Agreements expected by end of year as negotiators start the ‘final sprint’

Senior negotiators are making a determined push to achieve a final package of results in the Uruguay Round before the end of the year. Since 11 November, the chairmen of all seven negotiating groups have been conducting continuous and simultaneous negotiations to establish agreements.

On 29 November, the TNC Chairman at official level, Mr. Arthur Dunkel, reported to heads of delegations that “there is no doubt that our process has moved forward.” Referring to new negotiating texts in agriculture and anti-dumping, among others, he pointed out that “now, finally, we have available a basis for negotiation in each and every subject of our agenda” (see page 3).

Mr. Dunkel said he intended to put the whole negotiating process back on track immediately after the Forty-Seventh Session of the Contracting Parties (3-5 December). “We must push forward in all areas with a view to achieving substantial results across the board,” he said. He added that “some time before 20 December, we can determine whether we have succeeded and, as you all know, success is at hand”.

“Every day counts,” the TNC Chairman stressed. “The next weeks - and your flexibility as negotiators - will determine whether the Uruguay Round will end with substantial agreements or whether we will be confronted with the unthinkable possibility that these negotiations are merely referred to as a missed opportunity,” he said.

Mr. Dunkel observed that “as we enter the final phase of the negotiations, the highest political levels in the participating governments are fully engaged and aware of the compromises which have to be made.

TNC Chairman Arthur Dunkel: “We must push forward in all the areas”

(The Uruguay Round was at the centre of talks held in the Hague on 9 November between President George Bush and Dutch Prime Minister Ruud Lubbers, current head of the European Community Council of Ministers, and EC Commission President Jacques Delors. They declared that to give a new momentum to the negotiations, they have “decided to endeavour to overcome divergences.” and that in agriculture, they have “made progress in narrowing differences.” In Seoul on 14 November, ministers of the 15-nation Asia Pacific Economic Cooperation (APEC) pledged “to take the political decisions needed to assemble a detailed package by the end of this year.” High-level meetings supporting the Round have also taken place in Latin America and Africa.)

The strategy for the final phase of the Round was agreed at the TNC meeting on 7 November. Mr. Dunkel identified specific points (see page 2) on which decisions should be taken right away. Recent work in Geneva and in the capitals, he explained, had enabled him and the chairmen of the groups to produce an annotated negotiating agenda “for our final sprint.”

November Council
Dispute panels jump from 1 to 11

In his regular report on dispute-settlement panels at the Council meeting on 12 November, the Director-General, Mr. Arthur Dunkel, pointed to a remarkable increase in the number of trade disputes lodged in the GATT this year. At about the same time in 1990, he said, only one panel was active but “today, as we redouble our efforts to bring the Uruguay Round to a successful conclusion, eleven panels are active, with up to five new panels likely to join the list over the coming months.”

He noted that the active panels included six established since July to examine disputes related to the Tokyo Round agreements on subsidies and anti-dumping procedures. While recent panels have generally respected the deadlines up to the submission of their reports to the Council, Mr. Dunkel observed that the GATT faced an “increasing problem of conditional and incomplete implementation of panel reports.”

“Panel reports interpret existing rights and obligations, and therefore need to be implemented regardless of the results of the Uruguay Round,” Mr. Dunkel stressed. Pointing out that Canada, the European Communities, Japan and the United States were involved in over 95 per cent of all GATT panel cases, the Director-General said that it was “particularly important that these countries, which rely so heavily on the GATT dispute settlement mechanism, make a concerted effort to once again face up to this important issue.”

The eleven active panels will soon submit their reports for adoption. Mr. Dunkel said. Thus, it was important to (Continued on page 5)
economic reforms are occurring in a large part of the world economy - a world economy in the process of radical growth, a world economy in which radical economic reforms are occurring in a large number of countries in Asia, Africa, Latin America and Central Europe, not to speak of the Soviet Union. In turn, these reforms are the result of a process of radical economic reforms which started in the West and spread to the rest of the world.

The immediate problem is to set the scene for an effective negotiating process involving broad-based exchanges of concessions on the basis of the most-favoured-nation principle, taking into account the particular needs of developing countries. One trigger to start the process lies in an early agreement on modalities, including tariffication, for negotiating market access as part of the reform programme being negotiated in agriculture.

A second trigger is agreement on modalities for liberalizing trade in textiles and clothing, and for integrating this sector into the GATT.

Market access

Market access cuts across virtually the entire negotiating agenda: manufactured products, tropical products, natural resource-based products, textiles and clothing and agriculture. Market access negotiations involve not just the reduction and elimination of tariffs and non-tariff measures at the border, but also corresponding commitments at the level of domestic policies that distort trade and competition. It is therefore central to the balance that every government would like to achieve in the overall package.

The basic elements of the Uruguay Round package

Let us avoid the trap of looking at the negotiating process solely in terms of the negotiating structure. In other words, attention should be more and more addressed to the basic elements of the global package which is our goal. These elements are:

- market opening, a traditional and central part of all multilateral trade negotiations;
- rule-making, which in this Round means (a) establishing multilateral rules and disciplines in areas of increasing trade importance; (b) strengthening existing rules in order to underpin and secure the higher levels of market opening and competition which will be achieved; and (c) putting in place a dispute settlement mechanism capable of dealing with future challenges to the multilateral system;
- bringing agriculture and textiles and clothing under improved multilateral rules and disciplines; and
- the institutional support necessary for implementing and securing the results of the negotiations.

I am going to take these four elements one by one. Let me, however, remind you that they have to be considered against the needs of the world economy - a world economy in urgent need of stimulation and greater growth, a world economy in which radical economic reforms are occurring in a large number of countries in Asia, Africa, Latin America and Central Europe, not to speak of the Soviet Union.

The Uruguay Round offers us, therefore, an historic opportunity to establish a strengthened multilateral trading system, broader in scope and more universal in membership.

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Rule-making

The establishment of multilateral rules and disciplines in areas of increasing trade importance brings me to two key subjects of the Uruguay Round - Services and Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods (TRIPS).

In Services, governments must adhere to the application of unconditional most-favoured-nation treatment as a general obligation and sharply restrict exemptions. This applies especially to such important service sectors as maritime transport, basic telecommunications, and audiovisual services, as well as to the movement of personnel related to the supply of a service.

Technology and creativity have become, like services, a critical factor in international economic relations and competition. The TRIPS negotiations have brought within grasp an international consensus on a very wide range of issues concerning the impact of protection and enforcement of intellectual property rights on international competition. To bring this work to fruition three basic decisions have to be made. First, the level of protection must be adequate; this will require significant changes in national legislation in all countries. Second, governments must be convinced that the new consensus will be operational: this will require an effective multilateral dispute settlement mechanism and a commitment to use it as the means of settling disputes on TRIPS matters. Third, for a number of governments which are mainly importers of technology, the commitments in this area will have to be viewed in the context of the overall results of the Round.

A central part of the negotiating agenda concerns strengthening of existing rules and disciplines in the GATT system. In antidumping, the main task is now to find an acceptable compromise between the objective pursued by many governments of strengthening existing rules in such areas as the determination of the existence of dumping and injury, and the objective pursued by others of introducing new rules to ensure that the enforcement of legitimate antidumping measures is not circumvented.

In the area of subsidies and countervailing measures the key question is whether the negotiators are ready to accept, in return for improved disciplines on the use of subsidies in general, that some subsidies which are not meant to have any trade distorting effects may be non-actionable (i.e., neither countervailing measures nor multilateral countermeasures will normally be taken against them). The second key question is the scope of special treatment for developing countries. If a satisfactory solution is found to these two issues, participants will have got parameters indispensable for resolving other outstanding problems.

In the safeguards negotiations, the three main outstanding issues are: "quota modulation" (i.e., whether in an overall import quota, the share allocated to countries found to be contributing more to global injury...
could be lower than the share allocated to them on the basis of recent trade patterns; the time period allowed for phasing out "grey area" measures such as voluntary export restraints and orderly market arrangements; and the provisions which would preclude the use, for safeguards purposes, of measures other than those provided for in the agreement.

Texts of revisions to seven GATT Articles are awaiting adoption - on Articles II:1(b), XVII, XXV, XXV:5, XXVIII, XXXV - as well as a revised text for the Protocol of Provisional Application. These would contribute greatly to the strengthening of the GATT system. With the same objective in view, governments also have before them proposals to improve the functioning of the provisions relating to measures taken for balance-of-payments purposes.

Concerning Trade-Related Investment Measures (TRIMs), though there are different opinions on a TRIMS agreement, the questions which must be addressed are: the specification of measures inconsistent with Articles III and XI of the GATT; the establishment of disciplines on export-performance requirements; the transitional arrangements needed in respect of measures to be eliminated; and the institutional support for any further work in this area.

Still in the broad area of rule-making, and effective implementation, governments have to put in place a reinforced and credible dispute settlement system for dealing with future challenges to the multilateral trading system. The degree to which the dispute settlement process should be automatic and binding, and the linked question of doing away with unilateral measures, are two major questions to be resolved. A third key question is the application of the dispute settlement process across the board to the package of the Uruguay Round results, particularly if all the results must be accepted together and finalizing the package:

- the direct payments to be exempted from reduction commitments on domestic support;
- the policy coverage of reduction commitments in the export competition context; and
- the amount, base period and duration of commitments to reduce support and protection.

In textiles and clothing, the central problem is the so-called "economic package", consisting of the product coverage of the agreement, the percentages for integration of products in stages, growth percentages for quotas on products not yet integrated, and the duration of the agreement. Successful conclusion of the textiles and clothing negotiations will bring this sector within GATT rules and disciplines after decades of managed trade. Trade in this sector amounts to almost a tenth of world trade in manufactures and is of crucial importance to a large number of participants.

Institutions

I now come to the last of the four elements of the negotiations - the institutional support necessary for implementing the results. A very well coordinated approach is essential in respect of the infrastructure that will be put in place to fulfil the requirements of notification, monitoring, surveillance, and dispute settlement arising from a large number of Uruguay Round agreements. Agriculture, textiles and clothing, TRIPS, TRIMs and services come immediately to mind and there are others as well.

And now a word about the negotiating strategy for November. Starting from Monday, 11 November, the seven chairmen will be conducting continuous and simultaneous negotiations in this building with a view to establishing agreed texts in the individual areas. By the end of this month, and on the understanding that nothing is final till everything is agreed, we must be in a position to consider in the Trade Negotiations Committee the results achieved across the board.

In any case, the TNC remains on call and will be required to review the process at any time during this period if deadlocks occur. This is, of course, in addition to the functions which the GNG and GNS have been charged to perform in terms of their mandates.

Heads of Delegation Meeting, 29 November 1991

"We have moved forward"

There is no doubt that our process has moved forward. And this is due to the greater readiness of participants to show their cards and thanks also to the unifying efforts and dedication of the Chairmen. The most visible proof of this forward movement lies in the fact that, now, we have available a basis for negotiation in each and every subject of our agenda. The situation varies, of course, substantially from subject to subject - in some areas there is much more work to be done than in others. However, the fact remains that this major development has put negotiators in a position to pose clearly to their capitals the key political issues on which decisions need to be taken immediately across the board if we are to succeed in concluding the Uruguay Round successfully and expeditiously. It is no accident that, as we enter the final phase of the negotiations, the highest political levels in the participating governments are fully engaged and aware of the compromises which have to be made for solutions to emerge.

In my view the next hours and days will be crucial. The annual meeting of the Contracting Parties will give participants a welcome breathing space - to take stock, to review positions, and to get new negotiating mandates where necessary.

It is my intention to put the whole negotiating process back on track on 5 December and push forward intensively. Our guiding principle continues to be nothing is final till everything is agreed. But, dynamically applied, this means that we must push forward in all areas with a view to achieving substantial results across the board. My aim is to do just this so that some time before 20 December, we can determine whether we have succeeded and, as you all know, success is at hand.

Let me now give you a succinct assessment of the state of affairs:

Continuous bargaining

The market access negotiations have now moved into a continuous bargaining process with a view to developing, in the next few weeks, the substantive political package. There are, however, important po-
itical breakthroughs to be made before a meaningful overall market access deal can emerge.

Among the positive developments, there has been:
- A renewed political commitment among a wide range of participants that a substantial and balanced trade liberalization package is a central element for a successful Round;
- Developments in the negotiations in agriculture—these have been helpful in removing doubts on product coverage and negotiating links with access issues in this key area;
- Systematic efforts in the last two weeks to advance bilateral negotiations across the whole range of tariff and non-tariff measures issues; and,
- Informal plurilateral stock-taking exercises held on tropical products, resource-based products and other sectoral issues, as well as on other tariff and non-tariff measure issues.

Work is continuing on a set of "Chairman's Guidelines" on credit for tariff bindings and the liberalization of non-tariff measures and on recognition for autonomous liberalization measures when assessing offers by developing countries. As these guidelines take account of the principle of special and differential treatment, they should facilitate the participation of developing countries in the market access negotiations, in particular in respect of increased tariff bindings.

All cards on the table

Since our last stock-taking at the TNC meeting on 7 November, consultations among and between participants have continued and intensified in the textiles and clothing negotiations. These have been useful in clarifying doubts, thus placing the negotiating text on which we are working in much clearer perspective. Important concepts and terms in many provisions of the draft agreement have been clarified. In addition, through this process, understanding has been achieved on a number of operational provisions relating to the functioning of the Textiles Monitoring Body and the working of the safeguard mechanism.

I should state very clearly that the hard-core problems identified at the last TNC meeting stand unresolved even today... the breakthroughs must come now and I must stress that every day counts. As we all know, textiles and clothing are a central part of the Uruguay Round package and a balanced result in this sector is important in itself. But also, textiles is an important trigger for developments elsewhere, notably in the market access negotiations.

It is encouraging that efforts are being directed towards giving the Chairman's text greater precision and clarity while preserving its basic framework. Indeed, even on the central issues, various solutions are being evolved and discussed. I have suggested some approaches myself in respect of the economic package.

Intensive work has been conducted on the transitional safeguard mechanism. A large part of the problem in this area consists not so much in drafting or finding language as in allaying suspicions, misgivings and uncertainties that decades of managed trade have created in this sector. While, here again, there will be need for improvements, I would caution against trying to find words or phrases to accommodate every specific concern, real or imaginary.

The scene is now set for the final negotiations. All the cards are on the table and my sense is that negotiators are ready and waiting to strike the deals.

A trigger for progress

In agriculture, the considerable amount of work that has been done to identify negotiating approaches at the technical and political levels has led to the circulation of "Draft Working Papers" on the Chairman's responsibilities.

These papers identify the key elements on which political decisions now need to be taken. In addition they provide the basis for the framework of the Uruguay Round agreement on agriculture as well as for focusing negotiations on operational texts. I might add that the papers are not exhaustive in the coverage of issues to be resolved. For example, they do not cover the details of the reduction commitments in domestic support, market access and export competition in terms of either the size of these commitments or their base and implementation periods. Certain legal and institutional aspects are also not included but would have to be looked at later on. Overall, however, I still feel that these papers represent a pragmatic step forward in our common effort to advance the negotiations. They have been, during the last days, at the centre of intensive informal and formal discussions on which I have reported regularly in the Negotiating Group on Agriculture where participants have put their positions on record.

It is my perception that the negotiating process in agriculture is now engaged at all levels and proceeding within more clearly defined parameters. Breakthroughs on the issues I had identified in my stock-taking at the last TNC meeting are now of the utmost urgency. These breakthroughs are needed not just for the negotiations in this sector but also for triggering the negotiating process in a number of other key areas of the Round. Every day counts.

New draft papers

In the Rule Making area, we have seen positive developments since the last meeting of the TNC, but much more intensive efforts are necessary if we want to resolve all outstanding issues.

In the area of subsidies and countervailing measures the Group has continued its work on the basis of the existing text. The Chairman of the Group has held bilateral and plurilateral consultations, in particular on the issue of special treatment for developing countries. While some progress has been made, there has not yet been enough to enable the Chairman to produce a revised text.

In the area of anti-dumping, the Group has now a draft working paper reflecting the present state of the negotiations. This paper provides the parameters for the final negotiations. In the area of safeguards, the work has concentrated on a major outstanding issue, namely, the prohibition and elimination of grey-area measures. The progress achieved so far has enabled the Chairman to submit a revised version of the Brussels text incorporating a new provision dealing with this question.

The negotiating group's work in the area of TRIMs is being conducted on the basis of a draft agreement circulated by its Chairman on 30 October. A number of fundamental decisions have yet to be taken, but there are good grounds for hope that it will be possible to resolve the remaining differences in the near future.

In the area of balance of payments, the group has now available to it a draft text circulated by its Chairman on 25 October. This text deals with procedures in the Balance-of-Payments Committee and the manner in which measure taken for balance-of-payments reasons should be applied. I felt that the text contains both useful clarifications of existing disciplines as well as the strengthening of these disciplines. The fact that consultations are now being conducted in a much more focused and result-orientated manner shows the new mood of flexibility and pragmatism among the participants.

Before moving to the next area I would like to draw your attention to a communication on GATT rules and disciplines formally circulated by thirty countries. I consider this to be a positive contribution to our work.

Agreement within reach

In the area of TRIPs, the Chairman has held intensive consultations which have, by now covered the whole of the draft agreement. Work continues to be based on the text that had been sent to Brussels.

Useful progress has been made and this has enabled the Chairman to circulate, on 25 November, new language which registers the advance achieved so far. My firm im-

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consider that "a dispute settlement mechanism can only be effective if there is a consensus on the value of substantive rules and in their bona fide application." The Director-General emphasized that "whatever procedural improvements we achieve in the Uruguay Round, they will be no substitute for the determined application of a set of rules agreed in good faith by the Contracting Parties." Many Council members supported the Director-General's call for speedy implementation of adopted panel reports. Smaller trading nations, in particular, emphasized the importance of an effective dispute-settlement mechanism in protecting their GATT rights.

The Council agreed to keep the subject of panel report implementation as part of the regular agenda.

US to propose reconvening of oilseeds panel

The United States said it intended to propose at the Forty-Seventh Session of the Contracting Parties (3-5 December 1991) the reconvening of members of the oilseeds panel. The panelists, it said, should examine whether the measures taken by the European Community comply with the recommendations and rulings set out in the panel report adopted by the Council in January 1990 (see Focus Nos. 68 and 85), and submit conclusions within 90 days. The European Community counselled for patience on this matter. To decide on a course of action now, it said, would be tantamount to prejudging measures not yet decided in Brussels. It expressed optimism that the decision-making process on this case "will come to fruition" before the 47th Session. The Community emphasized that it was fully aware of its GATT obligations, and would "behave" accordingly.

The Council also considered follow-ups of other adopted panel reports. Australia, New Zealand, the United States, Argentina and Uruguay pressed Japan to complete the implementation of a panel report on restrictions on agricultural products by lifting barriers on starch and dairy products. Japan said it was ready to continue with consultations on this matter. On the other hand, Japan expressed concern about the non-implementation of panel reports concerning EC regulation on imports of parts and components, and US Section 337.

Canada indicated that it would agree to the adoption of a 1985 panel report on measures affecting the sale of South African gold coins at the conclusion of the Uruguay Round. It also announced it would no longer pursue its case in a panel (currently inactive) established to examine US restrictions on some sugar-containing products.

Venezuela, referring to the panel report on US restrictions on imports of Mexican tuna, said it was also subject to a similar embargo and urged the United States to lift the restrictions. The Chairman said he had been informed that Mexico and the United States were studying the tuna panel report (submitted to GATT members in September 1991) with the greatest of care. The two parties, he said, had requested the dere- striction of the panel report (see page 6).

Report on Canada-US FTA adopted

The Council considered a report of the working party that had examined the Canada-United States Free Trade Agreement. The agreement established the world's largest bilateral free-trade area, covering trade in goods and services amounting to over US$200 billion annually. It entered into force on 1 January 1989 and provided for the elimination of all tariffs between the two countries over a ten-year period.

Contracting parties are required to submit to GATT reports on the implementation of a free-trade area or customs union agreement. The General Agreement recognizes, in Article XXIV, the value of closer integration of national economies through freer trade. It therefore permits such groupings, as an exception to the general rule of most-favoured-nation treatment, provided that certain conditions are met. These conditions are intended to ensure that the arrangements facilitate trade among the countries concerned without raising barriers to trade with the outside world.

The chairman of the working party, Ambassador David Hawes (Australia), said that as the working party was unable to reach conclusions as to the consistency of the agreement with GATT provisions, it had limited itself to reporting the views expressed during the examination.

Before the working party, Canada and the United States maintained that the agreement was fully consistent with the requirements of Article XXIV and had created a free-trade area compatible with GATT.

Members of the working party welcomed the attempt of Canada and the United States to enter into a free-trade agreement consistent with the provisions of GATT. However, some members raised concerns relating principally to:

- the limited availability of detailed statistical information to appreciate whether the agreement had been trade-liberalizing and had not had a trade-diverting effect;
- the exceptions allowing restrictions on trade between the two parties in certain agricultural products;
- the lack of a clear plan and schedule for the elimination of barriers in a number of agricultural products covered by emergency clauses;
- the restrictive effects of provisions on other regulations of commerce including the rules of origin, the suppression of the duty drawback scheme and the suppression of export-based duty remission in the automotive sector, and the US waiver of customs user fee on imports from Canada; and
- selective non-application of global emergency action to the other party and the relationship between Articles XIX (Safeguards) and XXIV (Free-trade Areas and Customs Unions).

The working party recommended that Canada and the United States furnish reports on the operation of their free-trade agreement, with the first such report to be submitted in 1993.

Ambassador Hawes said that the lack of conclusions in the report should not come as a surprise. "Over fifty previous working parties on individual customs unions or free-trade areas have been unable to reach unanimous conclusions on the compatibility of these agreements with the GATT—on the other hand, no such agreement has been explicitly disapproved," he said.

GATT faced the prospect of examining many new customs unions or free-trade areas currently under negotiation or being envisaged in various parts of the world. However, members engaged in efforts to produce agreements that would conform with GATT rules were hampered by the lack of clear guidance from past reports of working parties.

Ambassador Hawes noted that a draft Uruguay Round decision on Article XXIV would reinforce the present review procedures. It would also underline that dispute settlement provisions remain available to resolve any matter arising from the application of the provisions of Article XXIV. "Given these enlarged opportunities to respond to future problems, I hope it may prove easier in the future to reach unanimous conclusions on new agreements submitted under Article XXIV," he said. He suggested that the Council give some fresh thought to how working party examinations of Article XXIV agreements ought to be conducted and, in particular, to the kind of conclusions they could most usefully seek.

Canada and the United States expressed disappointment that the working party had failed to arrive at the conclusion that their free trade agreement was consistent with the GATT. They stressed that the purpose of this bilateral arrangement was to facilitate trade and not raise trade barriers.

India said that the lack of definitive conclusions in reports of Article XXIV working parties posed the danger of giving a virtual GATT carte blanche to participants in regional trade arrangements. The European Community reserved its GATT rights with... (Continued on page 7)
GATT Dispute Settlement

**Mexico/United States: US restrictions on tuna**

In eastern tropical Pacific Ocean, schools of yellowfin tuna often swim beneath schools of dolphins. When tuna is harvested with purse seine nets, dolphins are trapped in the nets and die unless released.

The United States' Marine Mammal Protection Act (MMPA) sets dolphin protection standards for the domestic fishing fleet and for countries whose fishing boats catch yellowfin tuna in that part of the Pacific Ocean. If a country exporting tuna to the United States cannot prove to US authorities that it meets the dolphin protection standards set out in the MMPA, the US government must embargo all imports of the fish from that country and from "intermediary" countries that purchase tuna from the country subject to the direct embargo. Under this law, the US government has prohibited imports of yellowfin tuna and tuna products from Mexico, Venezuela and Vanuatu, and from the intermediary countries of Costa Rica, France, Italy, Japan and Panama.

In February this year, Mexico asked for a dispute settlement panel, arguing that the US embargo on yellowfin tuna and tuna products was inconsistent with GATT provisions. The United States maintained that GATT's national treatment provisions (Article III) permitted the enforcement at the border of dolphin protection standards set out in the MMPA. The Council established a panel to examine this dispute.

The panel submitted its report to GATT members last September. It found that the standards of Article III - namely, that imported products be accorded no less favourable treatment than domestic products - required a comparison between products of exporting and importing countries, and not a comparison between production regulations of the exporting and importing countries that had no effect on the product as such. Therefore, the United States could not embargo imports of tuna products from Mexico simply because that country's regulations affecting the production of tuna did not satisfy US regulations.

The United States had also argued that the import embargo could be justified under that part of Article XX which permits measures, that otherwise would be inconsistent with GATT obligations, to protect animal health and exhaustible natural resources. The panel found that Article XX does not permit a contracting party to take trade measures for the purpose of enforcing its own domestic laws regarding animal health or an exhaustible natural resource outside its jurisdiction.

The reasoning behind these findings was as follows. If the US arguments were accepted, then any country could ban imports of a product from a country merely because the exporting country pursues environmental, health and social policies different from its own. This would create a virtually open-ended route for any country to unilaterally apply trade restrictions not for the purpose of enforcing its own laws within its jurisdiction, but to attempt to impose the standards set out in its laws on other countries. In such an environment, the potential for protectionist abuses would also be very great. This would be clearly contrary to the main purpose of the multilateral trading system, namely to achieve predictability in trade relations through rules.

The panel's task was limited to examination of this matter in the light of existing GATT obligations. It was not asked whether either party's environmental policies as such were appropriate. In finding that a country may not restrict imports of a product solely because it originates in a country whose environmental policies are different, the panel stressed the all-or-nothing choice which Article XX presents. If the GATT contracting parties wished to permit environmental trade restrictions such as those under the US dolphin protection law, they would need to agree on limits to prevent abuse. Since Article XX does not provide such limits, the panel stated that it would be better to amend or supplement the provisions of the General Agreement or to provide a waiver, since each of these alternatives would provide an opportunity for the contracting parties to develop and engraft provisions to minimize the risk of excessive use and abuse.

Another issue Mexico had raised before the panel concerned the US Dolphin Protection Consumer Information Act, which requires that tuna products labeled "dolphin safe" meet certain dolphin protection standards. The panel found that this labeling practice was not inconsistent with GATT provisions because it was designed to prevent deceptive advertising practices on all tuna products, whether imported or domestically produced.

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Trade-environment link will become a major part of post-Round agenda

GATT Deputy Director-General Charles R. Carlisle speaking on 19 November at the Malente Symposium IX sponsored by the Dräger Foundation and held in Timmen-dorfer Strand, Germany, allayed fears in some quarters that the existing GATT hinders environmental efforts. He stressed that "GATT as it now stands gives its contracting parties the right to protect their own environment...provided that the measures do not discriminate in favour of domestic products over foreign products. Trade liberalization and growth, he pointed out, can make substantial contributions to efforts to protect the environment.

First, "trade generates wealth, and wealth generates the financial and technical resources to protect the environment and, the attitudes that give priority to environmental protection." Second, "trade barriers can have negative ecological effects by encouraging environmentally damaging production."

"Problems arise when a government compels another to follow an environmental standard which that other country does not recognize..."

"Problems arise when a government seeks to induce or compel another country to follow an environmental standard which that other country does not recognize," he observed, pointing to a recent case involving US restrictions on Mexican tuna. Trade issues also arise due to the perceived competitive disadvantage of producers in a nation which has more rigorous standards.

Looking ahead, the Deputy Director-General surmised that the "1990s will see a substantial advance in protecting the environment and a convergence of international opinion on this matter." Thus, "trade and environment could be central to GATT's next Round, which could become, who knows, the 'Green Round'?"
Council

(Continued from page 5)

respect to the Canada-US free trade agreement. It said it was convinced of the GATT consistency of past enlargement of the Community, but had likewise to gain confirmation from working parties. Japan said it retained doubts about the GATT consistency of certain provisions and welcomed a regular review of the Canada-US agreement.

Sweden said working party work might be time-consuming because of the question-and-answer procedure involved. However, it said this was in fact beneficial to the multilateral trading system because such detailed work promoted transparency in regional arrangements.

The Council adopted the report of the working party, and agreed to revert to the general issue of enhancing the effectiveness of Article XXIV working parties at a future meeting.

Czech and Slovak Republic asks for temporary suspension of tariff bindings

The Czech and Slovak Federal Republic (CSFR) requested some room for manoeuvre in its transition towards a market economy. Specifically, it requested a temporary suspension of bindings in its GATT tariff schedule to enable it to raise import duties beginning next year. These tariff increases would cover about one-fifth of all tariff schedule to enable it to raise import duties beginning next year. These tariff increases would cover about one-fifth of all tariff imports, including agricultural products, textiles and appliances. The CSFR pledged to enter promptly into consultations and negotiations with interested GATT members, as provided under Article XXVIII ("Modification of Schedules") of the General Agreement.

It said that as a result of previous GATT Round, its tariffs had gone down to trade-weighted average of only five percent and that 97 percent of all tariff lines were bound. The CSFR stressed that these concessions were made under the past system of central planning and state monopoly. With the liberalization of its trade regime, it said that tariffs have become the only protection for the domestic industry.

The CSFR said that "it has become clear that the protection of certain sectors of the domestic industry through tariffs is insufficient and is bound to result in serious difficulties and in certain case in unjustified closing down of these industries." It had therefore decided to increase, starting 1 January 1992, some tariffs and at the same time modify and withdraw the corresponding concessions in its GATT tariff schedule. This would be partly compensated by a reduction of duties on some 500 bound items.

The United States, while expressing support for the CSFR request, said that the draft Council decision proposed by CSFR, as it stood, did not sufficiently take into consideration trade interests of other contracting parties. It noted that the European Community and the EFTA countries were engaged in negotiations with CSFR on a free trade area. "Under these conditions, the CSFR's current GATT schedule becomes the maximum margin of discrimination against all other contracting party imports vis-à-vis the preferential trade," it said. It suggested the holding of more consultations on the CSFR request.

A delay in Council action for consultations was supported by many delegations. Switzerland, according to its ambassador from experience the problems faced by CSFR and urged the Council to approve the temporary waiver. Switzerland said the Council should recognize and support the historical process taking place in CSFR. Canada and the Nordic countries also expressed support for the waiver request. The European Community said it was unfortunate that a long debate on the CSFR request had had to take place. It said GATT members should take into consideration the enormous sacrifices being made by CSFR in turning towards a market-oriented economy. It added that "democratization is a matter that cannot wait."

CSFR underlined that it was pressed for time because many private companies were in need of protection. It said the granting of a waiver would be a sign of goodwill from the contracting parties. It requested the Council Chairman to act as intermediary in its consultations with other GATT members.

The Chairman said it was clear that there was general sympathy in the Council for the reform programme in CSFR but many members also considered that more time was needed to consider the matter. He was optimistic that the issue would be resolved in time for the 47th Session of the Contracting Parties.

GATT training activities commended

The Director-General reported that training activities of the GATT Secretariat in 1991 included two regular trade policy courses for developing countries (one in English and the other in French) and the first special trade policy course for the countries of Eastern and Central Europe. Forty-nine officials participated in the regular courses while 24 senior trade officials took part in the special course.

The demand for participation in the GATT courses has continued to increase, especially since the launching of the Uruguay Round, according to the Director-General. "We are doing our best to satisfy the demand within the limits of our possibilities," he said. One gauge of the effectiveness of the programme, he said, was the fact that a number of representatives in the room had graduated from these courses. Since the training programme started in 1985, some 1,244 officials from 116 countries and ten regional organizations have attended the regular GATT courses.

Mr. Dunkel thanked Canada and the United Kingdom for organizing and hosting the study tours for the participants this year. He also thanked the Swiss government for its contribution to the organization of study tours in Switzerland, for funding the special workshops on negotiating techniques, and for its initiative and support for the special trade policy course for countries in Eastern and Central Europe.

Many delegations said the GATT trade policy courses have proven to be of great value for officials responsible for the formulation and conduct of trade policies in their countries.

"The practical orientation of the GATT programme helps participants in familiarising themselves with both the theory of trade policy, and the real-life problems of international trade relations based on the General Agreement," according to Pakistan. The ASEAN countries said the courses "will take on a more crucial role in the near future with the prospect of a successful conclusion to the Uruguay Round, especially with regard to fostering a clear understanding of the new subjects and improvements in GATT rules and disciplines."
Uruguay Round

(Continued from page 5)

pression is that a substantial and balanced agreement is now within reach and that we can achieve a meaningful result in this area with a final effort in the days ahead.

More proposals in pipeline

In dispute settlement, progress has been achieved in a number of secondary issues, and, wherever possible, agreed texts have been incorporated into the consolidated dispute settlement text. Consultations are continuing concerning the question of non-violation and some new proposals are in the pipeline.

The central issues—prohibition of unilateral measures and automaticity in the dispute settlement process—have to be considered further, taking into account the results of the negotiations in other areas. But work on the other difficult questions of an integrated dispute settlement system and cross-retaliation is being pursued.

The discussions on the Final Act have led to agreements on some outstanding issues. The essential issue concerning the single undertaking remains unresolved and can presumably be taken up meaningfully only as the contours of the final results become clearer and more solid.

A comprehensive proposal for a Multilateral Trade Organization (MTO) has recently been submitted as a basis for further discussion and negotiation among participants. The ideas in this proposal are consolidations and elaborations of earlier suggestions and approaches submitted to the Group from time to time. Here again the work of the negotiators will become more focused and intensive as the results of the Uruguay Round and the institutional requirements to implement these results become clearer.

Finally the negotiators will also have to consider the proposal or a decision on greater coherence in global economic policy making prepared by the earlier Group on the Functioning of the GATT System.

GATS within grasp

The drafting of the articles of the General Agreement on Trade in Services (GATS) is at an advanced stage. I can even go further to say that an agreement on the Framework Treaty is within our grasp.

It seems more and more likely that there will be at least two sectoral annexes (Telecommunications Services and Financial Services) and a labour annex. The final shape of these is yet to be determined. In some areas—for example in the he Financial Services Annex, some final political decisions have yet to be taken.

The question of exemptions—time-bound or open-ended—from the most-favoured-nation requirement of the GATS Treaty is one which has to be addressed and accommodated without compromising the basic framework itself. This is a delicate political issue, but 1 would ask negotiators not to forget that the final commercial value of the agreement will, to a large extent, be determined by how this question is resolved.

While the work of creating an agreement liberalizing trade in service is nearing completion, political will will be necessary to apply the liberalization concepts of the framework agreement to sensitive sectors, for example, maritime transport, basic telecommunications and audio-visual services.

Cheese prices firm up but butter trade hit by softening demand and high stocks

Buoyed by recent strong demand in many countries, world cheese prices should remain firm in the short-term. In contrast, an overhang of government stocks and shifting consumer preference towards low-calorie products have been exerting downward pressure on butter prices.

These are among the findings contained in The World Market for Dairy Products 1991 published by the GATT secretariat in December.

Among the major trends identified in the report are the following:

- World milk production this year is expected to be 2.5 per cent less than 1990's total of 532 million tons, mainly due to projected declines in milk output of the

USSR (-10 per cent) and the European Community (-2 per cent).

- A growing consumer preference for low-calorie products has dampened demand for butter leading to substantial surpluses of milk fat. Market prices for butter and anhydrous milk fat have remained at or slightly above minimum prices agreed in the GATT Dairy Protocol Committees as world butter production is expected to reach 7.55 million tons this year, or two per cent less than the previous year's total. World butter exports have been steadily declining: one million tons in 1988, 800,000 tons in 1989 and 700,000 tons in 1990. The declining demand has led to a 50 per cent rise in total stocks of butter in the European Community, North America and Oceania to 770,000 tons on 1 July 1991. World butter stocks are forecast to reach 1.08 million tons at the end of 1991, with the EC and the United States being the principal holders.

- Events in the Soviet Union, which account for a quarter of the world's butter consumption, are having a major effect on the butter market. In the light of urgent food requirements in the USSR, the Committee of the Protocol Regarding Milk Fat in December 1990 had granted butter shipments to the Soviet Union a derogation from minimum export prices. Some 311,000 tons of butter under this derogation have been contracted for delivery this year. However, deliveries were delayed due to payment problems. With food relief requirements in the USSR envisaged to increase, a number of signatories to the International Dairy Arrangement have sought assurances providing food aid to the USSR should cause only minimal disruption to the commercial market.