

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG2/14
19 December 1989

Special Distribution

Group of Negotiations on Goods (GATT)

Negotiating Group on Non-Tariff Measures

MEETING OF 30 NOVEMBER 1989

Chairman: Ambassador L. Duthie (Australia)

Note by the Secretariat

1. The Negotiating Group held its fourteenth meeting on 30 November 1989. It adopted the agenda contained in GATT/AIR/2875.

I. Examination of submissions relating to multilateral approaches

New submissions

2. Introducing the communication submitted by his delegation on behalf of the least-developed countries (MTN.GNG/NG2/W/48), the representative of Bangladesh, who was supported by another delegation, recalled that in 1988 his delegation had submitted to the TNC an integrated paper (MTN.GNG/W/14/Rev.1) containing a set of specific and general proposals. It had later been decided to forward specific proposals to each relevant negotiating group. The representative of Bangladesh requested that all non-tariff measures, including quantitative restrictions, import levies and selective taxes, currently applied to the exports of the least-developed countries be eliminated. The total value of the exports of these countries, 65-70% of which already benefited from concessional terms, accounted for only 0.4% of global trade. Eliminating the restrictions which applied to their exports would not disrupt any country's market.

3. The Chairman recalled that, under paragraph I.B (vii) of the Ministerial Declaration launching the Uruguay Round which was highlighted in the Mid-Term Review Agreement, special attention should be given to the particular situation and problems of the least-developed countries and to the need to encourage positive measures to facilitate expansion of their trading opportunities. Appropriate attention should also be given to the expeditious implementation of the relevant provisions of the 1982 Ministerial Declaration concerning the least-developed countries.

GATT SECRETARIAT

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Preshipment Inspection (PSI)

4. A number of delegations informed the Group that they were working on proposals related to preshipment inspection which would be submitted before the next meeting of the Group. The representative of Zaire introduced his delegation's new proposal, subsequently issued as MTN.GNG/NG2/W/50. The purpose of this new proposal was to accelerate the work in the Group on PSI and to serve as a basis for further discussions in order to reach an agreement before the end of the Uruguay Round.

5. Many delegations welcomed Zaire's new proposal which they described as constituting a first step towards a multilateral solution. Some representatives of user-countries noted with satisfaction that elements of great importance to exporting countries, including transparency, confidentiality and an appeal mechanism, were addressed in the proposal and considered that a code of practice along the lines set out in the proposal should meet the concerns of exporting countries.

6. In response to questions from some delegations, the representative of Zaire stressed that the proposal aimed to find a procedure for solving the differences between exporting countries and inspection companies in a pragmatic and expeditious manner without prejudicing the national sovereignty of the governments using PSI. Technical assistance by some exporting countries, which was already on offer, would be welcomed since it would help train officials to carry out PSI programmes. Such assistance should not put into question the right of user countries to resort to PSI as long as unethical practices in world trade made it necessary. A number of delegations reiterated their readiness to provide technical assistance to those countries which might require it.

7. The Chairman suggested, and the Group agreed, that the secretariat update the "summary points made in relation to PSI" in the light of the discussion and of any submissions which may reach it before 31 December 1989. He hoped that the revised note would assist delegations to start building compromise solutions on this matter from the next meeting onwards.

Rules of Origin

8. A number of delegations informed the Group that they were preparing proposals on rules of origin which they would submit before the next meeting of the Group. The delegation of Japan explained that its proposal would suggest a work programme for the establishment, with the help of analytical studies from the Customs Cooperation Council (CCC), of common criteria to determine the country of origin of goods and would outline a possible transitional agreement on the subject which should be reached before the end of the Uruguay Round. Japan was of the view that the change-of-tariff-heading rule should be used principally, while the

processing and ad valorem rules should have a complementary role. This basic guideline should be incorporated in a transitional agreement which should apply until such time as detailed rules of origin were agreed in GATT. The transitional agreement and the one which should replace it should also contain general principles and procedural rules to govern the application of rules of origin. The general principles, which were already listed in Japan's earlier submission, would be elaborated in its new proposal and would aim at ensuring that arbitrariness be avoided in formulating, changing or applying rules of origin. The agreement, whose legal form should not be prejudged, should also provide requirements for prior notification and reasonable time for participants to make comments, as well as for review, consultation and dispute settlement. A special Committee on rules of origin should also be constituted in GATT together with a specific mechanism for dispute settlement to which participants could resort prior to Articles XXII and XXIII.

9. In a statement later circulated as MTN.GNG/NG2/W/51, the representative of the United States reiterated that her delegation was committed to reaching, during the Uruguay Round, an agreement on procedures and principles related to rules of origin, and to starting work on harmonization. She also provided a clarification of her delegation's proposal (MTN.GNG/NG2/W/43) and particularly the sections which related to studies to be requested from the CCC in preparation for work to be carried out in GATT on the harmonization of rules of origin. She also explained that, in the view of her delegation, preferential rules of origin should be taken up in such negotiations.

10. Certain delegations recognized that, though they had not experienced major problems in connection with rules of origin, these could be used for protectionist purposes and that they were therefore relevant to the GATT, to the extent that they applied to trade covered by the GATT régime. Discussion on certain aspects of rules of origin could be held in the Uruguay Round, but rules applicable to preferential arrangements should be excluded since such arrangements were conditional upon the application of specific rules of origin. These rules were negotiable only among the parties to the agreements of which they were integral parts, and were acceptable under the GATT to the same extent as these agreements themselves. However, rules of origin were also needed for monitoring trade carried out under the mfn principle or for marking purposes and the protection of intellectual property. Rules were applied in different countries for the administration of commercial policy. While they raised complex issues, technical expertise was available in the CCC and should be used to the extent necessary to further discussions. Before time-and-resource-consuming tasks were requested of the CCC, the Group should ensure that these tasks were needed. These delegations doubted that all the work suggested in the United States proposal was really essential for progress. The first study seemed to assume that the change-in-tariff-heading criterion formed the basis for any discussion on

rules of origin and thus prejudged that discussion by setting a number of other options aside. Since there was no consensus on which criteria should be used, such a report from the CCC might imply judgements which it might not have the mandate to pass. The second study might be simple to produce for the 23 countries which had already made contributions to the CCC's "Compendium on Rules of Origin" but more time than was available before the end of the Uruguay Round would be necessary to collect and analyze contributions for such a study which might be a useful basis for further harmonization effort, to the extent that such effort was considered necessary or desirable. Attention should not be diverted in the Uruguay Round from more important matters of principle. Given the position of these countries with respect to preferential rules of origin, they saw no reason for including a survey on such schemes in the coverage of the third study suggested by the United States. It might be more relevant to provide input and support for further work to the CCC and to develop in the GATT context some broad and general principles and procedures for the application of rules of origin in order to ensure that they were not abused for protectionist purposes. The roles of the two organizations could be discussed in the light of such general rules and principles as could be agreed, such as transparency, non-discrimination, avoidance of trade-distorting effects, objectivity, predictability etc., which were mentioned in the submission from Hong Kong (MTN.GNG/NG2/W/41). One representative recalled that the only existing international regulations on rules of origin were contained in Annexes D.1, D.2 and D.3 of the Kyoto Convention and he suggested that the CCC be requested to provide a balance sheet of the practical operation of these Annexes, which would also set out the status of ratifications and explain the content of reservations.

11. In response to a question addressed to his delegation, the representative of Hong Kong replied that they had not referred to the CCC in their proposal because the proposal addressed trade policy questions which were best taken up in the GATT. They were open to ideas about an input of the CCC in this regard. Work on harmonization of rules of origin should only address non-preferential rules, because preferential rules were concerned with conditional mfn, whereas non-preferential rules related to the principle of unconditional mfn treatment provided for in Article I of the GATT. His delegation thought that the Kyoto Convention did not give sufficient weight to the interests of exporters, in that the criterion of substantial manufacturing or processing was open to subjective evaluation which could be biased in favour of large economies and could deny to the small economies the rights to which they were entitled to under the GATT. More rigorous rules of origin could militate against the interests of small economies and discourage economic development which could be contrary to the principle of comparative advantage. This problem had to be taken into consideration when drawing up guidelines for the CCC.

12. The representative of the Customs Cooperation Council referred to the letter which the Secretary-General of the CCC had written to the

Director-General of GATT (MTN.GNG/NG2/W/49) and reiterated his organization's readiness to contribute to work on rules of origin. A first assessment of staff needed to carry out the tasks which might be requested of it indicated that existing resources would be sufficient provided that the work in question did not last more than twelve months. If after such a period, a more detailed study necessitating more staff was required, the CCC might need to reassess the situation.

13. The representative of the United States welcomed the readiness of participants in the discussion to carry out in the GATT negotiations on at least certain aspects related to rules of origin and stressed that they had given a lot of consideration to the tasks which they envisaged should be carried out by the CCC. They did not propose that the change-in-tariff classification rule should be followed by all, but only saw it as a way of expressing in detail the substantial transformation principle and therefore considered that it merited further examination.

14. The Chairman suggested, and the Group agreed, that in order to help the Group start making progress towards compromise solutions on rules of origin, the secretariat be requested to prepare a synopsis which would bring together the points made in submissions already put forward or to be made available before 31 December 1989, and in oral statements made in the Group. Such a synopsis would be updated as necessary.

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

15. Referring to the information document of the secretariat on "the effective rate of assistance and related methods" (MTN.GNG/NG2/W/47), some delegations considered that this concept should be used by participants as a yardstick for progress in trade negotiations. The ERA was not a novel idea. It had been used by the IBRD for a number of years and might have applications in future trade negotiations and in the Trade Policy Review Mechanism. One of these delegations said that it would use this concept in assessing its own offers or the offers tabled by other participants in the Uruguay Round negotiations.

16. A number of delegations reiterated the request that they had put forward at the previous meeting of the Group for a secretariat paper listing measures which were clearly inconsistent with the GATT but which were still applied. This was a purely manual task which would not require the secretariat to engage in assessment of its own. On the other hand, until such measures were rolled back no progress could be made in this Group. A similar request had been made in the Surveillance Body, but no decision had yet been reached. They stressed that this document was of vital importance for these delegations' participation in the negotiations. Other delegations considered that it was not for this Group to deal with GATT-inconsistent measures. The Chairman recalled that the Chairman of the Surveillance Body would hold consultations on the request.

III Any other business, including arrangements for future meetings of the Group

17. The Chairman suggested, and the Group agreed, that the next meetings of the Group be held on 14-15 February and 21-22 March 1990. He also informed the Group that in consultation with the secretariat he would reserve dates for meetings in May and June 1990.

18. The Chairman also suggested that the agenda for the next meeting be the same as for the present meeting. He stressed the need to start making progress towards compromise solutions in keeping with the time-table outlined by the Chairman of the TNC at the July meeting of the Committee, and he therefore urged delegations which were preparing submissions to complete them as soon as possible.