

# URUGUAY ROUND

## OF MULTILATERAL TRADE NEGOTIATIONS

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### URUGUAY ROUND BACK ON TRACK

#### NEGOTIATIONS RESTART IN MANY AREAS

Uruguay Round participants have returned to the negotiating table. The decision to restart the trade talks, suspended last December, was made on 26 February by the Trade Negotiations Committee (TNC).

"I have now at hand all the elements necessary to enable us to put the negotiations back on track," reported Arthur Dunkel, TNC Chairman at official level. He proposed, and the TNC adopted, a work programme which provided the basis for restarting the negotiations in which differences remain outstanding. The programme also sets out a work agenda, covering each of the seven negotiating areas, which are being developed in further consultations that started on 1 March with agriculture.

Mr. Dunkel stressed that the Punta del Este Declaration remained the basis of all the work in the Uruguay Round and that decisions taken at the Mid-Term Review also retained their validity. This meant that the Group of Negotiations on Goods (GNG), the Group of Negotiations on Services (GNS) and the surveillance mechanism would remain in place and retain their status.

Mr. Dunkel said he would conduct further consultations with participants not only on the proposed agenda for further work but also on the way in which that work will be organized.

He also reminded participants of the requirement that an effective evaluation be conducted of the extent to which the objectives relating to differential and more favourable treatment for developing countries are being attained.

With respect to timing, Mr. Dunkel pointed out that at the Punta del Este meeting in September 1986, Ministers had agreed that "the multilateral trade negotiations will be concluded within four years", i.e., before the end of 1990. At the conclusion of the Brussels Ministerial Meeting, all members of the TNC had concurred with a proposal by Minister Gros Espiel that the consultations be pursued until "the beginning of 1991." It was now

clear that this expectation had not been met. The TNC therefore agreed to continue the negotiations with the aim of concluding them as soon as possible. The target date for concluding the Round would be allowed to emerge in the process of negotiations.

He pointed out that the Mid-Term decisions on greater Ministerial involvement in the GATT and on increasing the contribution of GATT towards achieving greater coherence in global economic policy making were not limited in time. Therefore, they remained unchanged by the continuation of the negotiations beyond 1990. The standstill and rollback commitments in the Punta del Este Declaration and the Mid-Term decisions on improved dispute settlement procedures and on the establishment of the trade policy review mechanism remained valid until the end of the negotiations.

The work programme was the result of Mr. Dunkel's intensive consultations at multilateral, plurilateral and bilateral levels in Geneva and elsewhere since the Brussels TNC meeting adjourned on 7 December 1990. They were in accordance with the mandate given to Mr. Dunkel at the conclusion of the Brussels Meeting by Minister Hector Gros Espiel, TNC chairman at Ministerial level.

The breakthrough was made on 20 February. In private consultations, some 30 delegations agreed on a negotiating approach, proposed by Mr. Dunkel, for agriculture. In subsequent informal consultations ending on 25 February, agreements were achieved on continuing negotiations in textiles and clothing, services, rule-making, trade-related investment measures and trade-related aspects of intellectual property rights, dispute settlement and the final act, and market access.

These various agreements form the work programme for continuing the Uruguay Round negotiations, an outline of which follows:

#### AGRICULTURE

Participants agree to conduct negotiations to achieve specific binding commitments on each of the following areas: domestic support; market access; export competition; and to reach an agreement on sanitary and phytosanitary issues; and that technical work will begin immediately to facilitate these negotiations. To ensure these results, participants are committed to pursuing consultations, as necessary, at senior policy-making levels to address outstanding aspects of the negotiation requiring such guidance.

All participants are committed to achieving reform of world agricultural trade through the framework approach set forth in the results on agriculture adopted by the TNC at its mid-term review.

A tentative agenda for consultations is agreed on the following technical issues:

- In the area of domestic support: a means of determining the policies that shall be excluded from the reduction commitment, the role and definition of an Aggregate Measurement of Support and equivalent commitments, a means of taking account of high levels of inflation faced by some participants, and the reinforcement of GATT rules and disciplines.
- In the area of market access: the modality and scope of tariffication, the modalities of a possible special safeguard for agriculture, the scope and modalities of implementation of a minimum access commitment, the treatment of existing tariffs, and the reinforcement of GATT rules and disciplines.
- In the area of export competition: a definition of export subsidies to be subject to the terms of the final agreement including the development of means to avoid the circumvention of commitments while maintaining adequate levels of food aid, and the reinforcement of GATT rules and disciplines.
- In the area of sanitary and phytosanitary measures, there is also scope for further refinement of a number of technical provisions and procedures.
- In each of these areas the particular concerns of developing countries, of net food importing developing countries, and those relating to food security will be examined.

#### TEXTILES AND CLOTHING

While much intensive work was done in Brussels, the issues to be resolved in the area of textiles and clothing are essentially among those set out in the Brussels document. Further work is to proceed within the framework established for the negotiations up to the end of the Brussels Meeting and that the work carried out at Brussels should be taken into account as appropriate.

Consultations should be held with a view to restarting work by reviewing the situation in the negotiations in this sector, so as to provide delegations with an opportunity to comment on the basis on which further work is to proceed on any technical aspects in relation to outstanding issues (e.g. annexes to the draft agreement), so that their results could be brought, at the appropriate time, into the process of substantive negotiations.

#### SERVICES

While much intensive work was done in Brussels, the issues to be settled remain, in general, those set out in the Brussels document. There appears to be an agreement among participants to undertake work in three specific areas: the framework, initial commitments and sectoral annexes. In the consultations, participants should first be given an opportunity

(a) to take stock of the situation by assessing where we are in the negotiations on initial commitments, the framework text and on the annexes and (b) to explain how they see further developments in this work in terms of priorities and interrelationships.

Participants should also identify technical work that can be done in the coming weeks in each of the three main elements of the negotiations on services - commitments, framework and annexes. Such technical work might relate, for example, to the clarification and evaluation of offers and to the establishment of appropriate negotiating procedures, to further examination of arrangements and agreements of a general character for which exceptions from m.f.n. provisions might be sought, and to specific modalities for the application of m.f.n. in particular sectors.

#### RULE-MAKING

This heading deals with a number of negotiating areas, in particular: subsidies and countervailing duties, anti-dumping, safeguards, preshipment inspection, rules of origin, technical barriers to trade, import licensing procedures, customs valuation, government procurement and a number of specific GATT Articles. Issues in some of these areas are closely related to the main political problems facing the negotiations and in such cases political and technical questions overlap.

#### Subsidies and countervailing duties

In the consultations, participants should be invited to comment on the basis for their discussions and negotiations in this area, and on the way in which they should proceed. The commentary in the Brussels document states that, while the text in that document requires a number of drafting changes, these can be done once major political problems have been resolved. Until major political decisions are taken, participants would focus on technical work. One example of an area on which technical work might be done is in the area of special and differential treatment for developing countries.

#### Anti-Dumping

The Brussels document does not contain a text on anti-dumping and this is therefore one area in which there is no basis for negotiations. The commentary in that document merely listed out some (but not all) of the points on which basic differences continue to exist and stated that political decisions were needed to overcome these basic differences.

Technical work should be restarted on anti-dumping and that participants will first be given the opportunity of commenting on the basis of the discussions and negotiations in this area and on the way in which they should be tackled. Participants will also, however, wish to identify those specific issues in this area which can usefully be discussed in the near future. In doing so, it is expected that they will be taking up work carried out in Brussels.

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### Safeguards

The Brussels document contains a detailed text on safeguards. The commentary on that text sets out the main points in that text that remained to be settled.

When consultations are held participants should be given an opportunity of commenting on where they stand now in the safeguards negotiations and where they should go from here, taking due account of work done in Brussels, as appropriate.

They will also consider whether there is any technical work they might usefully start on in this area. However, negotiations are now faced with a number of major issues requiring substantive decisions and that, in this area, it is therefore unlikely that they will identify areas on which technical work is required or would be useful at the present stage.

### Preshipment Inspection

Substantial work appears to have been done in Brussels on the main decision needed to be taken at the Ministerial meeting. When consultations are held participants should determine how far the progress made in Brussels should be confirmed. The legal form of the text will have to be examined but this should be done, in this and in other areas, only at a later stage when discussions and negotiations on the Final Act are further advanced. Consultations have been going on between the International Chamber of Commerce and the International Federation of Inspection Agencies on whom participants would be relying for the implementation of an important part of an agreement. A way should be found of keeping them informed of any developments in the Uruguay Round which would affect their plans and that participants respond to the suggestions that ICC and IFIA have already made in this regard.

### Rules of Origin

Here again, considerable work seems to have been done in Brussels. Participants should determine how far the progress made in Brussels should be confirmed. The document recalls that the legal form of the text will have to be examined but this could be done, in this and other areas, only at a later stage when discussions and negotiations on the Final Act are further advanced.

### Technical barriers to trade

In Brussels, substantial progress was made on the new text for Article 1.5 concerning the relationship of the Agreement to the Decision on Sanitary and Phytosanitary regulations and on the text on Consultation and Dispute Settlement Procedures. This remains dependent, however, on an agreement on the issue relating to the second level obligations (i.e. obligations on provinces, states and municipalities).

Participants should first focus on the second level obligation issue. Further discussions may also be necessary on the proposal by one delegation for clarification of Article 2.2 (provisions relating to unnecessary obstacles to trade).

#### Import licensing procedures

The Brussels document contains the text of a new draft agreement on import licensing procedures which was agreed on an ad referendum basis prior to the Brussels Meeting. One delegation maintains a reservation on this text made prior to the Brussels Meeting, pending agreement that a GATT Working Party be established to develop rules in the area of export licensing procedures in the post-Uruguay Round period.

Since the text was agreed on an ad referendum basis prior to the Brussels Meeting, subject to this one reservation, it would appear that no further technical work may be needed in this area unless the request for the establishment of a Working Party on export restrictions raises technical questions which can be clarified at the present stage.

#### Customs valuation

The Brussels document contains the texts of two draft recommendations from the Contracting Parties to the Committee on Customs Valuation, and of an accompanying understanding which were accepted on an ad referendum basis prior to the Brussels Meeting. It would therefore appear that no further technical work is needed in the framework of the Round with respect to these texts.

#### Government procurement

The Brussels document contains the text of an agreement on accession to the Government Procurement Code. This text, which was the result of consultations held prior to the Brussels Meeting, was accepted on an ad referendum basis in Brussels.

However, delegations should, of course, be given an opportunity for offering comments on this text which takes the form of a recommendation from the Contracting Parties to the Committee on Government Procurement. However, it seems that further technical work is unlikely to be required in this area.

#### GATT Articles

The state of the work on GATT Articles is precisely as set out in the Brussels document. That document described, for each of the Articles which had been the subject of work in the Negotiating Group, the status of the draft agreement, where such a draft existed, and in the case of the balance of payments provisions the position reached in the discussions. Agreement had been reached ad referendum on Articles II:1(b), XVII (State Trading Enterprises) and XXVIII (Modification of Schedules); certain participants had maintained reservations on the draft decisions on Articles XXIV (on

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customs unions and free-trade areas) and XXXV (Non-application of the Agreement between particular contracting parties); and it was understood that final decisions on Article XXV:5 (on waivers) and the Protocol of Provisional Application could only be taken in the light of results in other areas of the negotiations. On the Balance of Payments provisions it had not been decided whether or not to engage in negotiations.

Delegations will be given an opportunity to express their views on the way in which we should work in the GATT Articles area. A start could be made by discussing Article XXXV and maybe Article XXIV.

#### TRIMs AND TRIPs

##### Trade-Related Investment Measures

Unlike in most other areas of the negotiations, it did not prove possible to transmit a draft text of an agreement on TRIMs to Ministers in Brussels. The commentary on TRIMs in the Brussels document simply enumerates the points on which basic divergences of view exist. These are: coverage; level of discipline; developing countries and restrictive business practices.

When consultations are held in this area, delegations will be given an opportunity to comment on the present status of negotiations on TRIMs. They should also try to identify technical work that can usefully be done in this area at the present stage of the negotiations. On this latter point, agreement could be assisted by discussions of a technical nature, building as appropriate on work already undertaken as reflected in the draft texts referred to in the commentary. Technical discussions to elaborate a workable "effects test" would, for example, be a useful contribution in the level of discipline area.

##### Trade-Related Aspects of Intellectual Property Rights

The text sent forward to Brussels listed the outstanding issues on which decisions were required in the TRIPs negotiations. These issues remain unsettled, and the basis for future work is the draft text as contained in that document.

When work restarts on TRIPs, delegations should be given an opportunity to consider the present state of the negotiations in this area, taking into account the work done in Brussels, and to identify any areas in which technical work could usefully be undertaken at this stage.

#### DISPUTE SETTLEMENT AND THE FINAL ACT

##### Dispute settlement

The Brussels document contains a detailed text on Dispute Settlement. A commentary on the text identified the three main outstanding issues.

Participants in consultations should be given an opportunity to comment on the present situation in the negotiations on dispute settlement and to identify work that can usefully be done in the phase of the negotiations that is just beginning.

A number of the issues in this area will only be solved when governments are ready to take the political decisions necessary to bring the Uruguay Round to a successful conclusion. There are areas in which technical discussions would be useful at the present stage: for example, the provisions concerning the maximum length of dispute settlement proceedings, and the procedures for dealing with non-violation complaints.

#### Final Act

The Draft Final Act is contained in the Brussels document. The two main issues in this area are whether the instruments resulting from the Uruguay Round should or should not be accepted as a single undertaking; and the form of the decision to be taken in respect of a new organizational structure to be implemented after the conclusion of the Round.

Delegations are likely to concentrate on other areas of the negotiations before turning to consideration of the Final Act.

#### FOGS text on Greater Coherence

The FOGS (functioning of the GATT system) texts on Institutional Reinforcement of the GATT and Greater Coherence in Global Economic Policy Making can be found in the Brussels document. An inspection of these texts shows that a number of issues remains to be settled.

These issues require political decisions that are unlikely to be forthcoming until the final decisions on the Uruguay Round are taken. There does not appear to be scope for technical discussions on them at the present stage.

#### MARKET ACCESS

It was proposed that the results of the market access negotiations are to be annexed to the Uruguay Round (1990) Protocol to the GATT, the draft text of which will be found in the Brussels document. The commentary which precedes this text makes it clear that this protocol will incorporate the results of the negotiations in a number of areas, including natural resource-based products and tropical products. This commentary also expressed the hope that the bilateral market access negotiations would be completed by the end of the Brussels Ministerial Meeting.

This hope was not realized. Consultations were held on the text of the draft Protocol. These revealed that two points in the Protocol remained to be settled. These are:

- reference to the application of Article XXVIII in cases of modification or withdrawal of non-tariff concessions; and

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- period of implementation of tariff concessions.

Much remains to be done in the market access negotiations but some major political decisions will be required before these are brought to a successful conclusion. Nevertheless, a lot of technical work still needs to be done. Thus:

- participants should pursue their bilateral and plurilateral negotiations as vigorously as they can in the present circumstances;
- transparency should be achieved by further informal meetings of all participants in the access negotiations as well as meetings of the TNC, as appropriate;
- participants review:
  - the status of bilateral and plurilateral market access negotiations: under this item, delegations should be invited to give oral reports on their bilateral and plurilateral negotiations on market access which they have been holding before, at and since Brussels; a total of 50 participants have submitted proposals on tariffs and tropical products.
  - proposals and offers currently on the table, including in tropical products and natural resource-based products: this item would provide for the continuation of the process of review and assessment of existing proposals and offers, a process which took place prior to Brussels, separately in the tariff and the tropical products groups. New proposals have been received or existing ones modified (mostly improved) since the process was discontinued in the two groups mentioned above. For these reviews, the secretariat would prepare up-to-date analytical background papers, and
  - further technical work would also relate to two points left open in the Market Access Protocol, i.e. reference to the application of Article XXVIII in cases of modification or withdrawal of non-tariff concessions; and period of implementation of tariff concessions (most delegations favoured five annual cuts, beginning 1 January 1992, some other delegations requested a longer period).