

SCOPE OF THE NEGOTIATION ON NON-TARIFF BARRIERS

Submission by New Zealand

The following communication, dated 30 July 2002, has been received from the Permanent Mission of New Zealand.

I. SUMMARY

This paper explores some possible guidelines for handling different categories of non-tariff issues.

II. INTRODUCTION

1. The Doha mandate on market access for non-agricultural products specifies that “negotiations shall aim ... to reduce or as appropriate eliminate tariffs ... as well as non-tariff barriers, in particular on products of export interest to developing countries”. Paragraph 16 stipulates that product coverage is to be comprehensive and without *a priori* exclusions, and that the negotiations are to take full account of the special needs and interests of developing and least developed country participants, including through less than full reciprocity in reduction commitments.

III. SCOPE OF THE NEGOTIATION ON NON-TARIFF BARRIERS

2. The theoretical scope of a negotiation on “non-tariff barriers” is extremely wide. One listing - the UNCTAD TRAINS database - classifies non-tariff measures (NTMs) under six broad headings (eg quantitative control measures, technical measures) and over eighty specific categories (eg local content requirements, labelling requirements). A full discussion on non-tariff measures would cover a large proportion of WTO agreements and rules.

3. At this point it is not clear what range of issues the negotiation will address. Some might wish to focus on specific measures applied by individual Members. Others might wish to concentrate on the WTO provisions governing those measures. Either way we would expect this to be a proposal-driven process focusing on issues identified by Members in submissions to the negotiating group.

IV. RELATIONSHIP BETWEEN NEGOTIATIONS AND OTHER WORK ON NTMS

4. The mandate does not provide precise guidance on the relationship of the NTB negotiation in the market access group with the wider WTO programme of work. There are a number of WTO bodies handling non-tariff issues as part of the Doha mandate (in addition to the Negotiating Group on

Market Access these include the Negotiating Group on Rules and, for trade facilitation, the Council for Trade in Goods). Other bodies examine non-tariff measures as part of their regular work programme (CTG subsidiary bodies such as the Committee on Customs Valuation, the Committee on Rules of Origin, and the Committee on Technical Barriers to Trade fall into this category).

5. The open nature of the mandate on non-tariff barriers thus carries the risk of conflict or overlap with the mandate of other negotiating groups. And with certain issues the question may be whether the appropriate approach is negotiation or action as part of the regular work programme. To get the NTB negotiating agenda in the Negotiating Group on Market Access into manageable shape and to achieve progress by the 5th Ministerial Conference might require a framework to help determine where and how individual NTB issues of interest to Members might best be addressed.

V. EXAMPLES

6. New Zealand's experience may be relevant to the development of such a framework. A group of agencies last year commissioned a study to assess the impact of non-tariff barriers on New Zealand exporters. The results illustrated the significant incidence of such barriers and the serious impact they had on returns for many exporters. These results will be fed into New Zealand's approach to this part of the negotiation on non-agricultural market access.

7. The top seven categories of non-tariff barrier identified in the survey were the following:

- standards and certification
- customs procedures
- food safety and health requirements
- import quotas and import prohibitions
- cargo handling and port procedures
- high internal taxes and charges
- non-scientific basis to quarantine restrictions.

Many other Members will also have encountered significant non-tariff barriers under such headings and might be keen to see those barriers addressed.

8. However, the New Zealand list also illustrates a procedural challenge we face in this negotiation. It will immediately be apparent that:

- there are existing WTO rules which address these issues, albeit at varying levels of detail;
- many "barriers" identified under these headings are likely, on examination, to prove WTO-legal, notwithstanding their significant trade impacts;
- the Doha ministerial declaration already provides a mandate (conditional or otherwise) for negotiations in respect of several of these headings.

9. The question that therefore arises is where individual non-tariff issues should be addressed and, in particular, which of them should become the subject of negotiation in the Negotiating Group on Market Access. This paper offers some preliminary ideas.

VI. CLASSIFICATION

10. In considering how to address issues identified in the New Zealand survey it became apparent that a categorisation would be a good starting point. In developing this we sought to make some

realistic assumptions about the handling of specific issues in the context of both the Doha mandate and the regular WTO work programme. Our initial categorisation takes the following form:

Issues that might be addressed in negotiations elsewhere under the Doha mandate

Some non-tariff issues fall within the scope of negotiations for which there is already a specific mandate under the Doha ministerial declaration. Our expectation is that any issue for which there already exists such a negotiating mandate will be addressed in the relevant negotiating group.

Issues or proposals involving substantial change to existing WTO agreements

While a large proportion of WTO agreements and GATT provisions relate to non-tariff aspects of non-agricultural market access, few of these agreements are specified in the negotiating mandate adopted in Doha. While we cannot rule out negotiations on agreements which are not specified in the Doha declaration, we expect the market access negotiating group would re-open existing agreements only on the basis of additional guidance.

Proposals involving clarification of existing rules

Proposals which do not seek to change existing rules but which seek to reduce uncertainty and conflict by clarifying those rules could be addressed within the market access negotiating group. There may, however, be mixed views on the extent to which “clarification” should be seen as part of the group’s current mandate.

Issues involving disputed interpretation of rules

Some practices seen as NTBs will turn on disputed interpretations of WTO rules. Resolution through the dispute settlement system remains an option in such cases. An alternative, in cases where it is broadly agreed that a particular issue has taken on systemic importance, would be clarification of the rules on the basis outlined above.

Issues open to bilateral resolution

In previous negotiations some non-tariff barriers have been taken up on a bilateral basis through a request-offer process, with the results in some cases being incorporated into schedules. This option remains available.

Products of interest to developing countries

In calling for the reduction or elimination of tariffs and non-tariff barriers the mandate makes particular reference to those affecting products of export interest to developing countries.

Capacity issues

For some issues involving NTBs a response may, at least in part, take the form of capacity building or technical assistance. This need not be confined to work under WTO auspices: experience suggests that bilateral and regional programmes will often be more appropriate.

Implementation issues

Many of the issues identified under the implementation mandate relate to non-tariff measures. Their handling is governed by the provisions of paragraph 12 of the Doha ministerial declaration.

Special and differential provisions

The mandate for the market access negotiating group makes specific reference to paragraph 50 of the Doha declaration (the requirement for negotiations to take fully into account the principle of special and differential treatment for developing and least developed countries). Work is also under way pursuant to paragraph 44 of the Doha declaration on strengthening special and differential provisions and making them more precise, effective and operational. Some of the proposals put forward relate to non-tariff aspects of non-agricultural market access. These issues are being addressed at this stage in the Committee on Trade and Development in Special Session.

VII. CONCLUSION

11. In the absence of a common understanding on which non-tariff issues should be addressed in the Negotiating Group on Market Access and which of them belong elsewhere, there is a risk that this part of the negotiation will become unwieldy. New Zealand offers these preliminary ideas as a contribution to discussion on how the negotiation might be managed.
