

**MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS**

Non-Tariff Barriers

*Communication from the European Communities*

Addendum

The following communication, dated 31 March 2003, has been received from the European Communities.

1. In this third submission to the negotiating group, the European Communities wishes to set out further ideas on its approach to negotiations on non-tariff barriers with a view to achieving the ambitious objectives established in the mandate agreed at Doha under the relevant sections of non-agricultural market access.

2. Several rounds of multilateral negotiations have contributed to the reduction of non-tariff barriers. The Uruguay Round, in particular, laid down specific disciplines on non-tariff obstacles to trade. The prevalence of non-tariff barriers in areas such as agriculture, textiles and clothing was, indeed, one of the main reasons spurring GATT contracting parties to launch it. As regards non-agricultural products, new ground was broken as a number of measures were prohibited: suffice it to quote Article 11 of the Uruguay Round Agreement on Safeguards prohibiting measures such as voluntary export restraints or marketing arrangements on both imports and exports.

3. Other instances of WTO disciplines aimed at eliminating the potential trade-distorting effects of non-tariff measures are: the Agreement on Import Licensing Procedures, which is mainly a modification of the "code" negotiated in the Tokyo Round; the Agreement on Implementation of Article VII of the GATT 1994, concerning the rules for valuation of goods at customs; the Agreement on Preshipment Inspection; and the Agreement on Rules of Origin, which was the first-ever agreement on the subject.

4. Preventing the use of overt or disguised discriminatory measures being applied at the border was not enough. The success of GATT 1947 in tackling traditional tariff barriers had exposed a host of behind-the-border measures, often of a technical nature, used to constrain the marketing, sale and distribution of goods after customs clearance. GATT and later WTO have aimed at enforcing the requirement of non-discrimination between foreign and domestic products.

5. In part, these efforts are founded on Article III:4 of the GATT 1994, requiring countries to accord treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offer for sale, purchase, transportation, distribution and use. Based upon the disciplines of Article III:4, three distinct WTO agreements are designed to address the problem of internal measures discriminating in favour of

national products, namely: the Agreement on Technical Barriers to Trade – whose origins can also be traced back to a Tokyo “code” –, the Agreement on Trade-Related Investment Measures, and in the field of agriculture the Agreement on the Application of Sanitary and Phytosanitary Measures.

6. In a sense, the amplification of WTO disciplines aimed at curbing non-tariff barriers and regulating the use of non-tariff measures has heightened the significance of tariff peaks and high tariffs, which is the reason why the European Communities call for their elimination. At the same time, WTO Members have still work to do to refine relevant multilateral disciplines and ensure the elimination of remaining barriers.

7. Industry world-wide continues to face pervasive behind-the-border trade obstacles which can frustrate any additional market access acquired through tariff reductions. Consequently, the European Communities considers it crucial to accompany all DDA efforts to reduce tariffs, tariff escalation, and to eliminate tariff peaks and high tariffs, with equally strong action to address remaining unjustified non-tariff barriers.

8. Members will need all their determination, as the definition and classification of non-tariff barriers is notoriously challenging, so much so that there is no WTO definition. Although they may be easily described, *a contrario*, as all barriers that are not tariffs, listing non-tariff barriers is almost impossible as such a definition includes a potentially unlimited number of obstacles. In general, apart from the straightforward category of border restrictions (e.g. import or export quotas), some non-tariff barriers can often best be described as procedures linked to the implementation of rules, as much as rules in themselves. Despite constant change barriers can be identified, even if attempts at systematic classification can be rather fruitless.

9. It is essential to distinguish between legitimate regulatory measures and the use of measures to establish unjustified barriers to trade. In contrast to legitimate non-tariff measures that are based on legitimate policy objectives such as public safety, health, security, environmental or consumer protection, non-tariff barriers may be dictated by protectionist designs, which are incompatible with GATT and WTO principles and impose unjustified burdens to traders.

10. Some of the non-tariff barriers currently encountered stem from deficiencies in the implementation of GATT and WTO disciplines. In some instances, difficulties may need to be resolved through the procedures for consultation provided for in each of the above-mentioned agreements, or – in the case of infringements – through the relevant GATT/WTO procedures for dispute settlement. In a limited number of cases such as those concerning least developed countries, difficulties might be due to inability of Members to live up to the commitments previously signed: technical assistance and capacity building activities could then help to address the issue, which is the reason why the European Communities has constantly supported initiatives in this field, a recent example being the inclusion of trade related assistance in its ongoing development aid programming. Non-tariff barriers arising in the cases just described are not a matter for negotiation.

11. Further to the attention devoted by the Singapore Ministerial Conference to non-tariff barriers, some of the non-tariff trade obstacles are already the subject of discussions in other WTO negotiating fora, in which the EC has submitted proposals and papers. For instance, issues concerning anti-dumping, countervailing measures and subsidies are currently discussed in the negotiating group on rules. Problems caused by excessive recourse to anti-dumping, countervailing duties or safeguard action have become much greater than in the years preceding the conclusion of the UR. The Community supports a substantial review and pro-trade strengthening of these rules. Discussions on investment, competition and public procurement are bound to tackle barriers that are not tariff-related as well. Discussions on trade facilitation, with their focus on customs and related trade procedures, also provide an avenue to reduce burdensome import, export and transit procedures to the benefit of all Members. Additionally, the work programmes on special and differential treatment and

implementation deal with several non-tariff issues of interest to developing countries. It is the EC's view that the negotiating group on non-agricultural market access should avoid duplication and ensure co-ordination with the work conducted in other fora.

12. There may be cases, however, where current GATT/WTO rules are either unclear or inadequate. In such instances, as well as in those where there is a lack of specific provisions to discipline barriers identified, the negotiating group should consider proposals to complete, clarify or improve current rules.

In this respect, the following issues appear, *prima facie*, worthy of consideration: export taxes, buy national campaigns, difficulties arising from requirements by local, regional or independent authorities and bodies, and from the application of national laws and regulations outside national borders.

This case-by-case approach dealing with specific non-tariff barriers could, if necessary, be supplemented by more horizontal provisions based on GATT Articles III and XI. In so doing, Members should take into full consideration the special needs of least developed countries.

13. Because of GATT's traditional focus on import policies, export taxes remain a policy instrument still not subject to specific disciplines, hence the significance of the effects such policies have. Export taxes, whenever used to protect industries that process primary commodities, tend to be the flip-side to tariff escalation thus causing adverse effects on commodity producers, who tend to receive a price which is below the price prevailing on world markets. The commitments on export taxes made by newly acceded Members have set a valuable example that should be followed by all Members.

14. As developing and least developed countries have often drawn the attention to (perceived) non-tariff barriers resulting from some Members' implementation of the Agreement on Technical Barriers to Trade and the SPS Agreement, the European Communities supports a thorough analysis of the existing disciplines in order to address such concerns.

15. We welcome the Chair's initiative requesting Members to indicate measures that constitute obstacles to trade on some specific markets. The negotiating group will thereafter be in a position to have an overview and to decide on the follow-up to be given to the issues that will have been raised.

16. In this respect, we would like to recall the provisions on notification already at the disposal of WTO Members. Decision G/L/59<sup>1</sup> lays down an obligation for WTO Members to notify some import and export restrictions, such as prohibitions, quotas, automatic licensing, non-automatic licensing, state trading enterprises, mixing regulations, minimum price, and voluntary export restrictions. Decision G/L/60<sup>2</sup> offers the possibility of reverse notification for trade barriers maintained by other members, whenever they are not subject to any existing WTO system of notification or reverse notification. Since Members have made almost no use of this possibility, it might be advisable to undertake a review aiming at operationalising such procedures within the Committee on Market Access, which could result in negotiations on new WTO rules, if Members so decide.

17. We would like to reiterate our marked preference for multilateral approaches with commitments equally applicable to all Members. Nevertheless, we consider that request and offer approaches with individual commitments should not be excluded *a priori*. In fact, the usefulness of including such individual commitments in some Members' schedules has been demonstrated.

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<sup>1</sup> Decision G/L/59 of the CTG of 10 January 1996 on notification procedures for quantitative restrictions.

<sup>2</sup> Decision G/L/60 of the CTG of 10 January 1996 on reverse notification of non-tariff measures.

18. Disciplines on specific non-tariff barriers are unlikely on their own to be effective in removing all obstacles to trade, especially when some of them are immediately replaced by new barriers. For this reason Members should explore whether additional horizontal mechanisms could be useful in addressing unnecessary barriers affecting market access so that measures taken by Members are not more trade-restrictive than necessary to fulfil a legitimate objective.

19. The Negotiating Group could also discuss whether it would be advisable for each Member to put in place or maintain procedures and criteria, in the context of its domestic regulatory process, to examine regulations affecting market access. Such an examination could, if necessary, result in modifications where the circumstances giving rise to the regulations in question no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner.

20. For purposes of transparency, it could be envisaged, finally, that Members in the Market Access Committee would retain the right to seek further information on Members' regulatory measures and procedures, and their compatibility with these commitments.

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