

SCOPE OF THE NEGOTIATION ON NON-TARIFF BARRIERS

Modalities

Submission by New Zealand

Addendum

The following communication, dated 17 February 2003, has been received from the Permanent Mission of New Zealand.

Introduction

1. Recent proposals, including from New Zealand and the US, underline the movement towards a post-tariff global trading environment. The Negotiating Group on Market Access (NGMA) must therefore deliver substantive results on non-tariff barriers (NTBs) in order to provide market access improvements, which are meaningful for business and contribute to sustainable economic growth in all economies.

2. The group faces difficulty in identifying how to shape a manageable negotiation on NTBs that will deliver these results.

- New Zealand's earlier submission (TN/MA/W/4) drew attention to the potentially wide scope of such a negotiation. The OECD's survey of NTBs refers to more than 7500 claims or complaints which provide information about the existence of NTBs (TD/TC/WP(2002)3), based on the annual trade reports of the EU, Japan and US and other surveys.
- New Zealand's notification on NTBs, submitted on 5 February 2003, also illustrates the extent of such barriers.

3. It is likely that a significant proportion of these NTBs are arguably covered by at least some existing WTO provisions.

4. An issue for this group therefore is how to handle such measures. They may or may not be WTO legal. But that can only be definitely determined through the dispute settlement system. We doubt that Members maintaining measures, which are arguably, covered by existing WTO provisions will join a consensus in this negotiation to agree that the measures are WTO illegal.

5. It is helpful at this point to recall the mandate from Ministers, which is to "reduce or as appropriate eliminate... non-tariff barriers (NTBs), in particular on products of export interest to developing countries". The issue of the legal status of an NTB is obviously a consideration in a rules-based organisation such as the WTO. But it is not identified as the defining factor in the mandate. By

analogy with tariffs, which are certainly WTO legal measures, the Negotiating Group's mandate is simply to reduce or eliminate the incidence of non-tariff barriers.

6 That said, many NTBs are linked to legitimate public policy objectives, for example health, safety or environmental protection, and may be in place for valid regulatory reasons. It is therefore not feasible simply to reduce or eliminate an arbitrary proportion of such measures. But given the Ministerial mandate, neither can negotiators avoid addressing them. Some of these measures impose unnecessary costs on business and consumers or distortions to trade. This is especially the case where the differences or variation in for example product mandatory standards (i.e. technical regulations) and procedures for assessing compliance with those technical regulations (i.e. conformity assessment) among major global markets itself imposes significant costs on business. In line with the mandate, the Negotiating Group on Market Access does need to seek effective ways to reduce or eliminate the NTBs which cause those costs.

7 New Zealand suggests the NGMA needs to consider various ways to advance. This paper proposes some possible approaches, as a contribution to the development of modalities for negotiation on NTBs, which are to be agreed by 31 May 2003.

Modalities: possible approaches

8 One way would be to leave measures for **dispute settlement**. That may be necessary in some instances, though it plainly would not discharge the mandate.

9 A second approach would reflect the fact that some areas are already covered under **other parts of the Doha mandate**, eg. the work currently being done on trade facilitation in the Council for Trade in Goods (CTG). The Council's existing mandate in the period up to Cancun is to review and as appropriate improve and clarify relevant GATT Articles. Negotiations on trade facilitation are to be launched at Cancun on the basis of a decision, by explicit consensus, on the modalities for those negotiations. The importance of substantive progress in this work on trade facilitation is apparent from the recent notifications of NTBs, by New Zealand, and other participants, which illustrate that customs and entry procedures are among the most frequently cited NTBs. The NGMA therefore needs to follow closely progress in the work on trade facilitation under the CTG.

10 Another possible approach to handling NTBs, noted in New Zealand's earlier submission, would be **bilateral request/offer** (R/O). We suspect that R/O may prove necessary as a fallback for some measures. But New Zealand would caution against making R/O the main modality for NTBs. Given the large membership of the WTO, the potentially huge number of NTBs as noted earlier, and the complexity of each individual issue, an approach solely based on bilateral R/O negotiations group would be likely to yield relatively limited results. That would imply a limited discharge of the mandate.

11 New Zealand suggests that to achieve substantial progress on the NTB part of the mandate, this Negotiating Group will also need to consider **multilateral** approaches. In this paper we share some preliminary ideas about possible approaches based on examples of technical regulations (i.e. mandatory standards), procedures for assessing whether products comply with those regulations (i.e. 'conformity assessment'), and quantitative restrictions. The reference to mandatory standards and conformity assessment reflects the fact that standards and certification ranked at the top of the seven categories of NTBs identified in New Zealand's earlier submission to the NGMA. These types of NTBs are prominent in the New Zealand notification of the NTBs faced by our exporters.

12 Within such a multilateral approach, there are various ways in which NTBs, especially those relating to technical regulations and conformity assessment, might be tackled.

13 One approach would be to **strengthen the application of existing horizontal disciplines**. For example, the TBT Agreement already requires technical regulations to be specified in terms of performance wherever appropriate.¹ In practice technical regulations are often described in prescriptive terms rather than in terms of product performance. (See example below from the forest products sector.) New Zealand suggests the negotiations should explore ways to strengthen horizontal disciplines by requiring a substantial increase in the proportion of Members' technical regulations to be performance based rather than based on product descriptions, and to provide some security that those performance based regulations will be maintained. In New Zealand's experience performance based standards are well received by the business sector because they result in technical efficiencies and consequently improved productivity levels.

PRESCRIPTIVE VERSUS PERFORMANCE-BASED TECHNICAL REGULATIONS IN THE FOREST PRODUCTS SECTOR

An August 2002 study for the APEC Business Advisory Council on the economic impact of prescriptive building codes in APEC Economies, focussing on fire regulations, suggests the opportunity cost to wood product suppliers and consumers of prescriptive building codes in five APEC economies, is in the order of US\$10.8 billion each year. Prescriptive fire regulations often discriminate against wood products generally and are usually based on social and cultural expectations rather than scientific data. For example, fire regulations commonly give preference to steel over wood in construction, even though in a fire a steel beam will soften and bend more rapidly than a wood beam of equivalent standard. Performance based regulations overcome this discrimination against wood by specifying fire-ratings for building components [i.e. the material's reaction under measured fire conditions], rather than simply requiring that wood not be used in certain parts of a building. The APEC study notes a shift is already occurring away from prescriptive standards to scientifically justifiable and measurable performance-based standards.

Performance-based regulations rather than prescriptive ones are similarly applicable to product standards, for example bending strength of wood products and durability.

14 Another example might be **to agree to strengthen the use of international standards**. The TBT Agreement already requires Members to base national technical regulations on relevant international standards where they exist (or are imminent), except where the standards would be ineffective or inappropriate for fulfilling the legitimate objective of the technical regulation.² In principle the NAMA negotiations might allow consideration of practical ways to foster greater use of international standards. This would of course have implications for the work of international standardising bodies, such as the ISO and IEC, and the capacity of all Members, especially developing and least developed Members, to participate effectively in that work.

15 Harmonisation of national regulations to international standards is often proposed as the best way forward in this area, though New Zealand and other Members have consistently preferred approaches based on recognition of the equivalence of technical regulations in individual Members. One of the impediments to strengthening the use of international standards is that in some sectors, industry considers the standards take too long to develop, so that existing international standards are either far behind current business practice or simply non-existent. For example the development of ISO standards in the forest products and building sector has been slow, even though they may be seen as ultimate replacements for existing national building standards and codes.

¹ TBT Article 2.8

² TBT Article 2.4

16 To supplement work on strengthening the application of existing horizontal disciplines, therefore, a further approach could be to explore negotiations to address **generic clusters of NTBs**, typically those associated with a particular sector. The forest products sector again provides an example of how this approach might deliver the results, which Ministers have sought. (Please refer to the example below.)

GENERIC NTBS IN THE FOREST PRODUCTS SECTOR

A 1999 APEC study on non-tariff measures in the forest products sector found that use of restrictive product standards within national building codes, together with difficult and expensive conformity assessment for foreign suppliers, distorted trade in building products and systems. The sorts of measures which unnecessarily restricted use of wood products included:

- Building codes which prescribe against use of wood (e.g. in relation to height regulations, by building zones, fire regulations,)
- Prescriptive product standards, e.g. durability and bending strength regulations (e.g. prescription of some species but not others, requirements for certain grades of timber to be used, for certain types of glue or other chemical treatments)
- Simply the absence of building codes for wood products in some cases
- Costly compliance procedures

The aim is that building codes should specify the building performance for fire ratings of walls, floors etc for fire resistance, with Hazard classes for durability, and Strength classes for timber structural properties. Product standards then go into the details of how those fire ratings, Hazard classes and Strength classes are achieved with particular species, materials, grades, chemicals etc.

Specification of durability performance by reference to a Hazard class is preferred to the specification of particular species, particular processes and particular chemicals because there are many combinations of species process and chemical that can give resistance to meet a given Hazard class. Also, new chemicals are being developed and some are becoming outlawed, e.g. - copper-chrome-arsenic preservatives. Specification of timber strength by (bending) Strength class is preferred to specification by species and grade.

17 The Negotiating Group might therefore want to consider the feasibility of addressing these types of generic NTBs in single clusters. For example:

- In relation to technical regulations, and taking forest products as an example, members might want to consider if a 'smorgasbord' approach might be feasible to achieve certain regulatory objectives. For example, New Zealand permits imported cars which meet the safety standards of any of the EU, US, Japan, Australia or the UN-ECE to be placed on the market. Is a comparable 'smorgasbord' approach feasible for some forest product technical regulations? Could that provide a relatively efficient way for this negotiation to reduce the costs and distortions, which currently arise from businesses having to meet different technical regulations in various major global markets? It is notable that there is a move within ISO towards declaring specific national, or regional or international standards as equivalent wherever this is possible rather than setting up one standard as the only option. For timber

this sort of approach is especially suited to things like grades, testing methods and strength classes.

- Other alternatives within the generic clusters approach might also be explored in the course of negotiations in order to address the costs which business faces due to varied technical regulations.

18 Another option could be to consider **classes of NTBs**. An example could be NTBs that impose quantitative restrictions on imports, which could be discussed as a group, possibly on an industry basis. The following box illustrates this type of NTB as applicable in the fishery sector.

QUANTITATIVE NTBS APPLICABLE IN THE FISH INDUSTRY

The use of quantitative restrictions (QRs) on imports of certain fish and fish products remains fairly widespread in a number of markets. These QRs may take the form of absolute limits set on the import of certain fish products expressed in volume or value terms or both. In other cases tariff quotas are applied to the import of certain fish and fish products. In the case of QRs set in absolute terms, it may be useful to discuss the justifiability of such measures.

19 It is clear that negotiations on NTBs have the potential to become complicated. New Zealand offers these observations as a contribution towards further discussion in the NGMA.
