

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG2/19
3 July 1990

Special Distribution

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

MEETING OF 6 JUNE 1990

Chairman: Ambassador L. Duthie (Australia)

Note by the Secretariat

1. The Negotiating Group held its eighteenth meeting on 6 June 1990. It adopted the agenda contained in GATT/AIR/2990.

A. Continued examination of categories of measures for which
multilateral approaches have been proposed

Preshipment Inspection (PSI)

2. The Chairman of the Informal Drafting Group on Preshipment Inspection, Mr. P. Williams (secretariat) reported on his own responsibility, on the second meeting of the Drafting Group which had been held on 14-15 May 1990. At that meeting, the Group had made a start in building bridges between differing positions. For its next meeting, which was due to be held on 7-8 June 1990, the Drafting Group would have before it a text by the secretariat in which remaining areas of divergence would be set out. A further meeting was expected to be held on 25-26 June 1990.

3. At the suggestion of the Chairman, the Negotiating Group took note of the report of the Chairman of the Informal Drafting Group.

Rules of Origin

4. The Chairman of the Informal Drafting Group on Rules of Origin, Mr. P. Williams (secretariat) reported on his own responsibility, on the first and second meetings of the Drafting Group which had been held on 2-3 and 17-18 May 1990 and on the third meeting which had started on 5 June and was due to end on 7 June 1990. The Drafting Group had before it an informal note by the secretariat which drew together the points contained in written submissions on rules of origin. In the first readings of this

note, the Drafting Group had attempted to make as much progress as possible in narrowing down the differences. After the second reading, it had requested the secretariat to make the informal note look more like a draft agreement. This text was being currently examined by the Drafting Group in an effort to narrow down differences which remained. Its next meeting was scheduled for 27-29 June 1990.

5. At the suggestion of the Chairman, the Negotiating Group took note of the report of the Chairman of the Informal Drafting Group. The Chairman of the Negotiating Group reminded delegations of the call made by the Chairman of the TNC at its last meeting, for conditional agreements, or at least close approximations of such agreements to be available in July for the consideration of the GNG (MTN.TNC/14, para.11). He therefore urged delegations to put in as much effort as was necessary into the drafting exercises on preshipment inspection and rules of origin, so that concrete results could be obtained by the next meeting of the Group which would be held shortly before the meeting of the GNG, scheduled for the week of 23 July.

B. Information on progress in request-offer negotiations

6. In keeping with Section F of the "Framework and procedures for the negotiations" adopted by the Group on 15 February 1990 (MTN.GNG/NG2/15), the Chairman requested delegations to report on developments in request-offer negotiations. The delegation of Australia informed the Group of the contents of the offer lists (later issued as MTN.GNG/NG2/OL/1) it had submitted to participants which had addressed requests to it. A number of countries had requested Australia to remove tariff quotas which applied to imports of textiles, clothing and footwear. Australia offered to remove these restrictions and associated procedures, but reserved the right to impose, if necessary, import duties on these products, which would not infringe bindings. Other requests which had been addressed to Australia were under consideration in negotiations presently held with a number of participants. Another delegation expressed the hope that intensive negotiations in which it was also engaged would continue in the near future and urged that a similar process be repeated during the weeks of 16 and 23 July 1990.

7. The Chairman reminded delegations that under the Punta del Este declaration, the TNC would have to take a decision at the end of the negotiations, "on the international implementation of the respective results". Recalling the statement of the Chairman of the TNC at its last meeting (MTN.TNC/14, para.11), he said that it was his intention to submit to the TNC in July a status report on progress made in the area of non-tariff measures. He requested participants in request-offer negotiations to provide him before the next meeting of the Group a brief statement of where they stand in these negotiations.

C. Examination of proposals on the security of concessions

8. The delegation of Australia introduced its submission, (MTN.GNG/NG2/W/67 and Add.1) the objective of which was to stimulate discussion of an important and complex issue. The Uruguay Round should produce an agreement on non-tariff measures which could take the form of a Protocol. Australia had no exact view of the legal nature of such an agreement but thought that drawing it up and establishing a Committee on non-tariff measures were desirable objectives. The parties which had agreed to bind non-tariff measures could express those agreements in schedules which could follow the procedures developed for tariff concessions. Australia's proposal provided a procedure for expeditious and abbreviated rulings on whether particular concessions for non-tariff measures had been impaired or nullified or the competitive conditions arising from agreements had been undermined, sometimes unintentionally, by the introduction, re-imposition or intensification of a non-tariff measure. This process was not intended to replace the normal dispute settlement procedures of the GATT and the proposed agreement did not prejudice the GATT rights and obligations of contracting parties or the consistency of measures.

9. Referring to the submission of his delegation (MTN.GNG/NG2/W/65), the representative of Uruguay stated that it was similar to that of Australia. The undertakings to liberalize non-tariff measures which could be attained during the round should be reflected in some multilateral instrument and subjected to multilateral surveillance. Their proposal envisaged that the measures liberalized in the Uruguay Round should not be reintroduced under a different form. New measures should not affect products on which concessions had been negotiated so that the same level of market access resulting from the negotiations should be preserved. They had proposed a definition of non-tariff measures which might be improved but it was important to have a clear idea of what should be included in and excluded from an agreement on this subject. The proposed agreement should be subject to all the provisions of the General Agreement and should not affect the rights and obligations of the contracting parties under the General Agreement. As foreseen in the General Agreement, developing countries might be compelled to introduce temporarily measures inconsistent with the commitments they had undertaken. Such situations should also be provided for in the proposed agreement.

10. Many representatives welcomed the proposals and agreed that they dealt with an issue which had become highly important as the market access negotiations were entering a crucial phase. Some informed the Group that they too were working on submissions addressing the subject.

11. Commenting on the proposals, some delegations agreed that an instrument on the security of concessions should not upset the balance of rights and obligations under the General Agreement. Thus, a distinction ought to be made between countries which had undertaken a high level of market access commitments and others which had not. The delegations of Australia and Uruguay felt that this problem equally applied to tariff negotiations, since not all contracting parties had the same level of tariff bindings. The delegation of Uruguay in particular considered that the objective of the present round of negotiations was to increase the level of rights and obligations under the GATT and to reach a multilateral trading system which was as free as possible.

12. Some delegations felt that it would be useful to arrive at a definition of non-tariff measures which could be covered by the proposed agreement. Others felt that attempting to do this would side-track the negotiations. Some considered that there were certain non-tariff measures which had no quantifiable effect and therefore were difficult to subject to negotiations and concessions. Equally some measures were not product related, unlike tariffs, and were difficult to bind in the same way as tariffs. Some also believed that there should be provision for legitimate objectives, such as the protection of public health and the environment.

13. Some delegations believed it necessary to clarify whether the agreement would cover all items or only bound ones, and only the concessions negotiated in the Uruguay Round to the exclusion of those negotiated earlier. Some delegations wondered whether contracting parties could preserve the right to impose restrictions, if justified by the GATT, even after they had bound the measures in question and whether this could be done without retaliation being allowed. One view was that existing tariff bindings also included a commitment to allow access to the market and such commitments should therefore not be reopened. Existing tariff commitments did not require an explicit statement that non-tariff measures would not be applied to the product in question. However, if concessions affected the "terms and conditions" of access in the meaning of Article II, they should be included in the relevant schedule. Some delegations also felt that efforts to bind concessions in non-tariff measures should not detract from those directed at strengthening the disciplines contained in specific GATT Articles. Instead, they considered that concessions arrived at bilaterally should deal with measures for which GATT disciplines left some liberty to contracting parties. The delegations of Australia and Uruguay believed that the agreement should cover all measures on which concessions had been undertaken bilaterally. Unlike some delegations which felt that all concessions, whether for tariffs or non-tariff measures, should be recorded in a single schedule, Australia tended to favour separate schedules, but was prepared to consider other views. It considered that if a contracting party had obtained a tariff concession for

a product it was likely to seek a concession for non-tariff measures affecting the same product. It did not feel that measures justified under the GATT should be excluded from concessions, since the whole basis of the GATT was that countries had been prepared to negotiate away their right to increase tariffs. However, it did not believe that the commitments contained in Article II covered non-tariff measures, since they allowed contracting parties freedom to introduce legitimate measures which limited conditions of trade.

14. Some delegations worried that measures inconsistent with the GATT could acquire "legality" by being included in schedules of concessions. However, the delegation of Uruguay considered that GATT-inconsistent measures would in any case be subjected to the rollback commitments. The fact that they might be subject to bilateral agreements would have no implication from the point of view of third parties whose rights under the GATT were not to be prejudiced by the proposed agreement.

15. Some delegations doubted that a separate dispute settlement mechanism and institutional arrangements were needed since the Council was empowered to deal with any disputes relating to non-tariff measures and improved dispute settlement procedures had recently been adopted. The representative of Australia explained that their intention was not to replace but to supplement existing dispute settlement procedures. They envisaged that the only task of the Committee would be in relation to the concessions granted in the field of non-tariff measures. It would therefore not duplicate any existing bodies.

16. In response to delegations which wondered whether the procedures of Article XXVIII could be applied to negotiations on non-tariff measures, because of the difficulty of identifying principal suppliers when, for instance a quantitative restriction was imposed, or to measure compensation when the restriction was generic and did not apply to specific products, the representative of Australia explained that the same problems arose with respect to tariff negotiations and that they could equally be solved albeit after protracted bilateral negotiations.

17. At the end of the discussion, the Chairman agreed with earlier speakers that a mechanism for binding concessions made in negotiations was needed in order for the outcome of the negotiations to be meaningful. He therefore urged delegations to examine the existing proposals closely with a view to seeing whether, in their opinion, they offered possible solutions to the problem. He urged delegations to come to the next meeting prepared to carry out a detailed examination of the question in the light of progress which may have been made by then in the request-offer negotiations.

D. Examination of proposals on the recognition of liberalization measures

18. The representative of Argentina introduced a communication from his delegation (MTN.GNG/NG2/W/69, later reissued as MTN.GNG/NG2/W/69/Rev.1) which described liberalization measures recently adopted by his authorities, for which they were seeking recognition in the negotiations. At the suggestion of the Chairman, the Group took note of the statement of the delegation of Argentina.

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

19. The Chairman recalled that at its last meeting, the Negotiating Group had requested the secretariat to prepare a list of measures which had been found by the CONTRACTING PARTIES to be inconsistent with the GATT in the past five years and which were still in effect (MTN.GNG/NG2/18, para.12). The secretariat had prepared such a list and had circulated it informally to the participants mentioned in it so that they could check that the information it contained was accurate. The list would be issued as a document as soon as those delegations had done this.

F. Other business

20. At the suggestion of the Chairman, the Negotiating Group agreed to hold its next meeting on the morning of 17 July and the afternoon of 18 July 1990, thus leaving some time available for additional meetings of the drafting groups. The Chairman also suggested that the agenda at the next meeting be the same as at the present one.