to ad valorem rates. Some participants had suggested that it would be difficult to calculate such a single rate, and in the revised proposal New Zealand was now suggesting that ordinary customs duties and any other duties and charges which were levied should be recorded separately in the schedules.

- (iii) A second question which had been raised was how other duties and charges should be defined, since no definition appeared in Article II. New Zealand's new submission contained an annex listing, for illustrative purposes, some of the types of measures that might be involved.
- (iv) A third issue which had been raised was the legal implications of inscribing other duties and charges in the schedules: it was conceivable that the legal status of a particular charge could be challenged either on the basis of the level indicated in the schedule or on the basis of the GATT compatibility of the type of measure in question. In other words, would inscription of other duties and charges imply their legitimacy, and would failure to specify particular charges effectively exempt them from the binding?
- (v) Fourthly, what would be the implications of the proposal for compensation obligations when tariff concessions were withdrawn?
- (vi) Finally, would the proposal entail a disproportionate administrative burden on countries granting tariff concessions?

4. The representative of New Zealand explained that an attempt had been made in the revised proposal to incorporate comments made by participants in previous meetings. The purpose of inscribing in a separate column of the schedules of concessions other duties and charges (ODCs) was to contribute to transparency by making it possible for any contracting party to know the true level of bindings in relation to all charges on importation. It was evident that the proposal implied a certain amount of work for officials in ensuring that all relevant charges were recorded, but since the charges were the subject of a binding governments must accept the responsibility of knowing exactly what their obligations were. New Zealand's proposal had been that ODCs should be recorded when new bindings were undertaken or existing ones renegotiated - leaving aside for the time being, in order not to create an undue administrative burden, existing bindings which would not be subject to reduction. Where new bindings were concerned - i.e. bindings on items previously unbound - the process would be simple; ODCs currently in force would be recorded and bound at their existing levels. In the case of items already bound, the obligation would be to demonstrate the validity of any ODCs recorded - i.e. to show that previously bound levels of ODCs were not exceeded by the existing rate. It would be open to other parties to the negotiations to challenge such claims, and in general it would be necessary to have an understanding that all ODCs were recorded without prejudice to their legal status in relation to previous concessions; their recording would not imply that trading partners had surrendered any future legal claim that an earlier concession had been breached. Disagreement as to proper level of bindings could be expected to arise only rarely. As to the coverage of ODCs, the charges to be recorded were those which applied solely to imports. New Zealand would therefore propose that for all concessions negotiated for the first time the ODCs relating to the item concerned should be recorded in the Looseleaf Schedule, and for all concessions negotiated at a rate lower than the existing rate, the ODCs relating to that item should be recorded in the

Looseleaf Schedule consistent with existing obligations, without prejudice to their legal status. The proposal would not change rights or obligations under the GATT nor imply any change in the text of the General Agreement itself; its implementation basically required the drafting of an understanding and a decision by the CONTRACTING PARTIES on how concessions were to be expressed. As to the timing of the proposal it should be brought into operation in conjunction with the forthcoming tariff negotiations.

5. In the discussion that followed many participants supported the revised proposal as contributing to enhanced transparency and greater security of bindings.

6. Regarding the question of coverage certain participants asked which kind of ODCs countries had the right to maintain and more particularly whether the legal status of charges recorded in schedules could be clarified. One participant noted that duties and charges maintained under Articles III and VIII were not covered by Article II:1(b). The "revenue duties" listed in Annex B of the proposal were considered by one participant as not falling within the purview of this Article and by another as deserving further study. Another participant pointed out that ordinary customs duties and ODCs could not be treated identically and noted that for example surcharges could be raised if the balance-of-payments position of the country in question justified this. The view was also expressed that it would be desirable to record in schedules all ODCs, not merely on those relating to tariff items which would be the subject of negotiation in the Uruguay Round, and that a commitment should be sought to make this information available either during the Round or immediately afterwards.

7. Several participants pointed out that the identification of ODCs and of the levels at which they are levied would be necessary for the purpose of negotiations on Tariffs and Non-Tariff Measures, and should therefore not be an unsurmountable difficulty in this Group. In discussion of the operative date for purposes of Article II:1(b) - i.e. the date as of which ODCs were bound - it was suggested that the text of the Article, and the related decision of the GATT Council in 1980, made it clear that the operative date was the date of the first concession on the item in question. It was agreed that this question merited closer examination. The point was also made that if the proposed system were adopted it would be necessary to address the recording of the dates of original tariff concessions, which were frequently not entered in column 6 of the schedules. With respect to the possibility of inadvertent omission of ODCs and the need for their later incorporation in the schedules, one delegation suggested that the Group might consider borrowing from the understanding according to which earlier schedules and negotiating records remained proper sources for interpreting tariff concessions (BISD 27S/24 and 33S/135). In this light, the schedules might be amended to reflect the fact that a particular ODC should have been reported. The related problem of how to prevent parties from binding ODCs at levels higher than permitted by previous commitments was also raised.

8. Some delegations reiterated their concern that the proposal might entail considerable administrative work, notably in identifying the level of ODCs applied at the time of tariff concessions undertaken at the inception of GATT. This work could be further complicated by the simultaneous transposition of tariff nomenclatures into the Harmonised System. The possibility that the implementation of this proposal would delay or increase the difficulty of the process of the certification of schedules was also raised. However, the point was made that since governments had legal obligations regarding the level of these charges the amount of work involved in making them transparent should not be seen as an obstacle: lack of political will here would contrast oddly with the apparent readiness to take on much heavier responsibilities in the area of trade policy surveillance.

9. On the question of the legal implications of the proposal some delegations wondered if inscription of ODCs in the schedules of concessions implied their legalisation. In this connection one delegation pointed out that although the inscription of ODCs would be without prejudice to their legal status, their appearance in the looseleaf schedules alongside bound tariff rates might seem anomalous, since the looseleaf schedules were accepted as legally binding. However, another participant, recalling the finding in a recent Panel Report adopted by the Council (L/6514), that "Article II:1(b) does not permit contracting parties to qualify their obligations under other provisions of the General Agreement", argued that the inscription of otherwise illegal ODCs in the tariff schedule of a contracting party could not establish their legality.

10. The question was raised, with respect to ODCs applying to a large number of tariff lines, whether it would be best to record them against every line or to make a general entry. One participant referred to the experience of his own country when it embarked on the transposition into the Harmonised System: in many cases ODCs were combined with the ordinary customs duties and expressed in a single rate, and in other cases the initials VL appeared to indicate that an additional levy was to be imposed in addition to the customs duty. He wondered whether in such a case there was a need to add a new column with information on ODCs since the Schedule already contained references to all existing charges. It was suggested that the reduction or elimination of ODCs might be taken up in the Negotiating Group on Non-Tariff Measures. One delegation said that the implications of the proposal would need to be examined in the light of progress in other Negotiating Groups, notably those on Tariffs, Non-Tariff Measures and Agriculture. The question was raised whether the obligation to record ODCs might operate as a disincentive to the assumption of tariff bindings.

11. The representative of New Zealand reacted to comments made by participants while suggesting that the time had now come to discuss these matters informally and more intensively. As to the legal implications of the proposal he suggested that problems would rarely arise: the charges which should be inscribed were those levied solely on imports; even if

charges properly falling under Articles III or VIII were recorded in error there would be no legal problem since such charges were in any case legitimate. All inscriptions would be open to challenge; the panel report previously referred to had established that the appearance of an ODC in a tariff schedule did not determine its legality.

12. The representative of New Zealand further pointed out that the identification of ODCs ought not to be very difficult since administrations could be expected to be familiar with the sources of their revenue. Any contracting party was entitled to ask other parties what ODCs were applied to a given tariff item, and this was likely to occur anyway in the Uruguay Round. He saw no reason why this proposal should affect in any way the existing problems relating to the certification of schedules. Transparency regarding ODCs should facilitate the tariff negotiations. He agreed that it would be desirable to inscribe all ODCs, not merely those pertaining to items under negotiation in the Uruguay Round, even if in practice the Uruguay Round could be expected to cover the great majority of existing bindings. He also agreed that it would be appropriate to specify each ODC applicable to a given tariff line, but was open to the view that an ODC applying to many different lines might be recorded only once. He suggested that obligations in respect of normal duties would also apply to ODCs so that compensation would be required in the case of a breach of a binding on an ODC - except in cases where an increase in a bound level could be justified under some other provision. The difficulty of identifying ODCs levied at the time of the original tariff binding might not be serious if, as New Zealand held, the applicable date for the purposes of Article II:1(b) were taken to be the date of the most recent renegotiation of the tariff concession.

13. It was agreed that the secretariat should prepare a note with a view to clarifying some of the outstanding questions relating to the technical and legal implications of the proposal. The Chairman suggested that the time had come to pursue the discussions more intensively and in an informal mode.

Agenda item B: Organisation of the Group's Future Work

14. The Chairman recalled that at the last meeting the Group had agreed that he should try to establish, on the basis of inputs from participants, a time-frame for work on individual Articles, and that in order to assist him in doing so delegations should indicate when they expected to be able to bring forward the specific proposals envisaged in the Ministerial decision at the Mid-Term Review.

15. The indications so far received from delegations showed that apart from the contribution by New Zealand discussed above there were firm intentions to submit written proposals in the coming months on the following Articles:

- Article XVII
- Article XXVIII
- Articles XII, XIV, XV and XVIII
- Article XXIV

No doubt there would also be additional submissions on other Articles, but as yet there were no firm indications that this would be so. As regards the timing of submissions, one delegation had indicated that its proposal on Article XVII might be circulated before the summer break. The other submissions would be made available in the autumn. The Group should therefore plan its autumn schedule on the basis of the intentions of delegations as explained.

16. The Chairman said it was clear that the time available in formal Group meetings would not be sufficient to carry out all of the work that would be entailed by serious consideration of the many complex issues which have been raised in the Group, and that a great deal of work within delegations, and many informal contacts between delegations, would be necessary throughout the remainder of the negotiations. He suggested that the Group must envisage periods of intensive work, between formal meetings, on Articles on which specific proposals for negotiation are expected to be tabled.

17. He therefore proposed that, at the Group's current meeting, it should agree to initiate intensive work on Article II:1(b). At its next meeting, in October, it would review the results achieved on this Article and would initiate intensive work on Articles XVII and XXVIII. In December, it would attempt to draw conclusions on Article II:1(b), would review progress on Article XVII and XXVIII and would initiate intensive work on the BOP provisions and Article XXIV. At the February 1990 meeting it would seek to draw conclusions on Article XVII and XXVIII, review progress on the BOP provisions and Article XXIV and initiate work on any further Articles which have been the subject of specific proposals. Delegations would of course be free to bring forward proposals on any Article: the Articles he had mentioned were those on which delegations had indicated a firm intention to submit such proposals in the coming months.

18. It would therefore be his intention to organize informal meetings, with the assistance of the secretariat, wherever possible in conjunction with formal meetings, in order to help delegations work in a coordinated manner. These meetings would be open to any interested delegation. In addition delegations were strongly urged to work together bilaterally and plurilaterally and to accelerate the development of their national positions.

19. The dates envisaged for formal meetings of the Group in the coming months were: October 16, 17 and 18 and December 6, 7 and 8. A further meeting would be arranged early in February.

20. The Group agreed with the Chairman's proposal, but several delegations drew attention to the inevitable pressure of meetings in the autumn, particularly on smaller delegations, and emphasised that wherever possible informal meetings should be planned in conjunction with the scheduled meetings of the Group; this would also be helpful for delegates from capitals. Some participants also made the point that agreement to engage in a period of intensive work did not represent a commitment on their part to enter negotiations on a given Article. Reference was also made to the need for continued transparency, and it was suggested that the involvement of the secretariat in informal meetings would be the best guarantee of this.

Agenda Item C: Other Business

(i) Communications concerning the least-developed countries

21. The Chairman informed the Group that he had received from the Chairman of the GNG a letter asking him to draw the attention of the Group to the proposals contained in the communication presented to the GNG by the Ambassador of Bangladesh on behalf of the least-developed countries (MTN.GNG/W/14/Rev.1) and to the statements made in the GNG and the related communication from the Chairman of the Sub-Committee on Trade of Least-Developed Countries (MTN.GNG/W/15) so that the Group could consider these in the light of its particular responsibilities.

(ii) Protocol of Provisional Application

22. The Chairman recalled that last September it had been agreed to extend until 1 March 1989 the deadline for replies to the Group's enquiry on legislation and measures maintained under the PPA or under Accession Protocols. The secretariat had received replies from only 13 countries, 11 of which had notified that they had no such legislation. Though it was clear that this was a difficult exercise, he would again urge parties to respond as quickly as possible.

(iii) Date of next meeting

23. The Group agreed to hold its next meeting on 16, 17 and 18 October 1989.