Uruguay Round

New moves to break negotiating impasse

A few weeks before its scheduled end in Brussels, the Uruguay Round has reached the critical stage of hard bargaining with efforts to draft final agreements proceeding painfully slowly despite nearly round-the-clock meetings in Geneva. The Trade Negotiations Committee (TNC) scheduled two informal meetings - on 2 and 6 November - to push the negotiating fronts forward. Several trade ministers, present in Geneva during that period, were expected to lend strong political support to the negotiating process.

These moves come after the TNC Chairman at officials level, Mr. Arthur Dunkel, presented a bleak picture of the negotiations at an informal meeting of heads of delegations on 24 October. He said that while there had been progress in some areas of negotiations, "political decisions are urgently needed to get on track for Brussels". He said that the TNC would not be in a position to address key elements of the Round - textiles, agriculture, safeguards, trade-related aspect of intellectual property rights and services - unless work on less controversial subjects were finalised and set aside.

Mr. Dunkel noted that the 15th October deadline on the tabling of market-access offers had not been met by many participants, including some major trading countries.

Another deadline was 19 October for the submission of agreed texts on a number of negotiating subjects. Mr. Dunkel reported that texts for the revision of several Tokyo Round Agreements (see page 5) and on the interpretation of GATT Articles II and XVII (see previous Focus) were ready for the Brussels meeting. However, the deadline had been missed in respect to rules of origin, preshipment inspection, dispute settlement and GATT Article XXIV (customs unions and free-trade areas).

The TNC Chairman expressed very deep concern over work on trade-related investment measures, anti-dumping, and subsidies and countervailing measures. "Governments have to get out of entrenched positions and make the breakthroughs that are indispensable for progress", he concluded.

October Council

EC adopts transitional trade measures for unified Germany, Panel rules against US CTV duties on Canadian pork

The Council, on 3 October, welcomed three new GATT members (Tunisia, Venezuela and Bolivia) and the unification, effective that day, of Germany. GATT rules now apply to the trade of the former German Democratic Republic (GDR) which in 1988 was the world's twenty-fourth leading exporter (US$28 billion) and twenty-second largest importer ($27 billion). The European Community, however, said it would request a GATT waiver for temporary (Continued on page 2)
Transitional trade measures

(Continued from page 1)

discriminatory measures aimed at protecting traditional GDR trade with Eastern Europe.

The Council dealt with a number of trade disputes, three of which involved the United States and Canada. It was informed that a dispute-settlement panel had found certain US countervailing duties on Canadian pork to be inconsistent with GATT provisions. On the report concerning the US GATT waiver on sugar, the European Community said it hoped not to raise objections to the report’s adoption at the next Council meeting.

‘Disappearing divisions’

The Council Chairman, Ambassador Rubens Ricupero (Brazil), warmly welcomed the unification of Germany and expressed the hope that this would signify an end to global divisions in the political, economic and trade fields.

German Ambassador Fredo Dannebring declared that “the principles of market economy and free competition which guided the recovery of the Federal Republic of Germany after the Second World War now apply also to the 16 million Germans on the territory of the former German Democratic Republic”. The unified Germany was now “firmly integrated into the European Community, continuing the tradition of close cooperation and solidarity which has characterised the development of Western Europe during the last forty years”.

As a major trading nation, the enlargement of Germany’s domestic market would have “positive effects for our trade partners worldwide”, said the German ambassador. Chancellor Kohl, he said, had stressed that Germany would not invest in German unity at the expense of developing countries. On the contrary, according to the German Ambassador, the country would “step up its efforts to combat poverty and underdevelopment and to protect the environment”.

The European Community noted that two-thirds of the external trade of the former GDR were with the Soviet Union and with Eastern European COMECON countries. The immediate application of former GDR were with the Soviet Union and with European COMECON countries have recently been, or will shortly be, eliminated or suspended. (The EC was evaluating the need to suspend the application of certain restrictions applied to imports from the USSR in order that previous trade flows could be continued.)

The beneficiaries of these measures would be the USSR, Poland, Hungary, Czechoslovakia, Romania, Bulgaria and Yugoslavia. The Community said these measures would be applicable from December 1990 until the end of 1991 with the possibility of renewal by another year. The EC expressed its readiness to enter into consultations with GATT members regarding these measures.

Many Council members welcomed the unification of Germany as a historic moment, and expressed the hope that the Community would continue to be forthcoming on reporting related trade measures. Some delegations, including those from the United States and Japan, said they expected the EC to take account of the trade interests of other GATT members. Many members expressed interest in joining a GATT working party, should one be established, to examine the measures. Czechoslovakia hoped GATT members would understand the reasons behind the transitional arrangements while Hungary expressed concern about the effects of these arrangements on its agricultural trade with Germany.

New GATT members welcomed

The Chairman welcomed Tunisia, Venezuela and Bolivia as the 97th, 98th and the 99th contracting parties, respectively. He said that Venezuela and Bolivia, having indicated interest in participating in the Council, were now members of the Council. Tunisia was already a member of the Council, he noted, having provisionally acceded to the GATT in 1959.

The new accessions have raised the Council membership to 76, including the Commission of the European Community.

The Council agreed to change the application of Honduras from provisional to full accession. Honduran Ambassador José Mejía Ucélès said his country’s decision to seek full GATT membership was in keeping with the tariff reform programme recently enacted by his government. He noted that, since 1986, Honduras had cut tariff levels from 80 per cent to a current 40 per cent; tariffs would be further reduced to a maximum of 20 per cent on 1 January 1992. Honduras, he said, wished to forge ahead in trade along with other Latin American countries.

The Soviet Union, speaking as an observer, informed the Council that it would report on its economic-reform programme at the 46th Session of the Contracting Parties in December. It said that report would include information on draft laws under the programme, including measures for transition to a market economy, which were under consideration in Moscow.

Panel rules against US CTV duties on Canadian pork

Disagreements between the United States and Canada dominated the dispute-settlement aspect of the Council’s work on 3 October. All three bilateral disputes concerned agricultural products.

The first dispute involved Canada’s complaint that the US countervailing duties imposed last year on imports of Canadian pork were inconsistent with the GATT. Canada’s point was that the US duties were aimed at countering subsidies paid to pig farmers, and thus violated strict GATT rules on the imposition of countervailing measures.

The US argued that, because of the production process, subsidies paid to pig farmers were entirely passed on to pork producers.

Mr. Peter Hussin (Australia) informed the Council that the Panel, of which he was chairman, had sustained Canada’s complaint against the United States. The Panel had concluded that the US duties were being levied inconsistently with GATT Article VI:3. It recommended that the United States “either reimburse the countervailing duties corresponding to the amount of the subsidies granted to producers of swine or to make a subsidy determination which met the requirements of Article VI:3 and reimburse the duties to the extent that they exceeded an amount equal to the subsidy so determined to have been granted to the production of pork”. (See box on page 4.)
Canada said it was unfortunate that the panel report was not circulated in time for consideration at the present meeting but expected the United States to agree to its adoption at the next Council meeting.

The Council agreed to Canada's request to derestrict the panel report.

In the second dispute, the United States, for the first time, asked the Council for authority to retaliate against the non-implementation of an adopted panel report.

The United States claimed that Canada had failed so far to eliminate discriminatory measures against imported beers as called for by the panel report on "Import, Distribution and Sale of Alcoholic Drinks by Canadian Provincial Marketing Agencies" adopted by the Council on 22 March 1988. The Panel, established at the request of the European Community, recommended that Canada "take such reasonable measures as may be available to it to ensure observance of the provisions of (GATT) Articles II and XI by the provincial liquor boards in Canada".

The United States said Canadian provinces continued to maintain the measures which discriminated against foreign beer (listing practices, price mark-ups, and restrictions on points of sale) and that the Canadian federal government had not ensured compliance by the provincial authorities of the panel report. It was therefore requesting authority from the Council to suspend concessions against Canada.

Canada maintained that the listing practices of its provinces did not discriminate against imported beer. It said this aspect had already been dealt with in a bilateral agreement with the EC which had been applied on a most-favoured-nation basis. Canada acknowledged some other aspects were not in full compliance with the panel findings but it said these were the subject of negotiations with the Community. At the conclusion of these negotiations, it intended to resume consultations with the United States on this issue.

The third dispute concerned Canadian import restrictions on ice-cream and yoghurt. A panel report which concluded that these measures were inconsistent with GATT was adopted at the Forty-Fifth Session of the Contracting Parties in December 1989.

The United States complained that Canada had not yet indicated any definitive steps towards the implementation of the panel report. It asked for assurances that the Canadian measures would be brought into conformity with GATT provisions soon after the completion of the Uruguay Round. Canada replied that GATT members were entitled to a reasonable period of time in the implementation of panel reports.

At the end of the meeting, the United States informed the Council that together with Canada, it had submitted to the chairman of the working party replies to questions from other GATT members on the Canada-US Free Trade Agreement. The submission would enable the Working Party to start work on the examination of the Free Trade Agreement.

US Bill on fruits criticised by Chile

Chile warned of a potential US$60 million annual loss to its fruit growers should the United States extend a marketing order on kiwis, plums, nectarines and apples. It said the proposed extension was included in the US Agriculture Act of 1990 which had been passed by the US Senate.

Chile said that the proposed marketing order was aimed at protecting American producers through the imposition of import controls. The action by the US Senate, according to Chile, was "in contradiction with the free-trade endeavour in which we are all engaged, more particularly in the Uruguay Round".

The United States expressed surprise that Chile had inscribed in the regular Council agenda concerns about a piece of draft legislation still under consideration. However, it recognised Chile's concern and said it would seek to work on this issue in a cooperative way.

Mexico, Uruguay, Australia, Cuba, Colombia, New Zealand, Peru, Costa Rica and Argentina expressed sympathy with Chile's concerns.

US implements two panel reports

The United States informed the Council of measures aimed at implementing two panel reports.

The first measure concerned the panel report which ruled that the US quota system on sugar imports was inconsistent with GATT provisions. This report was adopted by the Council in June 1989. According to the United States, President Bush on 14 September issued a Proclamation which established a tariff quota system for sugar imports. The US said that since sugar was not bound in its GATT tariff schedule, the new system would be in conformity with the General Agreement.

Australia, the original complainant, expressed concern that the aim of the new system would be to maintain the same level of import restrictions as under the old system. It would be watching closely the implementation of the new US sugar regime and reserved its right to come back to this subject in the future.

The second US measure was related to the customs users' fee panel report. This report, adopted by the Council in February 1988, ruled that the US customs users' fee system was inconsistent with GATT provisions. The US reported that the US Customs and Trade Act of 1990, signed into law by President Bush on 20 August, contained a provision which had brought the US customs users' fee system into conformity with the General Agreement.

The Community welcomed the US action and expressed interest in knowing whether there would be a refund of the users' fees which, it said, were judged excessive by the GATT panel.

US urges examination of relationship of labour standards to international trade

The United States reiterated a long-standing request for the establishment of a working party to examine the relationship of internationally-recognised labour standards to international trade.

It reported that since June, it had been consulting with delegations on this issue. It noted that two general concerns had been raised: "was the issue relevant to GATT?", and, "would it be used for protectionist ends?" The US said the first concern beggred the question, and on the second, it assured delegations that the subject would not be used as a protectionist device.

The US argued that any GATT member had the right to request the establishment of a working party to examine an issue which it considered relevant to GATT. It stressed it was not advocating any conclusions but simply was asking for the establishment of a working party to study the issue objectively. It proposed that the working party focus on three types of labour standards:

- freedom of association;
- freedom to organise and bargain collectively; and
- freedom from forced or compulsory labour.

Brazil, Mexico, the ASEAN countries, Tanzania, Chile, India, Bolivia, Nigeria, Egypt, Peru, Nicaragua, Yugoslavia, Morocco and Cuba reiterated their opposition to the US request. They said the subject belonged to the International Labour Office, not the GATT.

The European Community, the Nordic countries, Switzerland, Canada, Czechoslovakia, Poland, Hungary and Japan supported the US request.

The Council agreed to revert to this item at a future meeting. The United States said it would continue with its consultations on this issue.

(Continued on page 12)
Canada/United States: US countervailing duties on fresh, chilled and frozen pork from Canada

Background:
In July 1989, the US Department of Commerce (DOC), following a petition by the US National Pork Producers Council, imposed a countervailing duty on fresh, chilled and frozen pork from Canada. The subsidies which this duty was designed to offset were mainly subsidies provided by the Canadian government to producers of live swine. The DOC based its decision on a recent amendment (Section 771B) made by the US Congress to the US Tariff Act of 1930. This provision reads:

“In the case of an agricultural product processed from a raw agricultural product in which

(1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and

(2) the processing operations adds only limited value to the raw commodity,

subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product”.

The DOC determined that Canadian subsidy to pork was Canadian $0.08 per kilogramme, 99 per cent of which was attributed to subsidies to producers of live swine.

In September 1989, Canada requested bilateral consultations under GATT Article XXIII:2 with the United States on this issue. At the November 1989 meeting of the Council, Canada said bilateral consultations held the previous month had not resolved the issue and that it was therefore requesting the establishment of a panel. The Contracting Parties, at their Forty-Fifth Session held in early December, established a panel to examine Canada’s complaint.

Arguments:
During the panel proceedings, Canada argued that the United States, by levying a countervailing duty on pork in excess of an amount equal to a subsidy determined to have been granted, directly or indirectly, on the production of such product. Canada requested the Panel to recommend that the US refund the excess duties collected, and that no further duties be collected unless the conditions of Article VI:3 were met, and that the US revoke Section 771B.

The United States requested the Panel to find that the countervailing duty was levied consistently with Article VI:3 and consequently to reject the complaint.

Findings:
The Panel noted that it was not disputed that Canada had granted subsidies to swine producers, that swine producers and pork producers are separate industries, and that the subsidies granted to swine producers could have indirectly bestowed a subsidy on the production of pork. The sole issue in this case was whether the United States had acted consistently with Article VI:3 in its determination of a subsidy.

Under Article VI:3, according to the Panel, the US may impose a countervailing duty on pork only if a subsidy had been determined to have been bestowed on the production of pork; the mere fact that trade in pork was affected by the subsidies granted to swine producers was not sufficient. Given the existence of separate industries for swine and pork production in Canada, the subsidies granted to swine producers could be considered to be bestowed on the pork production only if it benefited pork producers with swine prices lower than those commercially available. This price difference - and not the US calculation - should be considered as the full amount of subsidy.

The Panel’s conclusions:
• The United States countervailing duty on fresh, chilled and frozen pork from Canada were being levied inconsistently with Article VI:3 because the US determination that the production of pork had benefited from subsidies had not been made in accordance with the requirements of that provision.
• The Contracting Parties were recommended to request the US to either reimburse the countervailing duties corresponding to the amount of the subsidies granted to producers of swine or to make a subsidy determination which met the requirements of Article VI:3 and reimburse the duties to the extent that they exceeded an amount equal to the subsidy so determined to have been granted to the production of pork.
• The Panel made clear that it had not made a finding that the countervailing duty should not have been levied at all. It had merely found that the determination that a subsidy was bestowed on pork production had not been made in conformity with Article VI:3. It had not excluded the possibility that a subsidy determination meeting the requirements of Article VI:3 would lead to the conclusion that subsidies bestowed on swine producers benefitted - at least in part - the production of pork. Canada’s request for the withdrawal of US Section 771B was considered not to fall within the mandate of the Panel.
Tokyo Round Agreements revised

Uruguay Round negotiators in October have agreed on a comprehensive revision of the Tokyo Round Agreement on Technical Barriers to Trade, as well as on improvements to the agreements on import licensing and customs valuation. These results will remain provisional pending the final outcome of the Uruguay Round.

The revised text of the Agreement on Technical Barriers to Trade significantly improves and clarifies the present disciplines of the Agreement, and extends its coverage and scope. The purpose of the Tokyo Round Agreement is to ensure that technical regulations and standards - adopted for safety, health, environmental protection or other reasons - do not create unnecessary obstacles to trade.

The revised text of the Agreement clarifies the key concept of "unnecessary obstacle" and introduces criteria for determining whether a measure is necessary. This clarification reduces the risk of disputes arising out of diverging interpretations and, when necessary, facilitates their settlement.

The disciplines of the Agreement are extended to requirements specified in terms of processes and production methods which are of growing importance in international trade.

With respect to the standardizing activities of local government, non-government bodies as well as regional bodies of which parties are members, a Code of Good Practice lays down the principles with which they are expected to comply, and increases considerably the transparency of their activities.

Disciplines on import licensing

Negotiators in the Uruguay Round have provisionally agreed on a revised version of the Tokyo Round Agreement on Import Licensing procedures. The revised Agreement strengthens the disciplines on the users of import licensing systems and increases transparency and predictability for the trading community.

The Agreement on Import Licensing Procedures aims at ensuring that licensing procedures do no act themselves as restrictions on imports; members commit themselves to having simple procedures and to administer them in a neutral and fair way.

Among revisions to the Agreement is a provision that non-automatic licensing procedures should be limited to what is absolutely necessary to administer the measures to which they apply. It sets criteria under which automatic licensing procedures are assumed not to have trade restrictive effects.

The revised Agreement will require parties to publish sufficient information for traders to know the basis for granting or allocating licenses. It provides for time-limits for implementing new licenses in order to permit governments and traders to get acquainted with them and to permit other signatories to make comments.

Customs Valuation

Technical work has been completed on elaborating, on an ad referendum basis, texts addressing problems encountered by some of the developing countries in applying the Agreement on Customs Valuation or wishing to accede to it. It is expected that the final adoption of these texts would facilitate accession to the Agreement of a number of developing countries.

Based on Article VII of the General Agreement, the Customs Valuation Agreement sets a fair, uniform and neutral system for the valuation of goods for customs purposes. The Agreement prohibits the use of arbitrary or fictitious valuation.

One Decision relates to cases where customs administrations have reasons to doubt the truth or accuracy of the declared value. It shifts the burden of proof from the customs administration to the importer, who can be asked to provide further evidence that the declared value represents the total amount actually paid or payable for the imported goods. If the customs administration maintains a reasonable doubt, it may be deemed that the customs value of the imported good cannot be determined by the declared value.

Two main questions were discussed: GATT rules and disciplines for agriculture and approaches to be followed by participants in tabling their offers. However, it appeared that participants were not in a position to enter into substantial negotiation on rules and disciplines before having an idea of what their partners intended to put in their offers and therefore, that only preliminary discussion on this topic was possible at this stage.

The Chairman emphasized that, given the time constraints, the Group had to discuss in parallel what improvements in the GATT rules and disciplines regarding agriculture should be elaborated in the field of internal support, market access and export competition, and how they should be included in specific commitments. As for internal support, a wide range of positions were expressed, both on the nature of the negotiating approach to be followed and on the sequence of time and the priority to be given to solving the problems. Certain countries favoured a legal approach based on the elaboration of rules regarding the use of an Aggregate Measure of Support, before undertaking specific commitments; others were of the opinion that priority should be given to specific commitments. In other words, the former thought that modification of Article XVI.1, which regulates the use of internal subsidies, should come first, and that new legal instruments should be elaborated to cover the special nature of the concessions to be given on reducing internal support. The latter considered that exchange of concessions could be conducted on the basis of Article II.

To illustrate their positions, the EC communicated to the Group a draft Code on the interpretation of Articles XVI and XXIII of the General Agreement with regard to agricultural support, the United States a paper on rules and disciplines to be followed for an aggregate measure of support, and Switzerland a more general proposal on rules governing agricultural trade.

In the field of market access, specific safeguards, food security and possible modification of Article XI were discussed. According to a working paper prepared by the Secretariat, specific safeguards for agriculture could be seen as the logical counterpart of an in-depth and overall reform of trade in agriculture; they would be linked to tariffication and therefore be of a transitional nature. They could be based either on an increase in volume or a decrease in prices. Exporting countries expressed in general more interest in a safeguard based on volume, and importing countries in one based on prices. The rela-
tionship with "normal" safeguards under Article XIX was also raised.

As for food security, Japan presented a paper in which it further elaborated its position, calling in particular for the establishment of an Article XXI(bis) permitting border adjustments for food security reasons. This was considered by some countries as a step backward. Japan also asked for the review of Article XI on quantitative restrictions and Article XX(g) on measures taken for conservation of natural resources.

Canada stressed the need to improve Article XI in order to make it more operational and increase the discipline on its use. Some other parties thought that Canada's concerns could be answered in the framework of tariffication, with tariff quotas being established for certain products.

In the field of export competition, it was noted that one of the main problems to solve was the definition of export subsidies and subsidies affecting trade. Developing countries stressed the need to have special and differential treatment.

As for approaches to be followed in tabling offers, the Chairman reminded participants that some important points, such as the choice of the techniques of reduction and the depth of the cuts, were still not agreed on. He urged participants to reach a degree of consensus on these items by the beginning of October.

- GATT Articles 3-5 September

The United States tabled a proposal on Article XXXV which deals with the non-application of the General Agreement between particular contracting Parties - according to which it would be possible for a contracting party or an acceding country to invoke the non-application of the GATT vis-à-vis the other if the outcome of discussions between them was unsatisfactory. Rather than an amendment of the Article, the proposal suggested a practical understanding that discussions between a contracting party and an acceding country prior to or pursuant to the establishment of a GATT schedule of concessions by the latter should not be considered as "tariff negotiations". It was argued that this interpretation would not impose an impediment to negotiations under Article XI on quantitative restrictions and Article XX(g) on measures taken for conservation of natural resources.

- Safeguards 11 September

Chairman had drawn up under his own responsibility a new draft, dated 1 October, indicating the areas of agreement and divergence, which would serve as a basis for the final phase of negotiations.

Several developing countries, while welcoming the transparency and the manner in which the consultations had been held, expressed concern at certain aspects: the tendency to treat intellectual property as a purely commercial issue, without taking account of aspects relating to the transfer of technology, the insufficient attention paid to the national policy objectives of developing countries, and the widening of the mandate to commercial secrets. They recalled that developing countries should not be required to make concessions that were inconsistent with their development needs.

- Trade Related Investment Measures 10 and 14 September

- Trade-Related Aspects of Intellectual Property Rights 10 and 21 September

In the course of a long session of informal consultations, participants again discussed the whole of the draft agreement submitted by the Group's Chairman to the TNC in July. In his report to the Negotiating Group on 21 September, the Chairman said that he was relatively satisfied and described the consultations as fruitful; they had allowed some progress to be made, even if there had been no significant breakthroughs on the major issues of substance. He drew the attention of participants to the short amount of time remaining, and said that the coming session, which was to begin on 8 October at the official level and continue at the informal level until 19 October, would be very important. For the purpose, the
proposing the progressive renunciation of all existing grey-area measures, a comprehensive safeguards agreement applied, generally, on a non-selective basis but with a specific, limited option. The Community's position was widely criticized with many delegations unable to detect the difference between selectivity and the proposal for a "specific, limited option". There was doubt that such an option could ever be non-discriminatory.

**Dispute Settlement**

12 September

The Group started a series of informal meetings to intensify detailed discussion and legal drafting of key issues, which had been highlighted in the Chairman's profile to the TNC in July, and which included: interim review stage; consideration of panel reports; appellate review; implementation; compensation and retaliation.

**MTN Agreements and Arrangements**

17 and 18 September

Following the review held on 17 September, informal consultations are continuing on the Codes on technical barriers to trade, import licensing and customs valuation, as well as the Anti-dumping Code. The Negotiating Group will meet formally on 18 and 19 October to adopt the results of the informal negotiations and transmit them to the Group of Negotiations on Goods.

**Textiles and Clothing**

17, 24 and 27 September

During two weeks of informal consultations with delegations, the Chairman explored the possibility of reaching agreement on three of the fundamental issues facing the Group: the implementation of a phase-out programme based on the present multi-fibre arrangement (MFA); a transitional safeguard mechanism; and strengthened GATT rules and disciplines and verification mechanism. At the end of consultations, he said there had been a positive and informative exchange of views which should provide an impetus to the work of the Group as it enters the critical and final stage of its work.

Participants adopted an intensive five-week programme for the negotiations, comprising both formal and informal negotiations, ending on 16 November - a date which the Chairman stressed was the firm deadline for finalizing the work of the Group. The Chairman urged that delegations with full negotiating authority be present in Geneva during the whole period.

**Tariffs**

19 September

The Chairman reported that new submissions from Morocco, South Africa, Sri Lanka and Romania had raised the number of tariff proposals or indicative offers to 43 (the EC counting as one); 24 participants have presented request lists. He reminded participants that the TNC Chairman in July had set 15 October as the deadline for the tabling of tariff offers.

Four countries announced they were substantially improving their offers with the final shape dependent on the outcome of the Round. Thailand said it was considering tariff reductions and bindings on more than 1,000 tariff lines, including agricultural and textile products; tariff rates exceeding 40 per cent would be reduced and bound to 40 per cent. Malaysia said it was adding 600 items to the list of products it had offered for binding at ceiling levels, thus expanding coverage of its proposal to 25 per cent of its total imports. Norway said it was expanding the scope of its offer to include additional sectors, in particular, fish and fishery products. Hong Kong said it was doubling the coverage of its offer (binding at zero tariffs) to about a quarter of its total imports. Norway said it was expanding the scope of its offer to include additional sectors, in particular, fish and fishery products. Hong Kong said it was doubling the coverage of its offer (binding at zero tariffs) to about a quarter of its total imports.

The United States announced it would table a comprehensive offer on 15 October which would cover all sectors, including agriculture and textile products. It urged an intensification in the bilateral negotiations, but said it would engage in this exercise only up to 15 November.

Before this formal meeting, participants who considered that such a review would be nonproductive. The Group agreed to revert to the proposal at the joint meeting of the four market-access groups (see below).

**Non-Tariff Measures**

19 September

It was noted that the drafting groups on preshipment inspection and rules of origin had resumed work, and that the TNC Chairman had called for these groups to establish "compromise solutions" by 15 October. On the request of offer negotiations, some 34 participants (the EC counting as one) had submitted request lists, and six participants had tabled offers.

The United States tabled a proposal aimed at ensuring that concessions made to reduce or eliminate non-tariff measures were not subsequently nullified or impaired. Under the US proposal, concessions made on non-tariff measures would be incorporated into the tariff schedules of each GATT member. As had been done in the past for tariff negotiations, a Protocol on NTMs would be drawn up which would, in effect, guarantee that concessions would not be subsequently diluted by the imposition of other measures. Contracting parties compelled to impose NTMs on products covered by concessions would notify their intention to a new Market Access Committee prior to imposition of the measures and would undertake to consult with contracting parties on this measure.

In the course of the preliminary discussion which was held on the proposal, many participants welcomed it. At the end of the discussion, the Group agreed that this proposal, together with proposals on the same subject submitted earlier by Uruguay and Australia, could continue to be examined at the joint meetings of the four market access groups, the first of which was scheduled for 21 September.

**Natural Resource-Based Products**

20 September

Under the negotiating procedures adopted in March, 29 participants have so far submitted proposals, submissions or notifications on natural resource-based products. Of the total, seven requests and three offers were addressed directly to the Negotiating Group. Other submissions were notifications of offers or requests tabled in the Tariff and Non-Tariff Groups.

In a brief meeting, a number of participants expressed frustration over what they believed were meagre results so far in the negotiations. Australia and the European Community proposed that the Group undertake a review and assessment of offers or requests tabled in the Tariff and Non-Tariff Groups.

The Group agreed to revert to the proposal at the joint meeting of the four market-access groups (see below).

**Joint Meeting: Tariffs, Non-Tariff Measures, Natural Resource-Based Products and Tropical Products**

21 September

The Chairman of the Trade Negotiations Committee suggested in July that these market-access groups hold joint meetings in order "to reduce uncertainties as to where offers should be discussed".
At this first joint meeting of the four groups, many delegations expressed concern about the overall progress in the market-access negotiations. Noting that time was running short, they urged the acceleration of substantive bilateral negotiations. (Note: the week marked the start of the third round of bilateral negotiations conducted by high-level representatives in Geneva.)

The European Community observed that the value of the tariff proposals on the table varied widely, and stressed that offers of binding without substantial tariff reductions would not be sufficient. It also expressed concern about the exclusion of whole sectors, in particular textile products, in some of the offers. On natural resource-based products, it invited exporting countries to negotiate trade liberalization of both imports and exports. On tropical products, it recalled that it had tabled a substantial offer which it said was conditional on contributions from other participants. Several delegations said the differences among tariff offers simply reflected the different development levels of participants.

The United States stressed that in the face of the limited time remaining in the Round and the need to consider thousands of tariff lines, participants should intensify bilateral negotiations on market access. It noted that it had suggested a timetable in the Tariffs Group (see above), and suggested that the final period of bilateral negotiations take place from 15 October to 15 November. On the other hand, several participants said the slow progress in the market-access negotiations was due to the persistent uncertainty as to product coverage. The use of request-offer procedures in the absence of an agreement on a systematic approach such as formulacutting for tariffs was also mentioned among the causes of slow progress necessitated by the failure of the Tariffs Group to agree on the use of a formula that would cut duties across the board.

The joint meeting provided an opportunity for delegations to announce trade-liberalization offers. Japan said it would be submitting a proposal on mutual elimination of tariffs which contained an offer of duty-free treatment of some 2,000 tariff lines. Indonesia announced that in May, it had reduced tariffs on some 2,300 items.

The Nordic countries and Canada suggested that to provide more time for bilateral talks, the four groups should consider holding only joint meetings. On the other hand, several delegations emphasized the importance of continuing with separate meetings in the light of the individual mandates of the groups.

Participants agreed to hold an informal joint meeting in early November involving countries which have tabled proposals on market-access. They also agreed to Australia’s proposal that the Secretariat undertake an assessment of proposals related to natural resource-based products.

\[\text{Tropical Products}\]
\[24 \text{ September}\]

The Group noted that 48 participants had submitted proposals either as separate proposals to this Group or as part of their general offers on tariffs. Requests for improvements of offers had been notified to the Secretariat by Australia, ASEAN countries, China, Colombia, Costa Rica, Cote d’Ivoire, India, Mexico, Sri Lanka and Uruguay. In his review of progress achieved so far in the negotiations, the Chairman observed that despite the increase in the number of proposals tabled there was need to improve their quality. He urged delegations to accelerate preparations for tabling specific offers as early as possible and not later than 15 October. He recalled that at the joint meeting of the four market-access groups held on 21 September it had been agreed that an informal joint meeting of participants which had submitted proposals would be held in the first week of November in order to assess the offers to be tabled by 15 October.

The Chairman also reminded delegations that according to the Mid-Term Review decision the group was required
URUGUAY ROUND

Machines building machines: the United States proposes expanding the "red-light" category of subsidies to include low-cost loans to industries.

to conduct an evaluation of the results before the formal completion of negotiations. He proposed that the group conduct this evaluation at a date to be set after the joint meeting.

- Functioning of the GATT System 26 September

The Group continued its discussions of the issues which had been highlighted by the Chairman of the TNC in July: the proposed small ministerial group; the future role of GATT and its Secretariat; and greater coherence in global economic policy-making, including the strengthening of GATT’s relationship with the IMF and the World Bank. In addition, the Group reviewed the elements necessary for it to fulfill its mandate with respect to enhancing surveillance in GATT.

The Group considered that it was premature to discuss the issue of a multilateral trade organization until a clearer picture had emerged of developments in the negotiations as a whole.

- Subsidies and Countervailing Measures 27 September

The Chairman presented a revised draft agreement on subsidies and countervailing measures - the result of intensive consultations he had conducted with participants since May. The new text contained new provisions relating to the establishment of a Committee on Subsidies and Countervailing Measures, detailed notification procedures and surveillance, and an illustrative list of export subsidies. Still to be added were sections on special and differential treatment for developing countries, transitional arrangements, dispute settlement and final provisions.

Many delegations, while reiterating their respective reservations, welcomed the greater clarity and precision of the new text. They described it as balanced and a good basis for the final phase of the negotiations.

During the meeting, the United States proposed adding to the prohibited category in the Chairman’s text the following practices: grants to cover operating losses; direct forgiveness of debt; loans at subsidized interest rates; provision of equity capital where the expected rate of return is negative; subsidized loan guarantee programmes; and subsidies contingent upon production performance.

Other delegations questioned the substance and timing of the US proposal. Some participants reiterated their opposition to the prohibition of domestic subsidies, stressing the importance of these subsidies in promoting development. They suggested that the Group focus instead on trade-distortive effects of subsidies. Many participants doubted the utility of tabling new proposals at this late stage of the negotiations. They urged that work continue strictly within the framework of the Chairman’s text.

The Chairman said his revised text would be the subject of continuing informal consultations, and that the next formal meeting of the Group, provisionally scheduled for 8 November, would be its final session.

- Services 29-31 August

This meeting gave participants further chance to discuss in some detail the draft framework text first presented by the Chairman in July. At the same time, the Chairman tabled a number of additional provisions not previously included. These covered institutional aspects - including dispute settlement and enforcement, the establishment of a Council to oversee the operation of the framework and the provision of technical assistance to developing countries by the secretariat and by developed parties to the agreement - and a number of final provisions. Among the latter, the Chairman outlined a non-application clause (circumstances in which the agreement would not apply between two parties) and an article permitting the denial of benefits to services or service providers where they originated from a
country outside the agreement (recognising that negotiations would be needed to determine rules of origin for traded services).

The GNS also agreed a procedural arrangement for the continuation of work on individual service sectors which has, in recent months been undertaken by a series of working groups. While recognising that sector-specific negotiation was difficult while lack of agreement on certain issues in the main framework persisted, the sectoral working groups were asked to complete their work by 20 October. By that time they should have recommended whether a specific annotation or annex is or is not needed for their sectors and, if so, what are the issues or provisions that should be covered. From the second half of October, an ad hoc and open-ended working group consisting of GNS secretariat and sectoral experts would meet to finalize draft texts of annexes or annotations where they appear necessary.

Services - Audio-visual sector working group

The first meeting of this working group discussed the economic, technological and cultural importance of the sector and focused on the question of whether a cultural exception - to the general framework or for the sector - would be necessary.

While no attempt was made to define the sector, several delegations indicated that they regarded it as comprising the film, video and television industries, including production, distribution and diffusion. Some spoke of the important technological spin-offs from the sector, including cable and satellite broadcasting techniques and other aspects of telecommunications. It was suggested that the sector, especially television and radio, provided an important public service function and that for many countries the protection or promotion of indigenous languages, history and heritage depended heavily on national audio-visual output.

Many delegates noted that the idea of a cultural exception had been discussed in the context of the draft general framework on services. If accepted, this would permit governments to enact measures, which might otherwise be contrary to other provisions, in order to protect cultural values. While many participants have supported the idea of a general cultural exception, it is also possible that a specific annex might be considered at a future meeting to deal with the particular circumstances of the audio-visual sector.

Some delegations considered that neither a general cultural exception nor an audio-visual annex was warranted. The United States, for instance, made clear its view that cultural identity was difficult to define given the tendency towards multi-national film and TV productions. This was not a view supported by other countries with major film industries, like the EC, India, Egypt and Canada. Some discussion was devoted to Article IV of the GATT which covers the administration of screen quotas for cinema films of national origin.

Services - Other sectoral working groups

The sectoral working groups which had been established before the summer met for their second or third meetings in September. Much of their discussion was conducted informally and in the light of the 20 October deadline imposed by the GNS.

The Working Group on Labour Mobility met on 3 and 4 September. Central to the discussion was the question of whether labour mobility could be dealt with adequately in the general framework, whether an annex or annotation might be necessary or whether references in national schedules would be sufficient. Definition issues included the meaning of the term "essential personnel", the distinction between temporary movement of personnel and immigration issues and the extent to which categories of labour could be distinguished. Some participants saw the question of labour mobility in the context of factors of production and pointed to the need to ensure some symmetry of treatment among all such factors, i.e. movement of labour and capital. There was also discussion of the link between movement of personnel and commercial presence.

The Working Group on Construction and Engineering Services met on 4 and 5 September. Discussion covered a number of market access issues including the nature of commitments in this sector, the role of performance bonds, bidding practices and construction and engineering service packages. The group discussed the relevance of labour mobility, government procurement and subsidies in the sector. It also covered transparency obligations, general regulatory matters and the application of other general framework principles to the sector.

The Working Group on Telecommunications, meeting on 10-12 September, looked in detail at the applicability of provisions in the general services framework as presented by the GNS chairman in July. Given its two previous meetings, the Group already had before it a large selection of proposals and views. Attention was also paid to the potential relationship between the services framework, a possible telecommunications annex and other international arrangements and disciplines.

The Financial Services Working Group held its third meeting on 13 and 14 September, continuing the detailed work related to the specificities of this sector which includes the insurance industry. In particular, the Group looked at a submission presented by Malaysia on behalf of members of the South East Asia Central Banking and Monetary Authorities (SEACEN). This group of countries stated that its members either already had a large foreign financial services presence or had instituted liberalization programmes as part of efforts to achieve steady economic growth. SEACEN was in favour of a financial services annex as an integral part of the services framework. However, the process of financial liberalization would have to take account of the over-riding importance of prudential considerations, monetary policies and national development objectives. The working group also looked in some detail at the nature of possible balance-of-payments provisions. It was widely noted that such provisions in the GATT existed on the basis of the need for exceptions to the fundamental prohibition of quantitative restrictions to trade in goods. There was no real equivalent to quantitative restrictions affecting trade in services, except perhaps in the context of cross-border provision of services. Nevertheless, some participants felt there was a significant requirement for a BOP exception related especially to financial services.

The Working Groups on Maritime, Land and Air Transport Services met for the second time on 24-28 September. Discussion followed the two main guidelines suggested by the Chairman of the GNS on 30 August, namely the determination of whether a specific annotation/annex was necessary in the sector and, if so, the identification of issues/provisions to be annotated and possibly the nature and content of such an annotation/annex. For all these transport sectors, there was considerable agreement on the need for an annex, though perceptions varied widely as to its function. In the groups on maritime and air transport, the tendency could be discerned on the part of a few delegations towards the inclusion in the annex of derogations as well as the application of certain general provisions appearing in the draft framework. Considerable attention was devoted to the application of the m.f.n. principle in that respect, especially as it had implications for existing bilateral and multilateral agreements in that area (e.g. the...
Many developing countries, at the 69th Session of the Committee on Trade and Development held on 12 and 16 October, urged the strengthening of the GATT technical cooperation programme after the completion of the Uruguay Round. They said this would help them in analysing, assessing and implementing the results of the negotiations.

Delegations praised the "very positive role" of the GATT programme in enhancing developing countries' participation in the negotiations. Several representatives expressed appreciation for the special attention given to the needs of the least-developed countries.

The GATT technical cooperation programme over the years has kept pace with the different phases of GATT's work. In launching the current Round, the Ministers at Punta del Este in September 1986 agreed that: "technical support by the Secretariat, adequately strengthened, should be available to developing countries participating in the negotiations".

The Committee on Trade and Development, at its 60th Session in November 1986, set the programme's objective: "to help developing countries in their preparations for and participation in the Uruguay Round of multilateral trade negotiations, by providing data, information and background documentation focusing on the issues and problems in the negotiations of interest to developing countries. The programme would thus aim at facilitating the more effective participation of the developing countries in the Uruguay Round".

The CTD, one of the principal standing committees of the GATT, has periodically reviewed the technical cooperation programme. Discussions in the CTD have helped the GATT Secretariat tailor its technical assistance activities to the specific requirements of developing countries. The programme would thus aim at facilitating the more effective participation of the developing countries in the Uruguay Round.

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Exports of domestically-prohibited goods

Primarily upon the initiative of African delegations, the Council established the Working Group on Domestically Prohibited Goods and Other Hazardous Substances in July 1989. Among the concerns expressed by these delegations had been the exportation of products banned in the domestic market as well as the surreptitious shipment of highly toxic waste materials to developing countries. The Group's mandate was to examine trade-related aspects of the issue which had not been adequately dealt with in other international organisations. The Council had set 30 September 1990 as the deadline for completion of work.

The Chairman of the Working Group reported that participants had held eight meetings. The two most recent session had focused on a comprehensive paper, circulated by the Chairman on his own responsibility, containing a Draft Decision on Products Banned or Severely Restricted in the Domestic Market. He said that a large number of delegations considered that the Group had made considerable progress and that further intensive negotiations should enable it to complete its work before the 46th Session of the Contracting Parties. He was therefore requesting the Council to extend the Group's deadline to the end of December 1990.

Nigeria supported the extension of the deadline. It stressed importance of the subject to both developing and developed countries, and hoped that the results of the Group's work would be adopted at the 46th Session of the Contracting Parties.

The Council granted the request by the Group's chairman. The United States expressed doubt that the three-month extension would be enough for the Group to finish its work.

ITC commended

The Joint Advisory Group on the International Trade Centre UNCTAD/GATT presented its report on the results of its twenty-third session held in Geneva on 23-27 April 1990. It was noted that ITC's expenditures on technical cooperation activities rose by 12 per cent between 1988 and 1989 to a record level of $29.6 million. The ITC, established by GATT in 1964, is a joint subsidiary organ of the GATT and the United Nations, the latter acting through the UN Conference on Trade and Development (UNCTAD). The GATT Council and the UNCTAD Trade and Development Board determine the broad policy guidelines of ITC programmes. The GATT and the UN contribute equally to the ITC's regular budget which, in 1989, totalled US$12.3 million. This budget is supplemented by voluntary government contributions and grants from other organisations like the UNDP.

The Joint Advisory Group reported to the Council that in 1989, the ITC devoted special attention to following newer programmes: technical cooperation at the enterprise level aimed at achieving concrete export results within a specific period for selected business firms; the promotion of exports of technical consultancy services; export-oriented joint ventures; and the integration of women into trade development and trade promotion services.

The Group thanked the following countries for their trust fund contributions to the ITC: Austria, Canada, China, Denmark, Finland, France, India, Indonesia, Ireland, Japan, Republic of Korea, Malta, Norway, Poland, Sri Lanka, Sweden and Switzerland.

Nickel (Continued from page 11)

hand, the high nominal tariffs observed in many, although not all, developing countries appear to be fiscal rather than protective since many of these countries have no nickel refining or manufacturing industries. However, in a number of developing countries, with growing nickel processing or manufacturing industries, the high tariffs reflect, to an extent, a fairly high degree of protection.

Imports of nickel and nickel products into most developed countries from developing countries which are eligible for GSP concessions, are mostly duty-free or enjoy reduced preferential rates. Many developed countries and groups of countries also grant duty-free or preferential rates under regional or special preferential arrangements.

There are some non-tariff measures on the export and import of nickel and nickel products, such as embargoes, prohibitions, border taxes, quotas and licensing in certain countries.

The study, part of a series of GATT background papers on non-ferrous metals, was undertaken in accordance with the decision of the 1982 GATT Ministerial Meeting to examine trade-related problems in certain natural-resource products.

The GATT report on nickel (SwF50) is available in English, French and Spanish from the GATT Secretariat or through accredited sales agents. Studies on aluminium, lead and zinc are also available. Next in the series are studies on copper and tin.

Costa Rica to become 100th GATT member

Costa Rica should become the 100th member of the GATT on 24 November, 30 days after Ambassador Rodrigo Barzuna Sauma of Costa Rica handed over ratification papers to Director General Arthur Dunkel.

In the Working Party which drew up the Protocol of Accession, Costa Rica declared its intention to bind its entire tariff schedule, and to establish a generalised 60 per cent ad valorem ceiling level for the tariff concessions contained in its GATT schedule within one year after the date of its accession. It also pledged to eliminate import surcharges and surtaxes, import licensing restrictions and quantitative restrictions within four years after its entry into the GATT.

Uruguay Round

Services (Continued from page 10)

UN Code of Conduct for Liner Conferences, ICAO). There was a wide recognition of the sensitive nature of issues relating to cabotage trades in both maritime and air transport. Differences of opinion regarding the treatment of inland waterways also became apparent, some countries preferring it to be covered by the maritime services working group while others deemed the land transport working group to be the most appropriate forum in that connection.

Proposals before the groups included a communication from the Nordic Countries on Maritime Transport Services and a communication from the EEC on Land Transport Services.

Correction: On page 12 of the previous Focus, the first sentence of the second paragraph in the first column should have read: "Referring to conditions for credit, the representative of New Zealand stressed that in New Zealand's programme of 'corporatization' or 'privatization' of State-owned enterprises, all such enterprises were now required to compete for credit on a commercial footing in the market".

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Centre William Rappard, 154, rue de Lausanne, 1211 Geneva 21
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