

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG2/13
20 November 1989

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Group of Negotiations on Goods (GATT)
Negotiating Group on Non-Tariff Measures

MEETING OF 24 OCTOBER 1989

Chairman: Ambassador L. Duthie (Australia)

Note by the Secretariat

1. The Negotiating Group held its thirteenth meeting on 24 October 1989. It adopted the agenda contained in GATT/AIR/2857.

I. Examination of submissions relating to multilateral approaches

Preshipment Inspection (PSI)

2. The Chairman recalled that submissions relating to preshipment inspection were contained in MTN.GNG/NG2/W/17, 30 and 39. Furthermore, the Group had before it an additional background note by the secretariat (MTN.GNG/NG2/W/11/Add.1) and another note also by the secretariat which brought together points made in relation to PSI and could be used to identify some issues on which delegations might wish to conduct negotiations (MTN.GNG/NG2/W/45).

3. In a statement later circulated as MTN.GNG/NG2/W/46, the representative of Zaire said that it was now recognized by all participants that the Round was the appropriate framework for dealing with the question of preshipment inspection. The validity of such inspections and the right of developing countries to resort to this service were no longer questioned. Limiting such programmes in time, as had been suggested, would not be desirable in a GATT instrument. Furthermore, the discussion in the Group had not enabled it to establish that PSI caused import restrictions. Multilateral negotiations on PSI should therefore lead to the adoption of an instrument which would respond to the concerns of exporting countries on matters such as transparency and non-discrimination but which should also safeguard the right of developing countries to resort to the services of PSI agencies. National regulations which could be implemented subsequently should not contain more restrictive provisions than a multilateral instrument negotiated in the GATT. Another representative agreed that preshipment inspection did not constitute a non-tariff measure. Countries which felt the need to resort to this service would stop using it when

practices in exporting countries which had required them to do so changed. In the meantime, PSI raised their capacity to import and thus encouraged trade.

4. Referring to the secretariat document bringing together points made in relation to PSI (MTN.GNG/NG2/W/45), some representatives announced that they would comment on it at the next meeting. One delegation considered that the additional background note (MTN.GNG/NG2/W/11/Add.1) interpreted certain provisions of the General Agreement, even though this was a prerogative of the CONTRACTING PARTIES. The Chairman drew attention to Section I of the paper which stated that only the CONTRACTING PARTIES could make definitive interpretations of the General Agreement and that the paper was designed as a contribution to the discussion. He announced that the secretariat would update MTN.GNG/NG2/W/45 bringing together points made in relation to PSI, and hoped that delegations would relate the discussion at the next meeting to the points identified in it.

Rules of origin

5. The Chairman recalled that submissions relating to rules of origin were contained in documents MTN.GNG/NG2/W/36, 41 and 43. Furthermore, the Group had before it a background note prepared by the secretariat (MTN.GNG/NG2/W/12). He drew attention to the fact that in the United States' submission, it was suggested that as a first step the Negotiating Group request the Customs Cooperation Council (CCC) to carry out some specific tasks as soon as possible and invited comments on this suggestion.

6. The representative of the United States explained that the information sought from the CCC would provide the GATT with a useful basis for negotiations and would allow it to distinguish technical issues from trade policy ones. On the first report requested from the CCC, she suggested that a special working group be established in the CCC to review the Harmonized System on an item-by-item basis in order to determine where the line could be drawn to confer origin. The second and third reports relating to products and to non-m.f.n. programmes would be considered only as informative. The CCC would encounter difficulties in collecting information from individual delegations, but these reports should be based on the best information available and should not be unduly delayed. If additional information was required in the course of GATT negotiations it could be obtained from contracting parties at that stage. She asked that the Group reach a decision to request the CCC to start work as soon as possible.

7. The representative of the Customs Cooperation Council said that as the resources were available in the CCC, the work could be undertaken immediately if requested by the Group and could be completed in several months.

8. Other representatives considered that rules of origin were a highly technical matter which would be best dealt with by the CCC. It was premature at this stage to ask the CCC to undertake work on specific parameters.

9. In response to questions which had been raised at the last meeting, the representative of the United States suggested that the Group use as a first step the definition of rules of origin laid down in Annex D.1 to the Kyoto Convention. Such a definition could be modified after completion of the harmonization programme. As to the adoption of the Kyoto Convention by more signatories as an alternative to negotiations in GATT, she believed that although the Kyoto Convention was useful in providing some principles and guidelines, it needed more elaboration to make it operational, meaningful and contribute to predictability in the international trading system. She added that in her delegation's view, rules of origin used in connection with government procurement should be subject to separate negotiations.

10. The representative of the Customs Cooperation Council considered that while the Kyoto Convention regulated to a certain extent what was done in the field of rules of origin, reservations could be made to any of its contents. He was not sure that wider acceptance of the Kyoto Convention would be sufficient to permit harmonization. Asked whether the CCC could determine when a product had been sufficiently transformed to confer origin, without some principles or guidelines being provided, he replied that in the past such matters had been considered to be policy issues rather than technical ones and that the CCC had been prevented by its members from getting involved with them.

Import procedures - cost of services rendered

11. The Chairman recalled that the European Communities had made a statement on this question at the last meeting (later circulated as MTN.GNG/NG2/W/44) and that the secretariat had prepared a background note which dealt with it (MTN.GNG/NG2/W/28).

12. One delegation was not opposed to broad examination of the issue but underlined that such an undertaking would not prejudice contracting parties' rights to resort to the procedures of Article XXIII. It believed that a study which would identify practices in this area would be useful. The Chairman invited the delegation of the European Communities to put forward a concrete proposal on the questions raised by this category of measure.

II. Review of any other development in the negotiations, including the relationship between the rollback commitments and negotiations on non-tariff measures

Request-offer negotiations

13. The Chairman recalled that at the last meeting he had asked delegations to follow the draft procedures which he had put to the Group until such a time as they could be adopted formally. Several delegations had announced their intention to follow these procedures and he hoped that other participants would also do so. Under the Punta del Este Declaration, in order for the results of negotiations to be incorporated in the outcome of the Uruguay Round negotiations, a decision would have to be taken by the TNC. In practice, this meant that the Negotiating Group would have to make a recommendation to that effect. If the procedures were followed in request-offer negotiations, the Group's task would be greatly facilitated and the chances of such agreements being incorporated in the results of the Round would be increased.

14. A number of representatives informed the Group that their delegations would follow the procedures and would submit lists of requests in the near future. Another delegation was preparing nine request lists on both tariffs and non-tariff measures which would be additional to those submitted earlier and would table these early in November. One representative noted that although no agreement on procedures had been reached in the Group, a number of delegations had announced their intention to follow them and had committed themselves to ensure transparency. These countries had decided unilaterally to embark on bilateral negotiations. This constituted a departure from the practice of consensus which could be used as a precedent. Pending a multilateral agreement in this Group all such negotiations would be considered as being carried out outside the framework of the Uruguay Round.

Relationship between the rollback commitments and negotiations on non-tariff measures

15. A representative stressed that participating countries should not ask a price for eliminating non-tariff measures which were not compatible with GATT. As identifying such non-tariff measures was difficult, he requested the secretariat to indicate on the basis of panel reports approved by the CONTRACTING PARTIES or on the basis of other decisions of the CONTRACTING PARTIES, which measures were inconsistent with the General Agreement and were still applied.

16. Other representatives considered that the Council was the appropriate body to deal with the follow-up of panel reports, and the Surveillance Body for matters relating to the implementation of the rollback commitments. None of these questions were within the competence of the Group.

17. However, some representatives believed that since the Group was negotiating on non-tariff measures, the participants should know which non-tariff measures were consistent with the General Agreement and were to be negotiated on.

18. A representative of the secretariat explained that much of the information requested was currently available to contracting parties in the Director-General's reports on the status of work in panels which included information on the follow-up to the panel reports that were still before the Council.

III. Other business

19. The Chairman recalled that as agreed at the previous meeting of the Group, precise dates for meetings of two days each which would be held in the weeks of 12-16 February and 19-23 March 1990, would be set at the next meeting of the Group, scheduled for 30 November-1 December 1989. He also suggested that the agenda for the next meeting be the same as for the present one. It was so agreed.