

URUGUAY ROUND

OF MULTILATERAL TRADE NEGOTIATIONS

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PROPOSALS ON DISPUTES SETTLEMENT AND AGRICULTURAL REFORM AMONG NEW NEGOTIATING SUBMISSIONS

A comprehensive proposal covering many elements which might serve to improve the working of the GATT dispute settlement procedure was tabled in October - among other things it would speed up the selection of panellists, place time limits on various stages of the procedure and rule out the blocking of panel reports in the Council. New proposals in the agriculture negotiating group included those from Korea and Japan, laying emphasis on food security, and from the United States developing ideas on both long- and short-term reform.

The following negotiating group meetings have taken place since the last bulletin.

Safeguards ... 26 and 28 September

A large part of the meeting was concerned with the longstanding question of selectivity in the geographical application of safeguard measures.

In a general statement the European Communities stressed that a solution to the safeguards problem would involve difficult political decisions. The Communities considered that while selectivity could be harmful so could a too-rigid position on the application of the MFN

(non-discrimination) clause. A solution, which would have to include transparency and surveillance, might be found somewhere between the two.

The United States took the view that an inflexible application of the MFN principle ignored reality and might drive countries more and more towards other restrictive mechanisms to solve safeguards problems. While MFN might be the general rule a limited use of selectivity could be accompanied by tougher disciplines for instance with respect to the duration of such measures and faster degressivity during their currency.

A number of developing countries reiterated their view that selective actions against imports had no place in Article XIX. They considered that such actions should either be brought into conformity with GATT or be phased out. Brazil considered that since the problem of selectivity tended to block negotiations it might be better to look upon safeguard actions not as import relief measures but domestic adjustment assistance measures.

The meeting also considered other aspects of a possible safeguards agreement including compensation and retaliation, and special and differential treatment for developing countries.

Functioning of the GATT System ... 26-30 September

In its discussion of how GATT could contribute to achieving greater coherence in global economic policy-making by strengthening its relationship with other monetary and financial organizations, the Group examined proposals by Mexico, Canada, the European Communities (EC) and Jamaica. Mexico saw a need for a system of cooperation and coordination to be established in GATT, the IMF and the World Bank to monitor and avert the imposition by creditor countries of measures detrimental to the export earnings of debtor countries. Such a strategy should ensure that macro-economic policies followed by developed countries were compatible and consistent with developing countries' structural adjustment programs.

Also discussed was a proposal by Canada that the Chairman of the Trade Negotiations Committee at Ministerial level request the GATT Director-General, along with the heads of the IMF and World Bank, to study cooperation among the three institutions. Several participants said the Director-General could undertake consultations with the two institutions on his own responsibility. Others focused on the need for the institutions to operate in their areas of competence, and to work in a coordinated fashion towards consistent ends. The EC said the GATT should support the overall adjustment process at both domestic and worldwide levels while simultaneously discouraging the introduction of restrictive trade measures resulting from budgetary, monetary or financial pressures.

MORE

The need for greater involvement of Ministers in GATT and regular meetings of the Contracting Parties at Ministerial level at least once every two years was generally accepted in the Group. Views differed, however, on whether a smaller Ministerial group should also be established. Supporters stressed the value of more frequent meetings of a consultative and advisory group of Ministers, restricted in numbers but representative of all GATT members. Others feared that existence of such a group would change GATT's character adversely. The discussion covered the rôle of a smaller group, the need for transparency in its work, its size and composition, and its relation to GATT as a whole.

In their discussion of enhanced surveillance in the GATT, participants generally agreed that all Contracting Parties should be subject to review, with a core group of countries being reviewed on a regular basis. A statement by the Nordic countries seeking more efficient and meaningful trade policy surveillance called for a team of "discussants" to present the reviews in a committee of all contracting parties. Participants widely agreed that enhanced surveillance through the trade policy review mechanism, while contributing to closer observances of GATT principles through greater transparency and understanding of individual contracting parties' trade policies, should not be a basis for the enforcement of specific obligations under GATT or for the institution of dispute settlement procedures.

Subsidies and Countervailing Measures ... 3 and 4 October

Participants discussed a submission by Canada that outlined a possible framework for the Group's negotiations. The Canadian proposal attempted to tackle, in a comprehensive manner, disciplines on the use of subsidies and the clarification of countervailing rules.

Suggesting that countries submit proposals on the elements of an eventual framework by June 1989, Canada stressed the need to define the scope and form of subsidy disciplines, such as prohibition, freeze or reduction, and said that questions related to the distorting or non-distorting effects of subsidies should be considered as well as compensation and retaliation remedies in regard to countervailing duties. Canada also suggested possible additional remedies in regard to those subsidies which create third-country export or import replacement problems such as: types of remedies that could be envisaged, including the right to compensation/retaliation; whether or not to allow unilateral action or to subject countervailing remedies to a multilateral process; and the precise form, scope and nature of such a multilateral process, with respect to remedial actions, including involvement of third countries.

In regard to improving and clarifying countervailing duty rules, Canada proposed that parameters for the application of countervail be more clearly defined and that they be consistent with the form and scope of agreed subsidy disciplines. Canada said other criteria used

MORE

in countervail investigations such as initiation procedures, standard of evidence, quantitative indicators and level of duty need to be clarified and that more precise rules on subsidy disciplines, countervailing duties and other remedies must be examined. The functioning of the current dispute settlement mechanism in the area of subsidies and countervailing measures should also be addressed.

The Canadian proposal was generally well-received although some participants sought a more detailed approach for special and differential treatment for developing countries. The Group agreed that the Chairman would draw on the Canadian and other submissions to arrive at a possible framework for the negotiations. A Chairman's report is to be drafted and circulated in time for the Group's next meeting.

Trade-Related Investment Measures ... 5-7 October

Participants continued examining the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures. One topic which figured prominently in the discussions was what kinds of GATT disciplines would be adequate to avoid the adverse effects of investment measures. In this regard, some participants stated that no possibilities should be ruled out a priori, and a number of them felt that there could be many cases in which the prohibition of trade-restricting and distorting measures might be necessary. Some others, however, considered that the principle of prohibition was wholly unnecessary in this context. It would, furthermore, seriously compromise national sovereignty over investment policies and undermine their objectives which were not, generally, trade-related. In their view, the mandate did not provide for such a far-reaching approach and the Group should confine itself to examining existing GATT provisions.

Some participants proposed that certain measures and practices of private enterprises, such as price fixing, tied sales and purchasing, and transfer pricing, should be examined in the Group alongside government-mandated measures. These measures could lead in themselves to trade restriction and distortion, and furthermore they frequently were the cause of the imposition of government-mandated investment measures which aimed to counter their trade effects. To ignore such measures would be to create an unbalanced approach to the negotiations. Some other participants stated that these were restrictive business practices that should not be addressed since there was no agreement on negotiating this subject in the Uruguay Round.

Dispute Settlement ... 10-12 October

Participants continued their examination of proposals for improving the dispute settlement mechanism, including special and differential treatment on behalf of developing countries. A joint proposal which addressed such elements as notification, consultations,

MORE

conciliation and mediation, arbitration, panel procedures, technical assistance, adoption of panel reports and GATTs surveillance of their implementation was submitted on behalf of fourteen participants. Another proposal submitted by Mexico was also discussed in detail.

Improvements, as outlined in the two proposals call for: notification to the Council of mutually agreed solutions, where any GATT member could raise matters relating to such solutions; request and response procedures for consultations, including provisions for going directly to the Council and requesting a panel should the other party fail to respond to a request for consultations within an established time period; and arbitration proceedings, whereby the two parties would agree to accept the outcome of arbitration proceedings in advance. It was stated that arbitration must not affect the rights of third parties.

Several participants agreed that panels should complete their work in six months after the composition of a panel had been agreed to and that three months could be a maximum period for cases considered as "urgent", including those involving perishable goods en route. Views still diverged on questions relating to adoption of panel reports by consensus and the idea, as put forth in the joint proposal, that parties to a dispute shall not block a consensus to adopt a panel report, but may either join or abstain from the consensus. Also addressed were selection procedures of panel members and the proposal that the GATT Director-General complete a panel, 10 days after having been notified by the disputing parties of their failure to reach agreement on panel composition. This procedure would be implemented 20 days after the decision was taken to create a panel. Surveillance procedures for overseeing the implementation of panel reports were also discussed.

The Group agreed that the Chairman would draw on the submissions and the related, detailed discussions on them in preparing a draft Chairman's paper for circulation to the Group prior to its next meeting. It was further agreed that the Chairman's paper would be in the nature of a comprehensive proposal for improvements to existing GATT dispute settlement rules and procedures, to be accompanied by a recommendation that the proposal be adopted by the Ministers at the Mid-Term Review and implemented on a trial basis as of 1 January 1989.

Trade in Agricultural Products ... 11-14 October

A proposal by Korea outlined its overall position on the agricultural negotiations. It highlighted the specific nature of the agricultural sector and the variety of situations from country to country, as well as the need for Korea and other developing countries to develop their agricultural infrastructure and preserve security of supply of basic food products by maintaining a certain degree of self-sufficiency. In particular, Korea advocated a strengthening of Article XI:2(c) on quantitative restrictions in the event of over-production, the progressive reduction of trade-distorting

MORE

subsidies, the harmonization of sanitary and phytosanitary regulations, and the development of a suitable method for the measurement of agricultural support. In the case of developing countries, a longer time-frame for liberalization and for the application of subsidies should be authorized during the period of adjustment of their agricultural sectors.

In elaborating a previous statement (NUR019), Japan defined the term "basic foodstuffs" as those foodstuffs - varying from country to country - which have traditionally been the main source of nutrition and which would be produced and supplied on a priority basis at a time of general food shortage. Japan also developed its position on short-term measures: these must be a part of long-term measures, and the expression of political will. Japan stated that it was in favour of the use of a measurement of support on an experimental basis, in order to see whether, in the context of short-term measures, it brought balanced results.

The United States presented the general outline of an approach for the Montreal Mid-Term Review. It proposed that Ministers should reach an agreement by which all support measures affecting, directly or indirectly, agricultural trade would be subject to strengthened and more operationally effective GATT rules and disciplines. Ministers should make three commitments: (1) to undertake specific reforms that would bring all agricultural trade into compliance with new GATT rules and disciplines, subject to the dispute settlement mechanisms; (2) to develop detailed implementation plans that would outline an overall schedule of specific policy changes that are necessary for the implementation of reforms, taking into account the needs of developing countries; (3) to harmonize health and sanitary measures by relying on the relevant international standards established by appropriate world-wide organizations. These commitments would concern both the short term and the long term. The United States said that it believed Ministers should agree to eliminate direct and indirect subsidies having an impact on trade by a date to be negotiated; in some areas, that date might be very soon, in others more remote. If at Montreal, Ministers reached agreement on reforms and on the process for them, the United States would then propose that Ministers should agree to a freeze on support and protection during 1989 and 1990.

With regard to the implementation of reforms with regard to market access, the United States proposed that Ministers decide to convert all non-tariff barriers, including variable levies and barriers maintained under waivers or other exceptions, into tariffs. Specific proposals for the rollback of non-tariff barriers and subsidies affecting trade would be submitted by participants by January 1990.

The European Community submitted a document describing the approach that could be adopted for a concerted reduction in support in the long term. It said that this first document dealt only with technical aspects and not with the extent of the reduction itself,

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which would be covered by another submission in due course. The Community's proposal was based on the use of a measure of support and the identification by each participant of the national policy instruments it intended to adjust, following a period of binding of support levels.

The Community considered that all policies should be taken into account for the measurement of support. The reduction of support should apply to the main agricultural commodity sectors, in particular cereals, rice, sugar, oilseeds and oleaginous fruit, dairy products and beef and veal. Compensation or the withdrawal of equivalent concessions should be envisaged in the event of failure to comply with support undertakings. It might prove appropriate to establish specific dispute settlement procedures.

The Chairman of the Working Group on Sanitary and Phytosanitary Regulations and Barriers presented a report on the Group's first meeting on 12 October. Three main negotiating themes were identified: (1) strengthening of the relevant GATT rules and disciplines, which lack clarity; (2) greater transparency through an improvement and simplification of notification procedures; (3) a search for greater harmonization of sanitary and phytosanitary regulations, and a study of a principle of equivalence when harmonization proves too difficult.

The Chairman of the Technical Group on Aggregate Measurement of Support, which met on 11 October, said that many differences remained concerning the various technical options for the development of an agricultural support measurement instrument suitable for the short term as well as for the long term. Participants were invited to submit detailed proposals on support measurement so as to enable the Technical Group to submit a report on the possible use of an aggregate measurement and the commitments which might be adopted in that connection at the Montreal Ministerial Meeting.

Tariffs ... 13-14 October

The United States, noting a lack of consensus on a common tariff-cutting method, urged the Group to focus instead on the desired final results of the negotiations. For the Mid-Term Review, it proposed that all participants make two commitments: first, on achieving a certain percentage reduction of average tariff levels over a given period of time and leaving the choice of method to individual members; and second, on the full binding of all tariff schedules. According to the United States, this approach would allow all participants to target their specific priorities and seek liberalization in the areas of greatest interest to them.

Many participants reiterated that only an agreed systematic negotiating method can ensure a higher degree of predictability and participation, and balanced results. A group of countries warned that the US approach might end up as an arithmetic exercise without any substantive liberalization of tariffs. On the other hand, some

members noted that a statement of final results in Montreal would be valuable and that it might be possible to combine elements of the US suggestion and the negotiating framework previously proposed by seven participants. On the full binding of entire tariff schedules, several members thought this goal was too ambitious, especially for developing countries.

Trade-Related Aspects of Intellectual Property Rights ... 17-18 and 21 October

Much of the meeting was devoted to a discussion of the report which the Chairman is to submit to the Group of Negotiations on Goods, prior to the Montreal meeting of the TNC.

The United States submitted a new proposal, elaborating that first presented in October 1987. It advocated a GATT intellectual property agreement to reduce distortions of and impediments to legitimate trade in goods and services caused by inadequate standards of protection and inadequate enforcement of intellectual property rights (IPRs). The agreement would include, in particular, the obligation to adopt and implement (i) adequate substantive standards for the protection of intellectual property (drawing on international conventions or, if necessary, national laws), (ii) both internal and border enforcement measures, (iii) a dispute settlement mechanism adapted from the GATT machinery, and (iv) general principles drawn from the GATT, such as national treatment and transparency, adapted to intellectual property. The agreement would cover patents, trademarks, copyright, trade secrets and integrated circuits.

The Nordic countries also submitted a proposal developing the ideas they had recently outlined. Their starting point was that any GATT commitments in this area must originate from infringements of IPRs. To identify these, it was necessary to have reference points to substantive standards which would require a certain level of specification and which would need to be negotiated. Negotiations on such reference points should be based on generally internationally-accepted and applied standards for the protection of intellectual property, provided for in international conventions as well as in commonly applied national provisions and practices. Although GATT negotiations should not aim at an overall harmonization of the intellectual property laws of participating countries, a certain amount of convergence would be inevitable and desirable.

Brazil submitted a proposal stressing that the Negotiating Group had received a mandate to discuss the trade-related aspects of intellectual property rights in the context of growth and development. Brazil considered that a number of specific questions should receive priority attention: the extent to which rigid and excessive protection of intellectual property rights impedes access to the latest technological developments, thereby restricting the participation of developing countries in international trade; the extent to which abusive use of such rights gives rise to restrictions

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and distortions in trade; and the risks that a rigid system of protection of intellectual property rights implies for international trade.

Non-Tariff Measures ... 17 and 21 October

Poland, Australia, New Zealand and Japan tabled proposals in line with procedures adopted early this year (see NUR 015). The new submissions listed a wide range of specific non-tariff measures maintained by various participants. The Australian and New Zealand delegations explained ways of adapting a formula approach to various non-tariff measures, and underlined the importance of this method in securing a meaningful and multilateral result to the negotiations. Several delegations indicated that they will soon be tabling their respective proposals. The Group was also presented with a secretariat paper which sorted specific non-tariff measures submitted by participants, using the classification system of the GATT Inventory of Non-Tariff Measures.

On preshipment inspection (PSI), some delegations made clear that they were not questioning legitimate concerns (such as reducing capital flight and customs fraud) behind its use but rather were concerned at the trade-distorting activities of the inspection agencies. Several countries using the system maintained that PSI was not a non-tariff measure; they were amenable, however, to a discussion in the Group on examples of PSI practices which might act as barriers to trade.

Note to Editors

1. Press bulletins on the Uruguay Round are issued regularly and are intended as an indication on the subject area 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) and 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). Further copies of these documents are available from the GATT Information and Media Relations Division.

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