MULTILATERAL TRADE NEGOTIATIONS THE URUGUAY ROUND

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

MEETING OF 14-15 FEBRUARY 1990

Note by the Secretariat

1. The Negotiating Group held its fifteenth meeting on 14 and 15 February 1990. In the absence of the Chairman, Ambassador Duthie, the meeting was chaired by Mr. M.G. Mathur, Deputy Director-General. The Group adopted the agenda contained in GATT/AIR/2915.

I. Examination of submissions relating to multilateral approaches

Preshipment inspection (PSI)

2. Introducing her delegation's new submission on preshipment inspection (MTN.GNG/NG2/W/53), the representative of the United States indicated that the objective of the proposal was to establish GATT disciplines on PSI, and to ensure that PSI facilitates trade rather than restricts or distorts it. The proposal did not call for the elimination of PSI, since it recognized that contracting parties use it for legitimate reasons. The proposal attempted to incorporate some of the views expressed by user countries of PSI and exporters so that the interests of both were balanced. It provided for technical assistance which should be offered unconditionally on a case-by-case basis and tailored to the needs of user countries. The United States was interested in a multilateral approach and a multilateral solution to PSI through a detailed GATT agreement. The proposal specified obligations and attempted to make them operational. The more detailed were the obligations in a GATT agreement, the less likely would be the need for national legislations. The document drew on the General Agreement and related agreements, the International Chamber of Commerce (ICC) recommendation on PSI, the International Federation of Inspection Agencies (IFIA) Code of Conduct, and the current procedures of PSI companies. Some PSI companies had already begun to implement reforms aimed at some of the practices identified by her delegation. This should facilitate adoption of GATT obligations dealing with these practices.

3. Many delegations welcomed the United States' proposal and considered that it contained positive elements. In a statement later circulated as MTN.GNG/NG2/W/56, the representative of Zaïre, who was supported by a

number of speakers, made detailed comments on the proposal. He considered that this proposal contained too many details for the type of agreement envisaged and that some of its elements were not of a nature to help the Group reach its objectives. He therefore thought that the Group should revert to his delegation's proposal which limited itself to defining some general principles to apply to PSI and which contained a draft code of conduct which addressed the essential points suggested by the United States. Some delegations from user countries did not agree with the preamble of the US proposal that "certain activities of preshipment inspection companies may have the effect of distorting trade", because PSI programmes were introduced by their governments to stop trade distortions caused by abusive practices such as under-invoicing or over-invoicing as well as to prevent fraud and the importation of sub-standard goods. One delegation considered that preshipment inspection was already regulated by the General Agreement and that there was no need to adopt a new code or specific agreement for it. This delegation would therefore not take part in discussions to that effect. Preshipment inspection was not a non-tariff measure and the reference to the Ministerial Declaration of Punta del Este in the preamble prejudged the issue. The reference to developing countries in the preamble appeared to discriminate against them, all the more so as not all of them resorted to PSI. PSI was also available to developed countries, even though only developing countries presently used it. Delegations from user countries considered the provisions for prior notification contained in Article I of the proposal to be impractical and liable to lead to the circumvention of laws. Paragraph (q)(i) seemed to suggest that user countries should adopt the Customs Valuation Code which was not acceptable to them. Difficulties were expressed with the price verification method described in paragraph (q)(ii) of the proposal, because it was considered too limited and because it would encourage malpractices which PSI was designed to combat. Paragraph (q)(iv).B was not acceptable to participants which used prices of goods on the domestic market of the country of export as the basis for verification or customs valuation. One delegation saw no reason why the floor value of shipments to be inspected should be set at US$10,000 and considered that each country should determine this value on its own. Paragraph 2 of Article II of the proposal was unbalanced because it put many obligations on the users of PSI and very few on the exporting countries. Balance could be restored by requiring that exporting countries not resort to unilateral action with respect to PSI. The binding appeal mechanism foreseen in the proposal also created difficulties for some delegations which preferred a non-binding body not infringing their sovereignty as foreseen in the proposal by Zaïre.

4. Some delegations considered that a GATT agreement on PSI should serve the traditional goal of trade liberalization embodied in the General Agreement and should not legitimize any activity which could be perceived as impeding free trade even if such activities served legitimate purposes. They therefore wished to stress the free trade objective of such an agreement, even more than the US proposal. As for the legal aspect of the question, these delegations were concerned that since GATT commitments are

by definition exclusively binding on governments, an agreement binding companies rather than governments might be difficult to implement in the GATT context. Enforcement of dispute settlement procedures might be difficult under this approach. There should be an in-depth discussion of such legal questions as the definition of entities conducting PSI. It might therefore be wiser to start from general principles and leave open the question of more specific rules which might even be agreed in another forum than the GATT. One delegation considered that an agreement on PSI should not contain commitments so restrictive that they caused delays.

5. Responding to the questions and comments addressed to her delegation, the representative of the United States recalled that their well-documented position had always been that some activities of PSI companies could cause non-tariff barriers to trade. They recognized that the user countries pursued legitimate objectives and called on them to accept that there was a possibility of trade-distortion involved. Merely stating the transparency obligation was not enough. This obligation should be made operational. The concept of prior notification of changes in the operation of programmes was useful and similar provisions could be found in many GATT instruments. Having consulted PSI companies, her delegation did not consider that it would be unreasonable to ask them to provide the exporters with information about the requirements they would have to fulfil to comply with inspection programmes. Provisions were needed to ensure that confidential business information was not disclosed. Her delegation's objective was not to increase formalities and thus delays but to expedite the inspection process by providing for preliminary price verification and the issuance of a provisional clean report of findings. Inspection would then simply ensure that the shipment coincided with the goods provided for in the documentation, thus shortening delays. While they had mentioned in their proposal the issue of customs valuation and some principles and practices contained in the Code, this was not a salient point. However, during the negotiations on non-tariff measures, they would be requesting a number of countries to accede to the Customs Valuation Code. A more important concern was to ensure that price verification was done promptly and transparently and according to reasonable criteria. Their intention was not to substitute international standards for national ones but only to ensure transparency in the standards used. They did not wish to discriminate against developing countries in their proposal, but simply to ensure that developed countries did not use preshipment inspection. Obligations in the instrument to be adopted would apply to the countries concerned. These would then be free to provide mechanisms to ensure that the PSI companies adhered to the obligations in the agreement. She did not agree with Zaïre that its delegation's proposal addressed the concerns of her delegation. A multilateral approach should provide a sufficient degree of detail to meet the concerns of exporters. Similarly, a dispute settlement mechanism should contain provisions for binding conclusions.

6. The representative of Austria introduced the submission of his delegation later circulated as MTN.GNG/NG2/W/57. Though it was not a draft

agreement, the concrete formulations that it contained could help clarify concepts and elaborate general principles. The proposal made it clear that obligations in a multilateral agreement on preshipment inspection would bind contracting parties and not companies themselves. The objective was to establish a more transparent and predictable system so that all parties knew their rights and obligations from the outset. This would foster international trade which was the purpose of GATT. By providing for PSI on the territory of the exporter or manufacturer, the proposal aimed at ensuring that the inspection process was not slowed down. The conciliation procedure aimed at reducing delays and at protecting the importing state's sovereignty.

7. At the end of the discussion, the Acting Chairman suggested that the Group ask the secretariat to attempt, in consultation with delegations, to put together in an informal paper, a text which would draw together all the suggestions proposed for inclusion in a draft agreement on preshipment inspection with a view to bringing out in a clear way the points of convergence and divergence. It was so agreed.

Rules of origin

8. The representative of Japan recalled that he had introduced at the last meeting of the Group his delegation's submission on rules of origin which was later circulated as MTN.GNG/NG2/W/52. Its objective was to arrive before the end of the Uruguay Round at a basic guideline for criteria to be used in determining the origin of goods. More detailed criteria would be negotiated after the Uruguay Round. The proposal also provided for an agreement to be adopted before the end of the Round on disciplines and principles to be followed in the implementation of rules of origin, as well as a mechanism for notification, consultation, dispute settlement and institutional arrangements. Key principles should be stated as precisely as possible in order to avoid arbitrary application and interpretation of rules of origin.

9. Introducing the proposal of his delegation contained in MTN.GNG/NG2/W/55, the representative of the European Communities stated that international trade depended on stable and predictable legal requirements. Rules of origin constituted part of these requirements and the Communities welcomed international discussions on this subject. The objective of such discussions should be to arrive in the GATT at a commitment to respect certain basic principles, leaving it to the Customs Co-operation Council to approximate rules of origin and their interpretation.

10. Many delegations welcomed the new proposals which had been tabled on rules of origin. They noted the many points of convergence in all the proposals which had been put forward so far. Some of these delegations shared the view expressed in the proposal by Japan that there should be

established in the course of the Uruguay Round, a programme of work leading to the harmonization of rules of origin, which remained the ultimate goal. Others agreed with the European Communities that the work in the Negotiating Group should instead focus exclusively on the adoption of general principles for the application of rules of origin. They supported the view that the approximation of rules of origin should be pursued in the long term and in the light of such general principles and that the most appropriate forum for such technical work was the Customs Co-operation Council.

11. Some of these participants wondered whether it would be possible, as recommended in the proposal of the European Communities, to agree in the GATT that participants would sign Annex D.1 of the Kyoto Convention and what the practical and legal consequences might be of some contracting parties not adhering to the Convention in spite of such an agreement. Others were of the view that accession to all Annexes of the Kyoto Convention would be a good starting point for work on approximation or harmonization of rules of origin, whose outcome should have a binding character. However, more specific disciplines than those contained in the Convention were called for. Discussing why so few countries had adhered to the Kyoto Convention would throw light on the direction which GATT negotiations could take.

12. Some participants believed that work in the Negotiating Group should only cover non-preferential rules of origin, though special provisions could apply to GSP preferences. Other participants considered that there were principles such as neutrality, transparency, predictability, etc. which should be valid for all kinds of rules of origin, including preferential ones. A uniform set of rules of origin should be developed for all purposes and all sectors and should cover dumping and government procurement as well as tariff preferences. The representative of Israel in a statement later circulated as MTN.GNG/NG2/W/58 said that his country which was a party to two separate free-trade areas covering two-thirds of its trade, was ready to discuss in GATT principles which would also be applicable to preferential rules of origin including those incorporated in the free-trade area agreements to which it was a party. Article XXIV:5(b) required that a free-trade area should not result in higher protection vis-à-vis third countries, but the rules of origin contained in some such arrangements could lead to that situation. Another participant agreed that there were certain benchmarks used to review free-trade areas under the GATT and there was no reason why rules of origin should be excluded from that review. This did not mean, however, that rules of origin used for preferential purposes should be the same as those used for non-preferential purposes. That was why this delegation was in favour of a CCC study on the different systems in effect. So much world trade was covered by free-trade arrangements and other preferential schemes that excluding preferences from work on rules of origin might do a disservice to the participants in the negotiations.

13. Another delegation agreed with the submission of Japan that there should be adoption in the Uruguay Round of common criteria to determine the country of origin of goods. Adopting principles and procedures for notification, consultation and dispute settlement would not be enough to prevent rules of origin from restricting or distorting international trade. Of the various methods used for identifying origin, the change in tariff heading criterion was the most appropriate for ensuring predictability and transparency in rules of origin. A joint Working Party should be established with the Customs Co-operation Council, which should be entrusted with the task of drawing up harmonized rules of origin, within a time-frame to be agreed. One delegation was of the view that the change of tariff heading criterion did not take into account the latest technological developments because in many high-technology products, the components and the final product were classified under the same heading. Therefore economic criteria such as percentage of local content or value added could be required as well. Another delegation was concerned that by the end of the Round there might be agreement on a basic guideline to apply to rules of origin, without the details of its application being known.

14. One delegation was of the view that rules of origin should be adapted to technological developments and should take into account the interests of small countries which manufacture and export technological products which use locally developed technology but at the same time incorporate many imported components.

15. One delegation's experience of the benefits of the GSP scheme was not a happy one, partly because of bottlenecks caused by rules of origin. Its country had a low production base and a relatively low level of technology. It could not satisfy the local content requirements of schemes applied by donor countries. Any agreement on rules of origin should therefore provide for preferential treatment and maximum flexibility in the application of rules of origin, for the least-developed countries.

16. A number of delegations thought that the proliferation of dispute settlement mechanisms should be avoided and that the GATT's existing mechanisms should be resorted to for disputes relating to rules of origin.

17. In response to comments and questions addressed to his delegation, the representative of Japan stated that without a work programme which would contain clear objectives for the harmonization of rules of origin, general principles and procedures would not be sufficiently effective to avoid possible trade distortions. Japan had not yet reached a decision on the coverage of a possible agreement on rules of origin. However, it would be logical for the principles and procedures to apply to both preferential and non-preferential rules of origin. The applicability of common criteria to each system of rules of origin could be considered. GSP schemes could be subject to specific rules of origin because these rules were dealt with in a separate multilateral organization with the result that transparency was sufficiently secured. Additionally, the rules applicable to GSP were

normally more generous in that they admitted cumulation. While it was prepared to discuss the question of coverage, Japan considered that rules of origin maintained for anti-dumping, calculation of tariffs or government procurement should be covered by negotiations in GATT. In elaborating common criteria to be used for determining origin, it was necessary to go further than the Kyoto Convention. With respect to the dispute settlement procedures, Japan did not aim to duplicate existing ones but thought that specific procedures were needed for rules of origin because of their technical nature. Japan also thought that the concerns of the least-developed countries could be accommodated in the arrangements envisaged for the harmonization of rules of origin. The common criteria to apply to rules of origin related to trade in goods, not in services. Rules of origin for trade in services might be dealt with in another forum.

18. In response to questions and comments addressed to his delegation, the representative of the European Communities explained that by calling for the approximation of rules of origin they had in mind a less demanding process than that implied by harmonization. His delegation considered that since rules of origin were only instruments to implement trade policy, rather than elements of trade policy, rules applicable to preferential trade could only be examined in the context of the bilateral agreements of which they were part, and which were reviewed under Article XXIV of the GATT. Work on this subject in the GATT should be limited to rules applicable to trade under the m.f.n. clause. The CCC should initiate its work only after agreement was reached in the Uruguay Round on general principles. In the absence of an agreement on applicability, a situation might arise where rules negotiated at great length in the CCC were only applied for statistical purposes but not for commercial policy ones. Agreement should also be reached on the principle of consistency before technical work was started in the CCC. The dispute settlement procedures under Articles XXII and XXIII should be applied in general, but the Origin Committee to be set up in the CCC might be competent to deal with any particular technical problem. In no way would the adoption of certain general principles to govern the application of rules of origin in international trade, diminish the application of the m.f.n. clause. Like the delegation of Japan, the delegation of the Communities confirmed that its proposal related to trade in goods. Finally, the Communities were of the opinion that the mechanism for the provision of information on rules of origin should be mandatory.

19. The Acting Chairman indicated that the secretariat would revise the synopsis of points made, to reflect the proposal of the European Communities and the statements made in the Group. There was a convergence of views on the need to seek in the Uruguay Round an agreement on policy principles to govern the application of rules of origin as well as on some of these principles. Efforts should be made to reconcile divergent approaches which had been identified in the discussion, such as on the coverage of negotiations, their objective, the rôle of the CCC and dispute settlement procedures.

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

20. The Acting Chairman recalled that the Group had come very close to adopting procedures for negotiations put to it by the Chairman, Ambassador Duthie (MTN.GNG/NG2/11/Add.1, Appendix). Following adoption of procedures for negotiations on tariffs, he had held consultations on the basis of an updated version of this text. He hoped that the text represented an acceptable compromise which could be adopted.

21. The representative of Chile expressed his delegation's agreement with the text put to the Group by the Acting Chairman, on the following understanding:

(a) All restrictions generally known as GATT-inconsistent would be eliminated without negotiations, before the end of the Uruguay Round;

(b) Special attention would be given to the dismantling of residual quantitative restrictions;

(c) In determining which measures would be dismantled, account would be taken of the notifications and conclusions of groups such as the Technical Group on Quantitative Restrictions and Other Non-tariff Measures as well as reports of panels approved by the CONTRACTING PARTIES, and in the case of his country, of documents prepared by the secretariat on non-tariff measures for which no GATT provision is cited, thus indicating that the measures were not consistent with the GATT;

(d) Because of the globality of the negotiations, the mandates of all the other groups would have to be carried out, in particular that of the Negotiating Group on Natural Resource-Based Products;

(e) Chile therefore appealed to all participants to abide by their undertakings in particular those relating to natural resource-based products;

(f) Whatever the negotiating approach selected, the results of the negotiations would be applied in keeping with the m.f.n. clause and be governed by it;

(g) It would be a very serious matter if there was no progress in some of the groups, in particular in the market access groups;

(h) Chile had already begun to implement paragraph C(a) of the Acting Chairman's proposal by circulating in the Negotiating Group on Natural Resource-Based Products, an initial list of requests which should also be considered as having being circulated to the Negotiating Group on Non-Tariff Measures.

22. After this statement, the Group adopted the "Framework and procedures for the negotiations" (MTN.GNG/NG2/15). The representative of Brazil then made the following statement:

> "Brazil fully realizes that in the absence of a compromise text on procedures, negotiations would be stalled or held non-transparently thereby prejudicing the attainment of the agreed objectives in this area. It also recognizes that there is a need to make progress towards the goal established for non-tariff measures in order to ensure more balanced results overall.
>
> On the other hand, we still feel that the text just adopted could have reflected more clearly the provisions contained in the Ministerial Declaration, regarding special and differential treatment for developing countries. In addition, we would have wished that the procedures had put more emphasis on rule-making approaches since request-offer negotiations present well-known disadvantages.
>
> Brazil's readiness to participate in the negotiations is dictated by its belief that the multilateral efforts will be carried out without undue pressures or application of further measures which would violate the rules of the GATT. There would be no point in pursuing negotiations to eliminate or reduce measures which may be regarded by one contracting party as either "unfair" or "unreasonable" or "unjustified" and therefore "actionable" by means of unilateral trade restrictions.
>
> If negotiations are to proceed in good faith, it is therefore essential that all participants respect the commitment to standstill and exercise the necessary self-restraint so as not to distort the negotiating process and allow for a true exchange of concessions based on mutual interests and not on the threat of retaliation."

23. Other delegations also considered that the provisions of the text with respect to special and differential treatment for developing countries, and transparency could have been improved. The negotiations under the agreed procedures should be guided by the Part I.B of the Punta del Este Declaration. The request-offer approach was considered to put a heavy burden on certain countries, and flexibility should be shown to those which might find the deadlines too restrictive.

III. Other business including arrangements for future meetings of the Group

24. The Acting Chairman recalled that the Group had already agreed to hold its next meeting on 21-22 March 1990. He also recalled the Group that the Chairman had announced his intention at the last meeting of the Group to reserve dates for further meetings of the Negotiating Group. He suggested, on behalf of the Chairman, that the Group meet in the weeks of 30 April-4 May, 5-8 June and 16-20 July 1990, together with the Negotiating

Groups on Tariffs and Natural Resource-Based Products. He also suggested that, subject to unforeseen developments and the possible need for informal meetings, meetings of the Negotiating Group on Non-Tariff Measures start in the afternoon of 1 May, 6 June and 17 July 1990, after the meetings of the Negotiating Group on Tariffs. It was so agreed.

25. The Acting Chairman also suggested that at its next meeting the Group continue its examination of categories of measures for which multilateral approaches have been suggested, review progress in the negotiations and in particular receive information on requests, and examine any proposals which may be made on the security of concessions and the recognition of liberalization measures. It was so agreed.