The GATT's dispute settlement procedure received a major boost at the 7 November meeting of the Council when reports on two important — and politically sensitive — disputes were adopted.

* The report on Section 337 of the US Tariff Act of 1930, which found that US procedures relating to patent infringement actions against imported products were discriminatory, had been under consideration since February. The United States, in accepting the adoption of the report, stressed the importance of a successful outcome of the Uruguay Round negotiations on intellectual property rights to its consideration of implementation of the report. The European Community, the original complainant, greeted the Council decision although it expressed concern about linking implementation with the Round.

* The case on Korean restrictions on imports of beef were presented to the Council in June this year. The panels had found the import ban to be contrary to GATT provisions. In accepting adoption, Korea stressed the political and economic difficulties associated with livestock farming in that country. Its undertaking to engage in consultations to agree implementation of the report was welcomed by the United States and the Republic of Korea to unblock the adoption of the panel reports concerning Section 337 and beef import restrictions, respectively. Canada asked for authority to retaliate against the non-implementation by the US of the "Superfund" panel report. The European Communities reiterated a long-standing request for the establishment of a panel on the US tariff increase for certain EC products which was in answer to the EC ban on beef treated with hormones. The United States requested consultations with the EC on the latter's "Television Without Frontiers" Directive.

Among other things, the Council adopted a working party report and the draft Protocol on Costa Rica's Accession to the GATT.

These and other matters handled by the Council in November will be reported in more detail in the next issue.
Panel rules against Canadian quotas on ice cream and yoghurt

The chairman of the dispute settlement panel, Ambassador Lars E.R. Anell (Sweden), recalled that the Council established a dispute settlement panel in December 1988 to examine the US complaint against Canadian import restrictions on ice cream and yoghurt. In September 1989, the panel submitted its report to the parties.

The panel report noted that Canada restricts the importation of a number of dairy products in conjunction with its domestic milk supply management programme. In January 1988, Canada amended its Import Control List by adding ice cream products and yoghurt. In March 1988, it gave notice that import permits were required for any import of these products. Canada did not establish quotas for 1988 but granted permits based on the record of importers for recent years. It produced 183,075 metric tons of ice cream in 1988 and imported 411 tons; domestic yoghurt production was 89,726 tons and imports amounted to 1,141 tons. In January 1989, Canada established quotas for the year: 345 tons for ice cream and 330 tons for yoghurt. There was no country allocation of quotas but, in practice, US products account for close to 100 per cent of Canadian imports of ice cream and yoghurt.

The United States argued before the panel, that the Canadian permit system and quotas for ice cream and yoghurt violated the prohibition of quantitative restrictions on imports in GATT Article XI:1, and could not be justified as an exception under Article XI:2. In addition, the implementation of the restrictions was inconsistent with Articles X (Publication and Administration of Trade Regulations) and XIII (Non-discriminatory Administration of Quantitative Restrictions). The US urged the elimination of the Canadian quotas and permit scheme.

Canada maintained that its quantitative restrictions on ice cream and yoghurt were justified under Article XI:2(c)(i) which allows import restrictions on agricultural products imported in any form when they are necessary to the enforcement of government measures restricting quantities of the like domestic product. Imported ice cream and yoghurt could displace Canadian ice cream and yoghurt which could cause a domestic surplus of raw milk. This would make it impossible for Canada to maintain the effectiveness of its supply management programme. Canada argued that ice cream and yoghurt were simply milk in a tradeable form, and Canadian controls on the production of raw milk ipso facto controlled domestic production of ice cream and yoghurt. Thus, import restrictions on the two products met the conditions of the GATT provision. Canada did not announce quotas for 1988 because it was in the midst of bilateral consultations with the US.

The panel concluded that the Canadian restrictions on the importation of ice cream and yoghurt were inconsistent with Article XI:1, and could not be justified as an exception under Article XI:2. In addition, the implementation of the restrictions was inconsistent with Articles X and XIII of the GATT. The panel ruled that Canada's import restrictions were inconsistent with the GATT prohibition of quantitative restrictions on imports. It urged the adoption of the report.

Canada replied that the panel report raised a number of issues. It questioned whether any national dairy programme could enjoy the exceptions under Article XI, given the panel's interpretation of that Article. It pointed out that the US could use its waiver on agricultural products to limit imports of ice cream and yoghurt while at the same time it challenged restrictions of other GATT members without waivers.

In the ongoing multilateral trade negotiations, Article XI should be examined with the aim of restoring an equitable balance of rights and obligations among GATT members. Canada requested more time to study the report.

The Council agreed to revert to the matter at its next meeting.

International Trade Centre commended

The Joint Advisory Group presented its report on the work of the International Trade Centre (ITC). Established by the GATT 25 years ago, the ITC is a joint subsidiary organ of the GATT and the United Nations, the latter acting through the UN Conference on Trade and Development (UNCTAD).

Ambassador William Rossier (Switzerland), Chairman of the Group, reported that at the annual meeting held in April, members commended the ITC for the high quality of its work and encouraged donor countries to increase their contributions. The Group recommended ITC to expand its trade information services and to pay greater attention to the export-promotion needs of the least-developed countries.

Bangladesh expressed appreciation for ITC assistance. It noted that its export diversification programme has led to the reduction of its export dependence on jute from 83 per cent in 1974-75 to 31 per cent in 1987-88. Indonesia also underlined the importance of ITC in its efforts to increase its non-oil exports.

Guidelines set for reconciling interests of members in the event of trade-damaging acts

The Council members have come to an understanding on guidelines to be followed for reconciling the interests of GATT members in the event of trade-damaging acts. In April, Chile reported that the discovery of a number of poisoned grapes in the United States had caused sudden restrictions to be imposed on Chile’s exports of fruits and vegetables in that country and in other markets. Chile suggested that a GATT mechanism be established to react expeditiously to such circumstances.

The Council Chairman reported that in several informal consultations, some delegations recognised a genuine problem exists but were doubtful on the need for a formal GATT structure. Thus, it was suggested that the following Chairman’s recommendations on this subject be made part of the Council’s records.

The Chairman recommended that the measure taken by the importing GATT member should not be any more severe, nor should last longer than necessary to protect the human, animal or plant health or life, as provided for in Article XX(b). The importing country should notify the Director-General as quickly as
possible. It would be expected to promptly agree to informal consultation with the exporting country as soon as a trade-damaging act has occurred in order to find the best way to effectively deal with the problem.

US requests consultations on EC TV Broadcast Directive

The United States informed the Council that on 1 September, it had requested consultations under Article XXII, paragraph 1 of the General Agreement with Austria, Luxembourg, Netherlands, Norway, Spain, Sweden, Switzerland and the United Kingdom. The request, according to the US, related to these countries' recent signing of the European Convention on Transfrontier Television.

The US claimed Article 10 of the Convention could obligate these countries to take action that would violate the GATT. (The Convention encourages the use of European-made television programmes.) It reported that while the non-EC signatories promptly agreed to consultations the EC Commission had not. Noting that the Council of the European Communities had approved on 3 October the EC Directive on Television Without Frontiers, the US urged the Commission to follow the new dispute settlement procedures and accept its request for consultations.

The Community said it would not object to any request for consultations provided the subject is germane to the GATT. It expressed serious doubts about the relevance of the US complaint to the General Agreement as in its view, broadcasting is essentially a service. It noted that the area of services is under negotiations in the Uruguayan Round. It advised the US to follow up its request in writing.

EC reiterates panel request

The Community reiterated its request for the establishment of a panel to examine a US measure (Presidential Proclamation No. 5759 of 24 December 1987) which raised duties on certain EC products. The United States maintained that the impasse on this issue was due to the blocking by the EC of the US request under the Technical Barriers to Trade Agreement for a panel of experts to examine the EC ban on beef treated with hormones.

The EC noted that while the economic stakes amounted to some US$100 million, which were small relative to the total EC-US trade, it wanted to use the case as a precedent for the future. It stressed that the US action was inconsistent with the General Agreement.

URUGUAY ROUND
India presents its views on intellectual property and investment measures

The first cycle of meeting since the summer saw intensive activity in all fifteen negotiating groups. India presented its detailed views in the TRIPS and TRIMS groups; the European Communities presented proposals on GATT rules and disciplines affecting agriculture; the United States and Hong Kong jointly tabled a proposal on import licensing and, separately, ideas on rules of origin; and the services group considered financial and professional services. Several of the "market access" groups continued efforts to reach agreement on negotiating approaches. Reports on some of the negotiating groups follow.

Trade-Related Aspects of Intellectual Property Rights

11-13 September

The Group concentrated on the applicability of GATT principles, enforcement of intellectual property rights (IPRs) and trade in counterfeit goods. The discussion on basic principles was spurred by a submission from India. This argued that concepts like mfn (most favoured nation) and national treatment as they apply in GATT could not not apply to intellectual property rights since these obligations were related to goods and not to the rights of persons, as in intellectual property conventions. Moreover, mfn was concerned with border measures while intellectual property rights were national territories. On the other hand, the concept of transparency could have some applicability and the principle of differential and more favourable treatment for developing countries was valid. Some other delegations could see no reason why the GATT national treatment concept could not be applied in the context of intellectual property protection. It was pointed out that there had already been a panel report (that on the European Communities' complaint against the operation of Section 337 of the US Tariff Act) where national procedures for the enforcement of intellectual property rights had been found to be contrary to GATT Article III (national treatment). With respect to non-discrimination/mfn, it was argued by some that the existence of national treatment requirements for IP protection invalidated the need for an mfn rule - others, however, contended that notwithstanding the national treatment obligation there would still be a possibility of discrimination between third countries if the mfn concept were not applied.

Canada tabled a new proposal on the enforcement of intellectual property rights. Its submission argued that enforcement principles should include: procedures which are effective but not unnecessary obstacles to legitimate trade; procedures which ensure national treatment as well as unconditional mfn/non-discrimination; fair and equitable treatment to affected parties; provision of judicial and/or administrative civil remedies with the possibility of compensation for injury as well as criminal sanction and penalties for counterfeiting and copyright piracy; interim procedures to permit the detention of counterfeit or pirated goods by customs and recourse to multilateral dispute settlement in the GATT. While favouring an approach based on general principles, Canada also presented its more detailed views should a more detailed approach, as advocated by some other participants, be adopted.

An Indian submission on enforcement stressed the need to distinguish between enforcement at the border, which in their view should be dealt with separately in the context of the Group's work on trade in counterfeit goods, and internal enforcement. It emphasized that any set of rules on internal enforcement could not be linked to the GATT system. With this in mind it put forward a number of principles which might be applied to internal enforcement. These included: simple effective and adequate procedures which rest upon principles of natural justice and fair play; the possibility of provisional remedies but with compensation where IPRs are subsequently found not to have been infringed; national treatment for foreign owners of IPRs with respect to procedures; no obligation on governments to initiate enforcement proceedings or to allocate additional resources to establish separate machinery for the enforcement of IPRs.

Japan also spelled out in detail its further ideas on internal enforcement, setting out principles for civil judicial and administrative procedures, as well as

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FOllowing the overview of the problems arising in trade in certain natural resource-based products – non-ferrous metals and minerals, forestry products and fisheries products – given in Focus No. 64, this second and concluding part of the File is devoted to a review of the issues related to the negotiations proper. The objective is to achieve the fullest liberalization of trade in these products. High tariffs, tariff escalation, "traditional" non-tariff barriers such as subsidies and quantitative restrictions are thus concerned. However, other more specific obstacles and practices, in particular relating to pricing and State trading, also affect this trade, in the view of some participants.

One important issue that has to be resolved is that of the choice of appropriate negotiating techniques, in particular because the various decisions concerning the conduct of the negotiations, inter alia at the Mid-Term Review, establish a link with the work of other negotiating groups in which trade barriers are dealt with horizontally: tariffs, non-tariff measures, subsidies and agriculture.

### SCOPE OF THE NEGOTIATIONS

There is no general consensus on what the scope of the negotiations should be: some topics and sectors are accepted by all participants, others are not. The Punta del Este Declaration and the text of the Mid-Term Review leave this point open: "participants will continue their examination of issues brought forward to date, without prejudice to additional products and issues participants may yet propose".

Broadly speaking, the number of negotiating proposals in this sector is not very large, probably owing to the complementarity of this Group’s work with that of other negotiating groups.

What trade distortions?

The "traditional" obstacles to trade in natural resource-based products, encountered in the trade in all of these products, are essentially customs duties, quantitative restrictions and licensing systems, technical barriers and sanitary and phytosanitary regulations, and subsidies.

It is admitted that high customs duties continue to exist in some countries for certain products, and that tariff escalation according to the degree of processing of products often protects the industries of importing countries. Furthermore, even low duties may result in a high level of effective protection.

The Negotiating Group on Tariffs, which deals with these problems on a general basis, has so far been unable to agree on the negotiating techniques to be used to attain the objective of a 33 per cent reduction in the average level of present duties, set by Ministers in December 1988. Most countries are in favour of a mathematical formula harmonizing the existing tariffs, but some, in particular the United States, consider that in view of the large differences in the various tariffs and the very low level of their own tariffs, the establishment of request and offer lists would be more appropriate; finally, other countries, such as Canada, advocate a combination of a mathematical formula and request/offer procedures.

In addition, some countries point out that export taxes are sometimes applied and ought to be the subject of negotiations. The Negotiating Group on Tariffs is not dealing with this problem.

Import restrictions, licensing systems, technical regulations and sanitary or phytosanitary regulations are covered by the negotiations in the Negotiating Group on Non-Tariff Measures. Subsidies are dealt with by the Negotiating Group on Subsidies and Countervailing Measures. Here again, it is not the measures themselves that raise a real problem – this is an area where GATT’s competence is fully recognized – but rather the choice of negotiating methods. Most participants consider that these measures are not specific to natural resource-based products, and therefore should first be dealt with by the horizontal negotiating groups. Any outstanding problems would then be dealt with by the Group on Natural Resource-Based Products.

Nevertheless, the Group on Non-Tariff Measures has not yet decided on its choice among the various negotiating methods proposed in the Group: establishment of generally-applicable rules, use of a formula for the automatic reduction of barriers, or request and offer lists.

In the case of subsidies, some countries consider that the legal approach adopted by the Subsidies Group (in particular the precision of the concepts of injury and compensation) would not really help to solve the practical problems raised by the importance of subsidies in the field of natural resources. Australia and Chile in particular have proposed enhanced disciplines and a substantial reduction of subsidies.

Many other non-tariff measures have been mentioned by participants as constituting major sources of trade distortion. Certain participants argue that several of these issues do not lie within GATT’s field of competence.

State control over the production and management of certain natural resources goes hand in hand not only with subsidies but also with export restrictions and controls (taxes, export prohibitions), which raise the issue of access to resources. At the end of the Tokyo Round, the matter of drawing up general guidelines on export restrictions was raised. However, certain participants consider that it is out of the question to infringe their national sovereignty, and that the provisions of the General Agreement do not include access to natural resources. This issue arises in particular for fisheries products, but also for certain minerals and metals, where the EEC has suggested that market access be linked with access to resources.

With regard to State trading as such, some participants have pointed out that this question is being dealt with both as a non-tariff measure in the Not-Tariff Measures Group and also on a normative level by the Negotiating Group on GATT Articles.

Some countries, such as the United States and the European Community, consider that dual-pricing practices are one of the biggest problems for trade in natural resource-based products, as well as being specific to that sector.

Dual-pricing may consist in holding domestic prices at a level above world prices, thus depriving foreign competitors of supplies of raw materials; it can also work the other way, with the raw material being sold to domestic pro-
cessors at a lower price than that paid by their foreign counterparts, thus giving them an advantage over the latter on the domestic and export markets. Anti-dumping measures are generally powerless to deal with this "reverse dumping"; there are no sales at a loss and the same prices are applied on the domestic and export markets.

Pricing policies in transactions between affiliated enterprises, where a lower price is paid for goods and services supplied compared with the price used in similar or comparable transactions with non-related enterprises, fall into the broader category of restrictive business practices; no GATT provisions exist in this area.

Sectors concerned

For some participants, the range of natural resource-based products to be negotiated is not limited, whereas others consider that the negotiations should only deal with these sectors considered by the Working Party since 1982: non-ferrous metals and minerals, forestry products, fish and fisheries products.

So far, it has been proposed that the following sectors and products should be included in the negotiations:

- energy and energy-based products, including natural gas, petroleum, coal, uranium, petro-chemicals, oil and gas processing;
- other non-ferrous metals and minerals, notably mineral sands, titanium (including titanium sponge), tungsten;
- iron ore, metal scrap, primary steel;
- construction materials, phosphates, salt;
- rattan;
- hides and skins.

Studies have been or are being carried out on most of these products.

NEGOTIATING TECHNIQUES

Some participants argue that problems encountered in the field of natural resource-based products are specific and may even vary from one sector to another, and therefore could not be validly dealt with elsewhere than in the Group on Natural Resource-Based Products.

On the other hand, others consider that most, if not all, of the problems raised in the Group are of a general nature and should be resolved by broader, horizontal negotiations.

Yet others consider that approaches combining horizontal and sectoral or product negotiations would be more appropriate. It has also been pointed out that the Group should have a monitoring and surveillance rôle, enabling it to take account of all problems affecting a sector as the negotiations advance in the other negotiating groups.

It was finally decided that the Group should devise methods to deal with specific problems and issues, taking account of the negotiating approaches elaborated in other negotiating groups, to determine to what extent specific provisions would be required. However, besides the absence of fundamental agreement as to whether certain problems are specific or not, the fact that the negotiating approaches in other groups have to be taken into account has considerably slowed progress in the Group.

Another issue affecting progress in the Group, by a ricochet effect, is that of the choice of an approach that combines action in the tariff and non-tariff field in a single liberalization effort. Some participants have considered that this integration should go further, and that a link should be established between the negotiations on tariffs, non-tariff barriers, natural resource-based products and textiles, which all address "market access"; while some other participants would also include agriculture.

The question of the special and differential treatment that could be granted to developing countries in this sector is also being studied. Four African countries, Senegal, Cameroon, Côte d'Ivoire and Zaire, at the outset of the negotiations pointed out that liberalization of trade in natural resource-based products would take into account only some of their concerns. They said they were in favour of whatever method would be best suited to take account of the specific situation of developing countries and ensure them additional benefits.

At its meeting in September 1989, the Group adopted arrangements for the continuation of the negotiations. Participants are to notify the Group on trade barriers they encounter, including those they have already raised in other groups, by 30 November. The Group will examine them in December and make arrangements for further work.

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the basis for provisional measures. In the view of Japan, participants to an agreement should regard the act of infringement of patents, trademarks and other IPRs as constituting criminal acts and should establish provision for criminal sanctions, including imprisonment or fines. It also envisaged the possible confiscation of goods in the event of infringement.

A further Indian submission outlined ideas for a multilateral framework for international trade in counterfeit trademarked goods. Elements for such a framework as envisaged by India would include: provision for suspension of customs clearance of suspect goods normally upon the application of the trade mark holder and adequate documentary evidence; such suspension for a limited period pending orders of a competent judicial or administrative body and conditional on adequate security from the applicant; and forfeiture of infringing goods and their disposal in a manner not prejudicial to the owner of the trademark. The submission stressed that any framework should discourage trade in counterfeit goods but that measures under it should not themselves become barriers to legitimate trade. India also expressed itself as ready to consider the extension of this approach to imports of pirated goods; meaning goods involving unauthorized copying of copyrighted material.

Trade-Related Investment Measures

14-15 September

India, Japan and Mexico tabled new submissions. India called on the Group to focus on those investment measures whose adverse trade effects - in terms of trade restriction or distortion - are direct and significant. It maintained that the prohibition of certain investment measures is alien to the GATT framework. India regarded the following types of investment measures as not trade-related and without any direct or significant adverse trade effects: local equity requirements, remittance restrictions, exchange restrictions, investment incentives, manufacturing limitations, technology transfer and licensing requirements.

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Performance requirements on domestic sales and product mandating may have some trade effects but not to the extent that would warrant consideration in the Group, according to India. The performance requirements which, in India’s view, could have some direct trade effects are export performance requirements, local content/local manufacturing requirements and trade-balancing requirements. However, India argued that the development dimensions of these measures far outweigh their trade effects, and that they are needed to counter restrictive business practices of transnational corporations. It suggested that the Group also examine these private corporate practices. India maintained that development considerations must be integrated into the work of the Group and that the investment measures of developing countries are in conformity with the spirit and philosophy of the General Agreement.

Japan proposed the prohibition of TRIMs which have trade restrictive and distortive effects and which are either inconsistent with, or relevant to, GATT provisions. It noted that some TRIMs are binding measures enforceable under domestic law while others, like government incentives, are not. To the first category, Japan listed seven TRIMs that should be prohibited: requirements on local content, export performance, trade balancing, domestic sales, technology transfer, manufacturing and product mandating. Those TRIMs belonging to the second category would be subjected to the general disciplines of non-discrimination and transparency. Japan also suggested the establishment of a “TRIMs Committee” which would survey the reduction or elimination of TRIMs. The proposal also envisaged some exceptions for developing countries for limited periods.

The Group held an initial discussion of those two new submissions. The United States and Switzerland which submitted proposals containing the “prohibition” concept at the previous meeting said the Japanese paper indicated a growing convergence in the Group regarding a possible framework of disciplines on TRIMs. Several countries expressed serious misgivings about the concept of prohibiting TRIMs, and generally supported the Indian approach.

Mexico elaborated its suggestion made at the previous meeting to “test” or systematically analyse two pilot TRIMs (export requirements and local equity requirements) to identify their trade effects.

MTN Agreements and Arrangements
18 and 20 September

The Group received five comprehensive submissions which are expected to pave the way for detailed negotiations on three Tokyo Round agreements. On the Anti-Dumping Agreement, Hong Kong tabled several amendments aimed at strengthening disciplines on importing countries using anti-dumping measures. The proposal emphasised the need to allow comparative advantage to work; to encourage investigating authorities to take more into account the interests of the user industry, the consumers and the overall economic cost of anti-dumping action; and to subject anti-dumping action to stringent constraints. Some countries expressed general support for the Hong Kong proposal while some other participants viewed the existing GATT agreement as, in the main, adequate.

On the Technical Barriers to Trade Agreement, the European Communities proposed a “Code of Good Practice” for non-governmental standardizing bodies. The EC noted that while the Agreement imposes direct legal obligations on central government bodies, the standardization, testing and certification activities of non-governmental bodies are covered only through a “best effort” pledge. It called for a code that would require these bodies to report regularly on their activities, and the creation of a monitoring mechanism under the Agreement. Several delegations expressed strong support for the Community proposal. The Nordic countries submitted two proposals. The first merged two previous submissions which were aimed at ensuring that testing and inspection procedures conducted by central government bodies on imports should not pose unnecessary obstacles to international trade. The second was minor revision of an earlier submission calling for improved transparency under the Agreement.

The United States and Hong Kong jointly proposed a comprehensive revision of the Agreement on Import Licensing Procedures. The submission stressed that import licensing procedures should not be utilised in a manner contrary to GATT principles and that they should not impede the flow of international trade. The two countries urged that import licensing, particularly non-automatic import licensing, should be implemented in a transparent and predictable manner, and that non-automatic licensing procedures should be no more administratively burdensome than absolutely necessary (under automatic import licensing, approval of the import application is freely granted).

Textiles and Clothing
21-22 September

The Group pursued its substantive discussions on modalities for the integration of the textiles and clothing sector into GATT on the basis of strengthened GATT rules and disciplines.

The United States explained its current position. Its statement stressed the need to ensure that any agreed integration process should address all trade-distorting measures and be based on real improvements in the GATT rules and disciplines affecting the sector. It suggested that such measures be classified in six categories, which should all be modified and integrated into GATT: (1) measures taken under a formal, multilaterally-agreed derogation, such as measures adopted under the Multifibre Arrangement or the voluntary restraint agreements concluded with non-MFA countries; (2) measures taken outside GATT by countries participating in the Uruguay Round, or (3) by non-GATT member countries participating in the Round; (4) safeguard actions or measures to protect infant industries or for balance-of-payments reasons; (5) measures which, while not necessarily inconsistent with GATT, are not subject to its disciplines (for example, unbound tariffs); and (6) preferential measures not notified, justified or approved by GATT.

Like the European Communities and Switzerland in previous submissions, the United States believed that there must be some parallelism between the negotiations on integration modalities and those on the strengthening of GATT rules which may affect the textiles sector.

Several countries, expressing their initial reaction, stressed that the United States’ statement demonstrated its willingness to engage actively in negotiations. According to many developing countries, however, the classification of the measures requiring modification was arbitrary and included types of measures – in particular those of categories 4, 5 and 6 – which could not be accepted. The ideal of a synchronized or parallel approach between negotiations on textiles and those on other GATT disciplines was widely criticized.
Agriculture 25-26 September

The European Communities submitted a communication on GATT rules and disciplines affecting agriculture. It centred on the idea that the particular status of agriculture should be maintained, the objective being to improve existing rules rather than fundamentally alter them. The Community was in favour of a global approach which would tighten up the existing links between domestic measures and measures taken at the frontier. In particular, it considered that the distinction established under Article XVI:1 of the General Agreement between domestic and export subsidies reflects a misunderstanding of the problems, and has not permitted the correction of the imbalances affecting world agricultural markets.

Likewise, Article XI should establish a more direct link between the volume of restrictions and the variations in production or marketing in the importing country. The provisions of Article XI should be extended to a whole range of other restrictions, such as those stemming from state-trading enterprises, boards and other state agricultural agencies, as well as the voluntary restraint arrangements that have grown up outside the framework of the General Agreement. In the case of variable levies, the Community considers that certain constraints could be placed on the operation of such systems, such as greater transparency in their method of calculation and a smaller difference between domestic and world prices. Likewise, the differences between minimum prices and domestic prices should be abolished. Finally, with respect to export competition, export subsidies should not be prohibited but rather subjected to strengthened disciplines bearing in particular on the level of the subsidy, a better definition of the "equitable share" concept and processed agricultural products.

Many countries considered that the Community's ideas involved only minor improvements, and seemed designed to maintain the status quo. Some were critical of the maintenance of the dual-price system and variable levies. Several countries considered that the proposal fell short of the guidelines laid down at the Mid-Term Review.

Japan also made a statement developing its ideas on the need to take full account of non-trade concerns, in particular food security and stable supplies of basic foodstuffs. Japan considered that it is essential to maintain some level of domestic production, as food security cannot be ensured solely by the maintenance of potential production capacity, food stocks, bilateral agreements or diversification of suppliers. Japan intended to state its views at a later stage with regard to the manner in which these non-trade concerns should be included in the GATT rules and disciplines.

The Group also discussed the preliminary ideas submitted by Switzerland and the Nordic countries in July. Switzerland proposed that countries having difficulties in implementing an across-the-board reduction in support should adopt a complementary approach that would enable them to achieve the same result by different methods. The minimum level of market access or rate of self-sufficiency would be the basic element for determining the disciplines to which countries, whose agricultural policies are based on non-commercial concerns, would be submitted. The Nordic countries, while calling for stricter GATT rules and disciplines and a liberalization of agricultural trade, argued that it would not be realistic to stick rigidly to the theory of comparative advantage while failing to recognize that many countries would continue to need some protection at the frontier.

Among the other questions considered by the Group was the aggregate measurement of support. Austria submitted a technical paper on the definition and use of the AMS, and the measures which should be included or excluded from its calculation. It considers in particular that the AMS should be used to monitor the implementation of a basic commitment. The Cairns Group submitted a communication on sanitary and phytosanitary measures and a preliminary discussion was held on the ideas advanced by Brazil concerning special and differential treatment for developing countries.

Subsidies and Countervailing Measures 26-27 September

Switzerland and Japan tabled new proposals on how subsidies should be classified into the three categories suggested in the negotiating framework approved during the Mid-Term Review. The main yardstick, according to Switzerland, should be the degree of trade-distorting effects as measured by normative and quantitative criteria. It called for listing measures very likely to cause trade distortion, such as export subsidies, under the category of prohibited subsidies subject to countervailing action.

In the course of the meeting, Japan presented a proposal calling for strict guidelines on the imposition of countervailing action. It listed export subsidies as well as domestic subsidies which favour local goods over imported products under the prohibited category.

Tariffs 27 September

Stressing the urgency of moving forward the market-access negotiations, Canada proposed a broad and systematic attack on tariff and non-tariff barriers (the same proposal was submitted to another five "market-access" groups: Non-Tariff Measures, Natural Resource-Based Products, Textiles and Clothing, Agriculture and Tropical Products). It presented a formula which would cut tariffs by between 32 per cent and 38 per cent, and which would eliminate duties of 4 per cent and below. According to Canada, this formula would be supplemented by early request-offer negotiations aimed at achieving deeper cuts. Tariff concessions should be bound and implemented in equal annual steps over an agreed period, with longer phasing for "sensitive products" and for cuts to be made by developing countries. It proposed simplifying procedures by rounding off the rates after the application of the formula, and the use of six-digit instead of eight-digit tariff headings.

Many participants welcomed the new proposal as constructive, and reiterated their support for the use of a tariff-cutting formula in the negotiations. The widespread view was that time for negotiations was running short, and that there was urgent need for agreement on a common negotiating approach. The United States expressed agreement with several elements contained in the Canadian paper but maintained it will continue to pursue the negotiations through the request-offer method.

Non-Tariff Measures 28 September

The meeting was marked by the tabling of two proposals relating to rules of origin, on which a preliminary discussion was held. The first proposal, from Hong Kong, identified the main problems associated with the application of origin rules. Firstly, it considered that the increase in specialization of processes and the multi-country processing and manufacture of goods have made the determination of origin difficult and led to uncertainty as to

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Non-Tariff Measures
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wich rules are being applied. Secondly, an absence of uniform international rules of origin had left importing countries with an undesirably-high degree of discretion, which included the possibility of modifying the rules in a way which could make them operate as barriers to trade.

Dismissing the possibility of negotiating internationally-harmonized rules of origin in the time-frame of the Uruguay Round, the Hong Kong proposal set out ideas to secure non-discriminatory application of rules of origin; to ensure they are objective and predictable and are implemented impartially and transparently; to require them not to have trade-distorting, restrictive or disruptive effects, nor to nullify or impair the rights of contracting parties under the General Agreement.

While the United States also set out procedural rules and principles to govern the application of rules of origin, it suggested a programme of analysis and negotiation aimed at the harmonization of rules of origin through an approach using the harmonized system nomenclature to identify product transformations sufficient to confer origin. This work, to be pursued in the Customs Cooperation Council in Brussels and, later, in the GATT would take up to two years and could not be completed before the end of the Uruguay Round - a point which was of concern to a number of participants in the Group.

● Services
18-22 September

In the third and final meeting of a series in which the "Montreal principles" have been examined in the context of individual service sectors, the Group looked at financial and professional services.

Financial services include banking, securities-related and insurance services. It was noted that banking and securities-related services could be considered, firstly, in regard to cross-border financial flows and, secondly, in the context of establishment or commercial presence. These services are highly regulated since they represent instruments of national and international economic management - monetary policies, debt management and fiscal policies for instance. Their institutions and markets are widely subject to prudential and other supervision. Many delegations stressed the importance of maintaining the integrity of regulatory systems because of these wider economic preoccupations and it was generally recognized that the application of a new framework of trade rules might often entail as much re-regulation as de-regulation. Nevertheless, substantial deregulation and liberalization has been achieved in both developed and developing countries in recent years, often associated with the liberalization of capital movements. However, a number of participants considered that many regulations still affecting establishment, acquisition of domestic enterprises, and the operation of foreign-owned banks and securities houses were often over-restrictive and could be subjected to disciplines in a multilateral framework. Many developing countries stressed the importance of banking to the development process.

Total premiums paid, in 1987, for both life and non-life insurance has been estimated at US$1.070 billion, with companies in North America taking 40 per cent of the business, those in Europe over 30 per cent and those in Asia 25 per cent. The premium income of developing countries in total was around 5 per cent. Again it is a highly-regulated sector: partly on the basis of consumer protection and partly because insurance premiums frequently provide a major source of investment funds. Apart from re-insurance, transport-related insurance and worldwide coverage of multinational businesses, cross-border trade in insurance services is often excluded by regulation. Regulations related to establishment usually determine whether a foreign insurer can be admitted to the market and the terms on which it may carry out its business. While some participants believed that the integrity of national insurance industries could be threatened by the application of liberal trade principles, others saw significant scope for progressive liberalization of the sector.

Forms of professional services which are internationally traded include accounting, legal, management, advertising, health care, architectural, engineering and software services. The nature of trade may be cross-border (via computer terminals, for instance, or through travel by the supplier or customer) or through a local commercial presence. The motivation for regulations in this sector tend to include consumer protection, promotion of domestic business and local employment, the need to manage foreign exchange and the preservation of cultural identity. In particular, the recognition of professional qualifications and the licensing of the right to provide the service often stands in the way of access of foreign professional service firms. In discussion, participants drew attention to the disparate nature of professional services and the danger of generalizing.

Nevertheless, a key issue was the practice of discrimination on the basis of nationality and the recognition of foreign qualifications in order to practice. Developing countries stressed the difficulties they face in training and educating skilled professionals who are subsequently attracted abroad.

Switzerland and New Zealand were the first participants to table proposals setting out overall structures and mechanisms for the services agreement. The Swiss proposal envisaged three parts to a "General Agreement on Trade in Services", namely: general provisions applicable to the universe of commercial services including obligations to negotiate and institutional aspects; an agreement on immediately applicable achievements; and provisions on the long-term process of progressive liberalization including bindings.

The New Zealand approach envisaged a "General Agreement on Trade in Services" consisting of generally applicable rules accompanied by individual country schedules of reservations and concessions.

Obituary
Mr. Richard Ford, former spokesman of the GATT, died on 6 October. His involvement with the GATT goes back to the preparatory meetings in 1947 which led to the establishment of the organization. He was chief of Information and Library Service when he retired from the GATT in 1970. Mr. Ford was born in Manchester, England on 15 January 1910.