

URUGUAY ROUND

OF MULTILATERAL TRADE NEGOTIATIONS

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MARKET ACCESS NEGOTIATIONS OPENED UP BY PROCEDURAL AGREEMENTS TIGHT TIMETABLE AGREED FOR SERVICES TALKS

The market access negotiations covering tariffs, non-tariff measures and tropical products were given a boost during February with procedural agreements laying down time schedules and guidelines. The Services Group also agreed an ambitious timetable moving towards agreement on a framework for trade in services in July. The United States put forward its detailed ideas on the phasing out of the Multifibre Arrangement, Mexico tabled its approach to the intellectual property negotiations and the European Communities proposed a selective safeguard system.

The following meetings have taken place since the previous news bulletin.

Trade-Related Investment Measures ... 29-30 January

The United States submitted a draft agreement on TRIMs. It adopted a two-tiered approach to disciplines: prohibition for those investment measures which inherently restrict or distort trade; and for others, general commitments to apply them only on a non-discriminatory basis and not to employ them if they cause adverse trade effects for other contracting parties. It also proposes longer transition periods for developing than for developed countries to eliminate prohibited TRIMs, detailed transparency requirements, and the creation of a standing TRIMs committee.

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TRIMs which should be prohibited according to the US draft include requirements to use local content, to manufacture particular goods or to sell them domestically, to export goods, to transfer or licence technology, and to export as a condition for importing; restrictions on the production of particular goods or the use of particular technology; and other TRIMs which inherently cause adverse trade effects such as requiring exports as a condition for making remittances or otherwise accessing foreign exchange.

The second tier of disciplines would cover TRIMs that restrict or distort trade in some, but not all, circumstances. Examples given in the US draft were local equity requirements applied generally without specific reference to who the local equity participant might be or remittance and exchange restrictions that are not conditioned upon export performance.

Some delegations welcomed the general thrust of the US proposal, although without endorsing necessarily its detailed provisions. Some others considered it premature to begin studying a draft agreement since certain basic principles and concepts relating to TRIMs had still not been agreed upon. They also said the US proposal to prohibit certain TRIMs was unacceptable, and that it failed to take account satisfactorily of development considerations.

The Chairman identified a number of key issues that the Group needs now to focus on and suggested participants should concentrate on translating their respective positions into operational terms.

Safeguards ... 29 and 31 January, 1-2 February

Participants started a detailed examination of a new draft text of a comprehensive agreement prepared by the Chairman following comments on his initial draft at previous meetings. The principal new input into the work of the group was a proposal by the European Community on a selective safeguard regime applicable in special circumstances. Although the debate on selectivity versus non-selectivity has long been an undercurrent in the negotiation, this was the first occasion that a specific proposal on a selective safeguard had been tabled.

The EC plan would permit interim precautionary action against one or a group of suppliers of products provisionally found by the authorities of an importing country to be causing serious injury to domestic producers as a result of a large increase in imports. Action to restrict imports from the supplier or suppliers concerned would follow consultations, would be proportional to the injury suffered and would be removed after a maximum of eight months or at the end of the full injury investigation. Where serious injury is finally established, the importing country would be able, following consultations, to apply safeguard measures selectively for a maximum period to be the subject of negotiations in the Round.

Countries affected by the interim or final measures would be free to withdraw equivalent concessions or other obligations to the importing country. During the period the selective measures are in place, imports from unaffected suppliers would be monitored in the importing country. If such imports increase significantly, the countries covered by the safeguard measure could request the extension of the restrictions to other suppliers. The period of application of the selective measures would be fully taken into account in the maximum period for safeguard measures authorized under the general - i.e. non-selective - provisions of the agreement.

In their initial reactions to the Community's ideas, many participants welcomed the fact that the central and, so far, unresolved issue in the negotiation had been brought to the surface for direct discussion. Nevertheless, the approach commanded little support. It was stressed widely that a scheme of the type envisaged would favour only the large, powerful traders and would allow others to be picked off. Developing countries and, indeed, many smaller industrial countries, could not withdraw concessions in any meaningful way as compensation for being subject to a selective safeguard action. There was scepticism about the possibility of clearly identifying the individual exporters actually causing the injury in question, leaving open too much scope for targeting of competitors. The idea of affected exporters being able to request an extension of the action to other suppliers was criticized for shifting the political burden of safeguard action from the importer to the exporter. In general, the scheme was criticized for permitting selective safeguards with few disciplines on the importing country concerned.

The United States described the EC proposal as interesting and suggested that the issue of selective safeguards needed more discussion in the group.

Tariffs ... 30 January

The Group established detailed procedures for the negotiations, including a timetable aimed at starting tariff-cutting negotiations in April. Each participant is to provide the Secretariat by 15 March with a proposal for the reduction, elimination and binding of its respective tariffs on a line-by-line basis. A summary of each proposal should also be provided, together with a demonstration that the proposal is in conformity with the Mid-Term Review agreement (the agreed target is an overall cut in tariff levels which is at least as deep as that achieved in the Tokyo Round, or about one third). The Secretariat would immediately distribute these proposals to all participants who have submitted proposals.

The participants agreed that the tariff negotiations would be conducted in a transparent manner, and to this end, not later than 18 April, participants who have made proposals will hold a first

in order to protect private citizens and entities from governmental decisions affecting their trading interests and rights.

Trade-Related Aspects of Intellectual Property Rights ... 5-6 February

Mexico submitted a proposal which highlights the importance of an appropriate intellectual property system to attract foreign investment and encourage technological development. Mexico explained that its proposal should be seen in the setting of its current policy for the development and modernization of industry and trade.

Mexico's proposal covers the principal elements of an agreement. It is aimed at ensuring that the negotiations maintain a suitable balance between the protection of intellectual property on the one hand and the general interest and economic and technological development objectives on the other.

The general principles of the General Agreement - transparency, national treatment, most-favoured-nation treatment, non-discrimination - as well as international co-operation, consultation and dispute settlement, should be covered by the negotiations. Mexico considers it particularly important to adopt a rapid and efficient dispute settlement mechanism; the GATT system could be used, in accordance with the procedures agreed upon in this area at the end of the Uruguay Round.

The aspects which distort or hinder international trade should be clearly defined. The negotiations should also deal with standards on patents, trademarks, geographical indications (including appellations of origin), copyright, integrated circuits and trade secrets, complementing the specific aspects negotiated in WIPO. Mexico considers that the protection of trade secrets would create conditions of legal security that would encourage associations among enterprises and transfer of technology between them.

With regard to the means to enforce intellectual property rights, the aim should not be to harmonize domestic legislation but rather to establish general principles to which participants should gradually adjust.

Developing countries should enjoy special and more favourable treatment, such as a reduction in the duration of patents, transitional arrangements for bringing themselves into line with the general standards, technical assistance programmes and the grant of financial resources. Mexico's proposal supports the establishment of a multilateral framework of principles and rules for the elimination of trade in counterfeit goods. Each country should determine for itself the means it considers most suitable to that end, in accordance with the multilateral rules. The agreement should be integrated into the GATT.

Chile submitted a proposal to the Group, in which it stresses that a suitable dispute settlement system would be a key element for reaching consensus on TRIPS, by establishing a complementary relationship between GATT and WIPO in this area. In Chile's view, the results of the Group's negotiations on rules for the protection of intellectual property should be implemented in the framework of WIPO. Chile pointed out that WIPO is currently studying the possibility of setting up its own dispute settlement system, in order to resolve the problems stemming from non-application of internationally accepted intellectual property standards. When a WIPO ad hoc group determined that an internationally accepted standard had not been applied, the injured party could then raise the matter in GATT and ask for a panel to be set up if it considered that such non-compliance had trade consequences. The panel's task would be to establish whether or not there were "trade-related effects". If so, the conciliation and dispute-settlement mechanisms of Article XXIII would be applicable.

Chile stressed that this procedure would dispel fears that trade sanctions might be applied arbitrarily. It would also respect the basic functions of GATT and WIPO.

Austria submitted an additional proposal further to its earlier communication concerning the importance of an effective enforcement mechanism for intellectual rights on an internationally agreed basis. Austria considers in particular that the purpose of a TRIPS instrument cannot be the harmonization of the various legal systems, but to ensure a similar level of effective protection for IPR holders in all participating countries. The fundamental principles of national treatment, most-favoured-nation treatment and transparency should apply. On that basis, Austria describes a series of internal procedures and remedies which should be followed, as well as provisional measures, including measures at the border, to ensure enforcement of rights.

After discussing these three new proposals, the Group began consideration of a synopsis of issues raised by participants during the discussions or in their communications, beginning with the basic principles which might be applicable.

Textiles and Clothing ... 5-7 February

This meeting was largely devoted to the presentation and discussion of two new proposals; from Japan and the United States.

Japan suggested that the group give priority to discussions on the integration of the MFA into GATT. It proposed that the MFA be terminated on 31 July 1991, at the expiry of the current protocol of extension. However, since it was unrealistic, in the view of Japan, to expect that the adverse effects of sharp increases in imports could effectively be coped with solely through the safeguard provisions of the General Agreement during the transitional period it was necessary to introduce special transition measures to deal with the

specific problems of the textiles and clothing sector. The integration of the MFA would be achieved as soon as possible and by the end of 1999 at the latest.

The transition measures outlined by Japan would involve objective criteria, making their invocation more stringent year-by-year and with the levels of restrictions becoming more liberal year-by-year. Transition measures, when invoked, would be subject to consultations with the exporting countries and an appraisal by a new multilateral surveillance body established for the purpose. Where agreement was reached between importing and exporting countries, the restrictions would be imposed by the exporting countries. Where agreement is not possible, the importing country would impose the restraints.

Japan listed and explained the five criteria which would govern the transition measures, namely: objectivity and strict procedures, limited application, limited duration, an automatic phase-out mechanism and equity between exporting countries. In discussion, many participants expressed their interest in the Japanese approach. The representative of the International Textile and Clothing Bureau (developing country exporters) said that many principles contained in it were acceptable to ITCB members though others would need elaboration.

In its proposal, the United States adopted a quite different mechanism for the integration of the MFA into the GATT. It suggested a ten-year transition period starting 1 January 1992 to ensure an orderly and equitable adjustment in trade terms as well as in terms of the domestic production processes of each participant. The transition mechanism should be simple, equitable, transparent, predictable and certain; allowing trade patterns to be driven by market forces as early as possible.

The mechanisms proposed by the United States were a global-type quota system and a tariff rate quota system. In the former, a comprehensive quantitative limit, by product category, would be established. The global limit would initially have two components: specific country allocations (covering trade from countries with whom bilateral agreements already exist) and a non-selective "global basket" that would expand to provide growth. Each year, during the transition period, the country allocations would shrink by one tenth and the global basket would expand by a growth factor and by adding to it the 10 per cent taken from each of the country allocations. In this way the global basket would gradually take over the country shares.

The tariff rate quota would employ the same quantitative limits, and their development over the ten-year transition, as in the global quota system but, while imports within the overall limit would be subject to applicable duty rates, further imports would be possible at substantially higher penalty tariff rates.

Many participants welcomed the tabling of a detailed proposal by the United States. There was a widespread view, however, that the objectives of the negotiation would be better achieved through an MFA-based approach; in other words, a system for the progressive liberalization of the MFA itself. The US approach would lead to an initial increase in restrictions as currently unrestricted supplying countries fell into the global quota. Developing countries suggested that the scheme would lead only to extra competition among supplying countries while leaving the domestic industries of importing countries insulated from competition and market forces. They also questioned whether all, or just developing country, exporters would be covered and whether they could have confidence that at the end of the ten year period the global quota would really disappear.

In reply, the United States said that the system would give the domestic industry a clear signal that at the end of the ten-year transition there would be no restrictions or quotas other than those possible under GATT. Nevertheless, many detailed aspects of the proposal were for negotiation in the Round.

Canada outlined a proposal whereby the MFA and all other measures inconsistent with GATT would be terminated on 31 July 1991. Thereafter, during a transitional period, trade in textiles and clothing would be governed by special safeguard measures patterned on GATT Article XIX, as amended. These measures would contain two significant derogations; the first would allow access to safeguard action on the basis of market disruption or real risk thereof, while the second would provide that no compensation would be required for measures taken. Further elaboration on this proposal is anticipated at the next meeting on 5-7 March.

Dispute settlement ... 7 February

Hong Kong maintained that the TNC (Mid-Term Review) decision of April 1989 on dispute settlement did not go far enough as regards the strengthening of third party rights, and suggested two improvements: firstly, that there should be a general right for third parties to receive the submissions of the disputing parties; and secondly, that third parties should be allowed to be present at the first substantive panel hearing. These ideas were countered by the view that the presence of a large number of third parties could complicate the solution of the dispute by turning the process into a kind of working party. If a third party had a real interest in a dispute, it could always be a co-complainant.

Hong Kong also raised the related issue of third party obligations with respect to the consequences of adopting panel reports. It maintained that panel reports should not be binding on all contracting parties, only on those to the dispute. According to Hong Kong, the situation of third parties is not necessarily the same as that of the parties to the dispute. Since the panel considers only the issues and arguments presented by the disputing parties, and third

parties do not have full rights under the panel process they therefore should not bear the full consequences. Hong Kong further added that panels have not always reached the same conclusions in similar cases. In response, it was pointed out that if adopted panel reports could not be relied upon as agreed interpretations of GATT obligations, then this could lead to practical difficulties, including the need to establish in extreme cases a separate panel against each of the contracting parties.

It was suggested by another delegation that a possible solution to the problem of deciding which interpretations in adopted panel reports have general application and which do not, may lie in the distinction set out in Article XXIII between a "ruling" and an "interpretation".

The delegation of Switzerland presented its proposal on domestic implementation of trade rules and enforcement of governmental decisions related to international trade. The fundamental issue was how private persons and entities could be protected from illicit governmental decisions affecting trading interests and rights. Three models to solve this problem were put forward by the Swiss delegation. One way could be to envisage countries undertaking to apply GATT obligations directly under their national laws; another would be for countries to choose a limited number of obligations and apply them on a reciprocal basis; and a third, and preferred approach within the scope of the present negotiations, would be to reinforce the rights of private persons to procedural remedies under national laws relating to trade matters. Article X of the GATT, which already contained this idea in a limited form, could be expanded to cover all areas under the General Agreement and similar provisions could be set out in the Codes and any other agreements in the new areas. The obligations could be expanded to cover the rights to a fair hearing, a reasoned decision, effective provisional measures, and effective administrative or judicial review.

The Swiss proposal also suggested that a further improvement to the predictability of rights and obligations would be the creation of an obligation to frame national trade regulations in a manner at least as precise as the corresponding rules and principles of the GATT. The proposal acknowledged that the issue of implementation and enforcement in the GATT context could be discussed in the Negotiating Group on the Functioning of the GATT System, but maintained that it would be preferable to deal with it in the Negotiating Group on Dispute Settlement to ensure a better coordination between the national and international levels of dispute settlement.

The subsequent discussion on the Swiss proposal concentrated primarily on the third model which some delegations interpreted simply as a strengthening of Article X:3(b). Several problematic possibilities were expressed by one delegation, such as the possibility of private persons being able to challenge governments on

the GATT consistency of their measures; the status of foreign nationals; the creation of a series of individual rights beyond the scope of Article X:3(b) thus questioning the GATT as essentially an agreement between sovereign states; and the status of domestic rulings vis-a-vis GATT panel rulings and recommendations.

Tropical Products ... 13 February

The Group established detailed procedures and a timetable for the continuation of negotiations which will enable participants to be fully engaged in specific tariff-cutting negotiations by the end of April 1990.

By 15 March, each participant will provide the Secretariat with a proposal giving due attention to the following key elements with regard to its respective tariffs and non-tariff measures on a line-by-line basis:

- (a) Elimination of duties on unprocessed products;
- (b) Elimination or substantial reduction of duties on semi-processed and processed products, including the objective of eliminating or reducing tariff escalation;
- (c) Elimination or reduction of all non-tariff measures affecting trade in these products.

A summary of each participant's proposal should also be provided, together with a demonstration that the proposal is in conformity with the Mid-Term Review agreement concerning tropical products. The Secretariat will distribute these proposals simultaneously to all participants who have submitted them. Current nomenclatures will be employed and the base rates for the negotiations will be the bound m.f.n. rates and, for the unbound rates, the normally applicable rates in September 1986 (the date of the launching of the Uruguay Round).

It was agreed that the negotiations would be conducted in a transparent manner and hence, all participants who have submitted proposals, would hold a first meeting no later than 25 April 1990 to review and assess these proposals. The periodic review and assessment process will allow participants to determine whether individual proposals comply with the Mid-Term Review agreement. It will be based, inter alia, on documentation to be provided by the Secretariat using customary, recognized statistical methods. Market-access concessions made in other negotiating groups will be taken fully into account in assessing a participant's contribution to negotiations on tropical products.

By 30 April, participants will endeavour to exchange with the other participants involved, and simultaneously submit to the Secretariat, preliminary request lists for improvements to adjust the proposals.

It was agreed that all participants would engage in negotiations and make appropriate contributions towards achieving the objective of negotiations in tropical products in accordance with the relevant provision of the Punta del Este Declaration including those contained in its Part 1.B.

Agriculture.....13-14 February

At a relatively short meeting, the group discussed the detailed proposals submitted for the achievement of the long-term objectives of the negotiations and undertook an initial examination of ideas presented by Israel.

In its submission, Israel stated that the process of reform in agriculture should not deprive developing countries of the tools necessary for successful agricultural development. Thus, with respect to market access, the negotiations should concentrate on serious cases of market restrictions. It should be recognised that for small domestic economies efficiently producing large quantities of produce for export, non-tariff restrictions on imports are essential. And while export subsidies should not be used to export surpluses of products produced under domestic subsidy or support programmes, a list should be drawn up of non-trade-distorting export measures which would be permissible. Israel also suggested that the intention should not be to remove domestic subsidy programmes for national or regional development purposes but to "level the playing field" to an agreed ceiling, based on an aggregate measure of support.

With regard to the future work of the group, the Chairman said he would consult informally on all elements of the long-term reform process. At the same time, the Secretariat would seek, by the next meeting, greater clarification and elaboration of elements of the detailed proposals submitted since the Mid-Term Review.

Non-Tariff Measures ... 14-15 February

After lengthy consultations, the Non-Tariff Measures Group adopted procedures for the negotiations. Participants have agreed to use the following negotiating approaches, depending on the nature of the non-tariff measures: multilateral rule-making, multilateral formula and the request-and-offer method. Under the procedures, participants should submit by 15 March request lists which may then be subject of consultations. Initial offers in response to these lists should be tabled to enable negotiations to start in May.

The Group will continue to consider proposals in two specific areas - preshipment inspection (PSI) and rules of origin - in addition to the negotiations to liberalize non-tariff measures in general.

The United States tabled a draft agreement which it said was aimed primarily at preventing trade distortions resulting from the use of PSI. It suggested that governments undertake certain obligations, including ensuring that companies undertaking PSI observe the following principles: non-discrimination and national treatment, transparency, protection of confidential business information, avoidance of delays, and provisions contained in the GATT Customs Valuation Agreement. During the meeting, Austria proposed a multilateral framework, based on GATT principles, to avoid trade obstacles resulting from the use of PSI. It suggested that the activities of PSI companies be subject to authorization by a national authority of the exporting country. Several countries employing PSI reiterated that it was not a non-tariff measure per se and that, by preventing abuses like fraud and undervaluation of goods, it had enhanced trade. They expressed reservations about the US reference to the Customs Valuation Agreement, noting that many developing countries have not acceded to this agreement.

On rules of origin, the European Community and Japan tabled new proposals. The Community proposed using the Kyoto Convention as the starting point of discussion (the 1973 International Convention on the Simplification and Harmonization of Customs Procedures). According to the EC, a possible GATT agreement in this area should only cover non-preferential trade. It suggested that in this Round, the Group should aim at reaching agreement on principles (it suggested the principles of non-discrimination, neutrality, transparency, predictability, consistency and legal certainty), leaving work on the approximation of different rules of origin to be carried out separately in the Customs Cooperation Council later.

Japan presented an outline agreement on rules of origin. It proposed general disciplines such as not using rules of origin to restrict trade, or to impair and nullify rights and benefits of GATT members. Japan also proposed that, with the objective of securing harmonization of rules of origin, the Customs Cooperation Council should be requested to submit to the Group studies on rules of origin by early Autumn. These studies would help participants in determining the "basic guideline" which would be the basis of post-Round work on the subject. Both Japan and the EC proposed the establishment of a Committee on Rules of Origin. In the discussion, several participants noted that the proposals on the table have many points in common.

Trade in Services ... 16, 18 and 19 January

Following intensive consultations by the chairman of the GNS the Group was able to agree a detailed schedule of work which should culminate in the completion of a draft framework in July.

The 26 February - 2 March meeting will concentrate on the structure of the framework (essentially its initial coverage and the techniques for progressive liberalization) as well as looking at statistical questions and the roles of other international service sector arrangements. The meeting at the end of March will cover structure the mechanics of liberalization undertakings including the nature of initial commitments; definitions; increased participation of developing countries in the services sector and institutional issues.

The Group's May meeting would introduce for discussion the identification of sectors requiring annotations in the framework and the nature of such annotations. It would also include the initial presentation of the kinds of progressive liberalization undertakings that may be pursued by participants. The June meeting would continue the process of exploring all areas of the framework. Following completion of the draft framework in the July meeting, it would be submitted to a legal drafting group.

At the January meeting, India presented its ideas on the elements of a multilateral framework, laying particular emphasis on the position of developing countries. With respect to progressive liberalization, India saw the process being governed by a number of principles: conformity with national policy objectives; conformity with development and technological objectives; expansion of services exports of developing countries; flexibility for developing countries to open fewer sectors or fewer types of transactions; security and other exceptions.

India suggested that the principle of national treatment should be a long-term objective and not an immediate obligation. Exceptions to an mfn provision would be allowed for the grant of preferences by developed countries to developing countries and for exchange of preferential concessions among developing countries. In the context of market access, developing countries would be free to impose entry and operating conditions on foreign service providers as well as to provide preferential treatment - in the form of tax differentials, market share reservations, government procurement preferences, financial incentives, levies or surcharges on foreign service suppliers etc. - to domestic service providers.

India also outlined a number of approaches to secure the increasing participation of developing countries in service sector activity. These included: the relaxation of restrictions (immigration regimes) on the international flow of labour; requirements on foreign service providers to transfer technology and know-how and to build up the export earning capacity of domestic services enterprises; and the facilitation by developed countries of market access for services exports of developing countries including improved access to distribution channels and information networks.

As well as discussing the Indian proposal specifically, the Group had a more general discussion about the options available for the treatment of developing countries and the promotion of their service sectors.

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 des 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.

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