NEGOTIATING ACTIVITY INTENSIFIES AS JULY TNC DEADLINE APPROACHES

Intensive consultations, based in most cases on draft texts by chairmen, have been held over recent weeks as a means of working towards the "profiles" expected to be presented to the Trade Negotiations Committee at the end of July. Working parties on specific service sectors have begun their work under the auspices of the Group of Negotiations on Services.

GATT Articles ... 21-23 May

With regard to Articles XII, XIV, XV and XVIII, dealing with trade measures taken for balance-of-payments purposes, the Negotiating Group discussed in great detail, under a series of broad headings emerging from the proposals submitted by the European Communities and by Canada and United States, the arguments for and against engaging in negotiations on this subject. Some participants continued to argue that lack of effective disciplines on balance-of-payments measures created an effective derogation from GATT obligations causing heavy costs for the countries applying the measures and for their trading partners, and weakening the multilateral system. They also maintained that no subject should be regarded as non-negotiable. Other participants argued that the proposals tabled would entail a significant deterioration in the balance of rights and obligations under GATT, from the viewpoint of developing countries, and that no convincing case had been made out for negotiations in this area. In their view the existing provisions and procedures had worked well and the proper place to address any specific problems which might arise was the Balance-of-Payments Committee itself.

Informal discussions also took place on revised draft decisions on state trading enterprises (Article XVII) and on Article XXVIII. Reporting on these discussions, the Chairman said that although the
Group had made some progress it would be necessary to incorporate points emerging from the debate in revised texts to be examined at the next meeting.

The Group considered proposals by Australia, Canada and Japan relating to the clarification and interpretation of certain provisions in Article XXIV. It also examined draft decisions on the criteria for the granting and termination of waivers under Article XXV:5 and on the termination of legal cover for GATT-inconsistent legislation maintained under the "grandfather clause" of the Protocol of Provisional Application and of Accession Protocols. The point was made that agreement on the two latter subjects would depend in part on progress made in negotiations on related subjects in other Groups.

GATT Articles ...19-21 June

Provisional agreement was reached, pending the outcome of the final results of the Uruguay Round, on the recording of "other duties and charges" in the schedules of tariff concessions (See NUR 037); the legal form of this decision, which relates to Article II (b), will be decided at a later stage.

Intensive drafting work was continued on Article XVII and XXVIII. It is hoped that the Group will be able to finalise work on these provisions by the next meeting of the Group, and then be able to transmit the corresponding draft decisions to the GNG and TNC. Regarding the draft decision on Article XXV:5 and the draft decision on the protocol of Provisional Application the Chairman invited participants to reflect on them further, bearing in mind the end-July TNC.

The United States and Canada presented a joint proposal containing a draft Declaration on trade measures taken for balance-of-payments purposes. This text puts into legal form their earlier proposals, as modified in the light of discussions in the Group. In presenting the document, both delegations stressed that they were not seeking modification of any existing GATT Article and were not suggesting that countries in serious balance-of-payments difficulty should be denied the right to impose trade restrictions if necessary. The main purpose of the proposed Declaration would be to provide clearer criteria as guidance for countries electing to use balance-of-payments restrictions and to render more effective the surveillance function of the Balance-of-Payments Committee. A number of participants supported the thrust of the proposal.

A number of other participants questioned the appropriateness of the submission of a draft legal text on the ground that there was no consensus as to the necessity for negotiations on the issue of balance-of-payments measures. It was argued that changes in the external economic environment since the agreement on the 1979 Declaration had exacerbated the payments problems of developing countries and would justify greater flexibility, rather than less, in
their use of trade restrictions under Article XVIII:B. Furthermore, the existing provisions and disciplines had worked well. It should be recognised that the Group could do no further useful work on this subject. Other participants were unable to accept this approach, and warned that refusal to negotiate might have serious implications for negotiations in related areas of the Round and for future cooperation in the Balance-of-Payments Committee.

The Group continued its discussion of proposals by Australia, Canada and Japan on the interpretation of Article XXIV and the review of regional agreements notified under that Article. The United States informed the Group of its intention to revive discussion on the possible modification of Article XXXV, which deals with the non-application of the General Agreement between particular contracting parties.

Functioning of the GATT System ... 22-23 May 1990

Australia, Canada, Hong Kong and New Zealand circulated an informal note of revision of their earlier submission on domestic transparency (NUR 035) specifically reinforcing the idea that the implementation of domestic transparency of trade policies would be on a voluntary basis. The Group decided to retain the proposal in its revised form, and to re-examine it when a clearer picture had emerged of the overall context within which the issue could be included in the final package stemming from the agreements.

In response to a request by the Group at the April meeting, a draft text on improvement of notification procedures was prepared and circulated by the Secretariat. It was based on the Group's discussions and covered three areas: a general obligation to notify; a central repository for all notifications; and a post-Uruguay Round work programme. The general thrust of the draft was widely supported. The Chairman suggested that participants should consider the Secretariat's draft and propose concrete improvements at the next meeting.

Regarding domestic implementation of trade rules, Switzerland stated that it would provide a legal text before the next meeting based on its earlier proposal (NUR 034) and on the Group's discussions.

Switzerland presented a submission on greater coherence in economic policy-making, which proposed a strengthening of the GATT as an institution by, among other things, investing it with an independent analytical policy capacity. The proposal also called for a strengthening of cooperation between GATT and the Bretton Woods institutions at both the ministerial and staff levels. The submission proposed a review of the mandate, structure, size and composition of the GATT Secretariat.
Some delegates maintained that the scope of the suggested changes to GATT as proposed by the Swiss submission went beyond the mandate of the current negotiations and were premature until the outcome of the Uruguay Round was known. The Group decided to examine the question of coherence in greater depth and to discuss it further at the next meeting.

MTN Agreements and Arrangements ... 1 June

Some progress in the informal negotiations was reported to the Group. For Customs Valuation, customs experts discussed the proposals made by India and Kenya on behalf of the Preferential Trade Area countries. The negotiations are progressing towards a compromise on the problem of the burden of proof for assessing the value of imported goods in cases where customs officials have reason to suspect, on the basis of the transaction in the immediately preceding period, that the imported goods are under- or over-valued. As for the two other issues concerning minimum value and how to establish the real value when the imports take place through an exclusive concessionary, most of the participants believe that the present Code and its Protocol already provide answers for dealing with the concerns expressed.

With regard to the Anti-Dumping Code, intensive informal discussions continued on circumvention of anti-dumping measures, determination of the existence of material injury caused by dumped imports, procedures for initiation and conduct of anti-dumping investigations and anti-dumping measures.

In the field of technical barriers to trade, negotiations continued on conformity assessment procedures, proposed amendments to Article 10 of the Code providing for transparency, and the establishment of a Code of good practice for standardization bodies.

For the Code on Government Procurement, most of the informal discussions centred on the clarification of the EEC proposal asking for the establishment of a transitional membership mechanism, aimed at helping non-members of the Code to better assess the costs and benefits of acceding to it.

The joint proposal by the United States and Hong Kong on improving import licensing procedures was at the centre of the informal negotiations in this field. An informal document putting together the various suggestions was examined, and some progress was made in narrowing down a number of divergences.

Subsidies and Countervailing Measures ... 31 May - 1 June

The Chairman submitted a comprehensive paper structured according to the framework agreed in Montreal and based on the issue-oriented discussions held over the previous five meetings. Intended to provide the basis for the Group’s future work, the paper was the subject of continuing informal consultations.
In the form of a draft legal agreement, the Chairman's paper contained detailed guidelines on which types of subsidies should be prohibited, which should be actionable and which should be permitted (non-actionable), based mainly on a measure's propensity to distort trade.

The prohibited category would include subsidies indicated in the amended illustrative list of export subsidies appended to the current Subsidies Code; those contingent upon export performance; and those contingent upon the use of domestic, in preference to imported, goods. Signatories would be free to take countermeasures against these types of subsidies.

Actionable subsidies would be those involving a financial contribution or any form of income or price support given by the government to certain enterprises. They would become countervailable should they cause injury to the domestic industry of another signatory; nullify or impair benefits under the GATT; or cause serious prejudice to the interest of another signatory. The paper proposed certain quantitative criteria, based on subsidization rate and export performance, to establish "serious prejudice".

Non-actionable subsidies would be: measures which are generally available and which do not grant a benefit to certain enterprises; and specific programmes for regional development, research and development, environmental protection or employment adjustment assistance. These programmes should not exceed a certain number of years, should be degressive and must be notified in advance to the Subsidies Committee.

Some concern was expressed that the paper might indicate a movement away from establishing effective generic disciplines, including quantitative and objective limits, on subsidies. Several participants emphasized that the paper should not prejudge negotiations in agriculture.

The Group also focused on two subjects not covered in the Chairman's paper: treatment of developing countries, and notification and surveillance.

Subsidies and Countervailing Measures ... 21 June

In a brief formal meeting, the Chairman said he would continue with informal consultations on his paper with the aim of presenting the final draft for adoption by the Group at its next meeting (12-13 July).

The Group continued discussion of subjects not adequately covered in the Chairman's paper. The United States urged the Group to establish clear guidelines to governments on "new practices" in the area of subsidies. It cited two examples of these practices: "industrial targeting" in which governments consistently follow
policies designed to benefit certain industries or enterprises; and "two-tiered pricing" under which domestic processors could buy local resource products at below world-market prices.

Japan maintained that "industrial targeting" was not covered in the Group's mandate while other participants asked the United States to provide more details on its concerns. Some participants said the issue of "two-tiered pricing" properly belonged to the natural resource-based products group.

Tropical Products ... 12 June

This was the second meeting of the Group since the adoption of the negotiating procedures in February 1990. In his review of the progress, the Chairman stated that he felt encouraged that in recent weeks more participants had submitted proposals or had offered improvements in their previous proposals. So far, 32 participants had submitted proposals.

However, the Chairman stressed the need for more active participation in the short time available before the TNC meeting in July. He made a number of suggestions, including: that participants who have not done so should make contributions in accordance with their trade, development and financial needs; that further efforts should be made to improving offers and contributions in terms of product coverage, elimination or substantial reduction of tariff and non-tariff measures as well as increasing the scope of bindings; and that bilateral consultations and negotiations should be intensified among participants and informal plurilateral consultations and negotiations should be organized if necessary.

Tariffs ... 1 June

The chairman reported that to date some 36 participants had tabled tariff proposals (indicative offers), and that 10 had presented tariff request lists. These participants held three meetings to review and assess the proposals. The Chairman urged other participants to submit quickly their proposals and requests as well as tariff and trade data.

A number of delegations indicated that their respective proposals were either on the way or were in an advanced stage of preparation. Canada urged that representatives from capitals be available in the week of the next meeting of the Group (16 July) when the second round of bilateral market-access negotiations would be held.

Non-Tariff Measures ... 6 June

The Group took stock of the progress of the negotiations under the framework and procedures agreed in February. The Chairman reported that, to date, some 30 participants had submitted request lists and that two of them had also presented offers. These participants had

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been holding private meetings to assess and review the requests on the table. The Group also noted that work was well underway in two drafting groups, on preshipment inspection and on rules of origin.

Australia and Uruguay tabled two separate proposals with one underlying objective: to "bind", as in the tariffs field, concessions negotiated in the non-tariff measures area. Australia also proposed the creation of a Committee on Non-Tariff Measures Concessions which could make quick rulings should bilateral consultations fail to settle disputes. There was general agreement on the need to guarantee the security of concessions but several participants expressed reservations about adding another dispute-settlement mechanism to the existing GATT framework.

Argentina requested recognition in the negotiations of autonomous liberalization measures it had implemented since the launching of the Uruguay Round. It reported that it had cut the number of tariff headings subject to government import authorization from more than 5,000 in September 1986 to 88.

Dispute settlement ... 6-7 June

The Chairman of the Group called on participants to concentrate on the issues of crucial importance, which could be grouped around four major themes: adoption of panel reports, including possible appeal procedures; implementation of adopted decisions and recommendations; compensation and retaliation; and strengthening of the commitment to comply with the GATT dispute-settlement rules and procedures and to refrain from taking unilateral measures.

The negotiations, which were largely held at informal level, focused on ways of improving the adoption and implementation of panel reports. In particular, many delegations were interested in the idea of having an interim examination of the report before it was circulated to contracting parties. During this additional stage, an intermediate report would be submitted to the parties to the dispute. They would have the chance to comment on the panel's conclusions, whereas at present they only receive the factual part of the report which sets out the facts and the parties' arguments. Another idea discussed, which was originally suggested at the April meeting, would be to allow parties to a dispute to appeal to an appellate body when they contested the panel's conclusions. The appeal body's decision could then be adopted with something less than a full consensus - which is required at present if one of the parties to the dispute opposes its adoption. However, many delegations expressed a fear that this procedure would slow adoption of reports and open the door to their being challenged almost systematically.

Natural Resource-Based Products ... 8 June

The Group resumed discussion of the European Community's proposal tabled at the previous meeting (see NUR 036). Several participants,
in particular both developed and developing coastal states, rejected the Community's call for discussion of m.f.n. access to surplus fishing grounds because they considered the issue outside the GATT competence. The Community said that the aim of its proposal was to enable it to compete on equal terms with other fishing countries, and there was no intention of impinging on the sovereignty of coastal states.

The EC proposal for new disciplines on double-pricing (when local resource products are provided to domestic processors at lower prices than those offered to foreign buyers) was welcomed by the United States which recalled its own proposal on this issue. Regarding export restrictions, several participants maintained that the application of export restrictions is often justified by the need to protect the environment, national security or short supply. The US and the EC were of the view that in many cases, the real reason behind export restrictions was to subsidize domestic industries.

The Chairman reported that 14 participants so far had submitted proposals or notifications under the negotiating procedures adopted in March. He called on other participants to follow suit as soon as possible. Several participants informed the Group that they were currently engaged in intensive bilateral negotiations on market access. Participants further said that in order to ensure greater transparency they would continue to report to the Group on progress in bilateral and multilateral negotiations as concerns NRBPs.

Textiles and Clothing ... 12-13, 15 June

The Group completed the first reading of three new proposals tabled by the International Textiles and Clothing Bureau (ITCB) members, the European Community and the ASEAN participants, respectively. The proponents stressed that their detailed submissions, all of which advocated the progressive phasing out of Multifibre Arrangement (MFA) restrictions, were aimed at helping the Group meet the July deadline for a common draft framework.

The ITCB participants presented a draft legal framework for the phasing out of MFA restrictions over a six-year period ending on 31 December 1997. The proposal was co-sponsored by the informal Group of Developing Countries. The ITCB proposed that upon the expiry of the MFA in July 1991, all quantitative restrictions would be removed on certain products, including textiles made of vegetable fibres, hand-loom fabrics and children's clothing. Restrictions on the remaining products would be progressively eliminated in four stages based on the "degree of processing" approach, i.e. tops and yarns in Stage I, fibres in Stage II, "made ups" (e.g. carpets, ropes, canvases in Stage III, and clothing in Stage IV. The ITCB members said their proposal contained special safeguard provisions designed to meet the concerns of the importing industrial countries. The proposal also called for the establishment of a multilateral body to monitor the phaseout of the restrictions.
A number of participants welcomed the MFA-based approach of the ITCB paper but many of them said a six-year transition period was too short. The European Community noted that its proposal (see below) and the ITCB submission shared many elements. However, it expressed serious concern about the absence of provisions in the ITCB proposal on "strengthened GATT rules and disciplines".

The EC introduced proposed elements for an agreement which it emphasized was conditional on work in other groups dealing with strengthened GATT rules and disciplines. Under the EC proposal, a list of products would be immediately integrated into the General Agreement and be subject to normal GATT safeguard rules. Restrictions on the remaining products would be progressively phased out in stages. Each stage would have a liberalization target of a certain percentage of the volume of restraint levels. Transitional safeguards would allow participants to continue negotiating bilateral agreements in some circumstances. The EC suggested a committee of verification to oversee the implementation of the process and to endorse the movement from one stage to the next.

Many developing-country exporters welcomed the MFA-based approach of the Community's proposal. However, some of them objected to the establishment of direct links with other negotiating groups and allowing negotiation of bilateral agreements during the transition period. Almost all participants were highly concerned by the proposal of a verification committee.

The ASEAN participants (Indonesia, Malaysia, Philippines, Singapore and Thailand) presented a framework of a transitional arrangement. It followed closely the main points of the ITCB paper but suggested that the transition period end by the year 2000.

The United States and Canada, while participating actively in the examination of the new proposals, reiterated their support for the replacement of the MFA by a global-quota system during the transition period.

The Group resumed discussion on the six topics set out in its work programme (see NUR 035). At the end of the meeting, the Chairman said he would continue informal consultations with delegations aimed at establishing a draft framework agreement for submission to the TNC in July.

Trade-Related Investment Measures ... 13 and 15 June

A number of developing countries (Bangladesh, Brazil, Colombia, Cuba, Egypt, India, Kenya, Nigeria, Pakistan, Peru, Tanzania, Zimbabwe), supported by China, presented a draft Declaration on trade related investment measures. While asking governments to seek to avoid investment measures which have direct and significant adverse trade effects, the draft Declaration provides for clear recognition that these measures are legitimate instruments used by governments for
the promotion of development objectives. Governments should also be allowed to use investment measures to offset the negative impact of trade-restrictive business practices. The paper also states that the existing framework of GATT rights and obligations and the dispute settlement mechanism would be sufficient to deal with alleged adverse effects of trade-related investment measures.

The Chairman reported on the informal consultations he had with delegations in order to narrow the gap between their positions. He considered that further consultations were necessary before the next meeting of the Group, on 12 July, in order to move closer to a common understanding on the TRIMS issue.

Agriculture ... 15 June

In summing up the informal consultations held in the course of the week, the Chairman of the Negotiating Group on Agriculture said that they had focused on the three major issues around which an agreement should be outlined at the meeting of the Trade Negotiations Committee at the end of July: these issues were internal support, border protection and export competition. He noted a genuine willingness to reach a consensus by that date, but there was still a long way to go.

With regard to internal support, the consultations had above all concerned the definition of permissible policies and the surveillance which might have to be exercised over them. While some of these policies, such as government assistance for research, inspection and pest control, disaster relief or domestic food aid could apparently be considered by all as permissible forms of support, the inclusion of other policies in this category seemed more controversial and would require the elaboration of precise criteria.

With regard to border protection, the tariffication approach (conversion of non-tariff barriers into tariffs) was discussed in depth. Emphasis was placed on the need to achieve a real improvement in market access by this means, which could lead to the introduction of tariff quotas at low or zero rates. The modalities of tariffication were also examined, in particular the determination of the internal and external reference prices on the basis of which tariff equivalents would be established. Little progress was made on the rebalancing of protection and the corrective factors which could result from the inclusion of a variable element designed to compensate for excessive price fluctuations in the tariff equivalents. The question of reductions in existing tariffs and in those resulting from tariffication was also discussed.

Regarding export competition, the Chairman considered that there was still much ground to be covered. Participants would not only have to reach agreement on their objective - a substantial reduction or elimination of export subsidies - but also have to define the policies
which should be considered export subsidies and the linkages between internal support and trade-distorting measures.

Trade in Services ... 18-22 June

Both the European Communities and Switzerland tabled full draft legal texts of a General Agreement on Trade in Services.

The EC text made clear that the Agreement should cover all services and should apply to any measure affecting the cross-border provision of services, cross-border movement of consumers, commercial or professional presence and cross-border movement of factors of production including essential personnel.

As well as detailed provisions on national treatment, domestic regulation, transparency, subsidies, anti-dumping and countervailing regulations, restrictive business practices and monopolies, the EC called for recognition to be given to the objective of securing higher degrees of liberalization through customs unions and free-trade areas. The draft also envisaged exceptions of the kind found in Articles XX and XXI of the GATT. It proposed a freeze on any new measures inconsistent with the agreement affecting market access. National schedules would cover restrictions affecting market access and commitments to remove them; restrictions inconsistent with the national treatment and subsidies provisions as well as any commitments to remove them; and any additional commitments to achieve "effective market access". Additional liberalisation commitments would be negotiated periodically beginning not later than, say, three years after the agreement comes into force.

Switzerland's proposal reflected approaches to the basic principles and rules similar to those of the European Community. With respect to the mechanics of liberalization, it included a freeze on new measures inconsistent with national treatment and subsidy provisions, and the preservation of existing market access conditions. These commitments would be bound in national schedules for each specified sector, sub-sector or transaction. While reservations could be noted in the schedules it would be understood that such reservations should be withdrawn as soon as circumstances permit. Apart from the initial commitments not to reduce existing levels of consistency with the agreement or of market access, the national schedules would contain additional commitments negotiated at the time of acceptance of the agreement.

As well as these national commitments, the Swiss draft envisaged further multilateral commitments, to be negotiated over time, which might include harmonization measures, rules for mutual recognition of national regulations, standards or qualifications, and global market access commitments. Switzerland envisaged periodic review conferences to further develop the agreement and to establish negotiating processes.
The GNS spent some time discussing these two new texts. The chairman also conducted informal consultations on a number of draft texts covering particular rules and principles to be contained in the framework. The meeting agreed that a further sectoral working group should be established to cover the audio-visual sector, notably films and broadcasting.

Trade in Services - Working Group on Telecommunications ... 5-6 June

The working group met for the first time to discuss the relationship of telecommunications to the multilateral framework agreement on services. The Group considered a draft annex presented by the United States, which covered access to and the use of telecommunications networks, and informal proposals from Japan, Korea and the European Communities. It was generally accepted that telecommunications would warrant some specific elaboration - in the form of an annex or annotation to the general framework - both because it is a technically complex and rapidly changing sector and because it is a mode of delivery for many other goods and service-producing activities. Developing countries stressed its role in development. Others pointed out the special nature of PTTs and national telecommunications monopolies generally in meeting national objectives such as universal telephone services covering remote and rural areas as well as cities. It was emphasized that the economic viability of these enterprises should not be threatened. A number of delegations expressed concern at the present multilateral arrangements for fixing international telephone rates.

It was agreed that a number of questions should be considered by the working party at future meetings. These included: transparency; mode of delivery; the distinction between basic infrastructural telecommunications services and enhanced services; standards-related issue; pricing; anti-competitive behaviour; conditions of supply and use of networks; and the increasing participation of developing countries in telecommunications trade.

Trade in services - Working Party on Financial Services ... 11-13 June

The first meeting of this group involved trade and finance officials from about 45 countries. Much of the meeting was an exploration of the particularities of the financial services sector with some delegations indicating their positions with respect to the application of the elements and principles on which the general services framework will be based.

Some of the main points of discussion were:

- definition and coverage: should all financial services be covered; should banking and insurance be treated differently.

- prudential regulation: one of the key concerns in this sector is to prevent trade liberalization from impairing necessary
prudential and fiduciary controls, and determining how to build the relevant safeguards into the agreement.

- national treatment: whether national treatment as defined in the framework should be annotated, particularly given the widely differing levels of financial market liberalization which is reflected currently in domestic regulatory regimes.

- market access: the need for establishment of commercial presence through acquisition or direct investment is frequently important but market access also could apply to the cross-border provision of financial services without establishment. While many participants consider that market access should be an obligation against which reservations could be lodged, some developing countries believe it should be granted only once a commitment is negotiated.

- mfn/non-discrimination: some consider it should be unconditional but others wish to avoid "free-riders" enjoying unqualified access to markets.

Note to Editors

1. Press bulletins on the Uruguay Round are issued regularly and are intended as an indication of the subject areas under discussion rather than as detailed accounts of negotiating positions. Journalists seeking further background information are invited to contact the GATT Information and Media Relations Division.

2. These accounts of negotiating meetings should be read in conjunction with the text of the Punta del Este Ministerial Declaration (GATT/1396 - 25 September 1986), the decisions taken on 28 January 1987 regarding the negotiating structure, the negotiating plans and the surveillance of standstill and rollback (GATT/1405 - 5 February 1987) and the TNC Mid-Term Review decisions (NUR 027 - 24 April 1989). Further copies of these documents are available from the GATT Information and Media Relations Division.