

NEWS
OF THE

BULLETIN

ROUND

OF MULTILATERAL TRADE NEGOTIATIONS

NUR 032
21 November 1989

UNITED STATES PRESENTS DRAFT SERVICES AGREEMENT
NEW PROPOSALS TABLED ON AGRICULTURE AND TRIPS

A draft legal text of a framework agreement on trade in services was tabled by the United States at the October meeting of the GNS. The plan, while widely welcomed, drew statements from many participants emphasizing the importance of any services agreement containing explicit provisions to promote the services sectors of developing countries. The GNS also received new proposals from Singapore, Austria, Korea and the European Communities. A large part of the October meeting of the negotiating group on agriculture was devoted to initial discussion of a comprehensive farm trade reform plan from the United States and other proposals from Switzerland and a group of net food-importing countries. The group covering trade-related aspects of intellectual property rights concentrated on the key issue of standards and norms of intellectual property protection, focusing on proposals from New Zealand, Canada and Korea.

The following meetings have taken place since the last bulletin.

GATT Articles ... 16-18 October

Following consultations, which were based on a note prepared by the Secretariat examining the implications of a proposal made by

New Zealand in July (see NUR 030), the Groups requested the Secretariat to prepare a draft decision which could serve to put into effect the revised proposal. The objective of New Zealand's proposal is to ensure transparency of the legal rights and obligations deriving from Article II:1(b) by requiring that the nature and level of any "other duties and charges" levied on bound items be recorded in schedules of tariff concessions against the tariff item to which they apply. It is intended that the meeting of the Group in December should further consider the proposal and the draft decision with the possibility that it could be adopted in time to be taken into account in the Uruguay Round tariff negotiations.

In the context of Article II, the United States put forward a proposal that uniform import fees or charges be permitted for the purpose of funding adjustment assistance programmes related to import competition. Such fees or charges would be limited to a maximum of 0.15 per cent and would be applied to all imports. The funds raised would, in general, be directed to workers, although some assistance could be provided to firms and industries.

Intensive work on Article XVII was also initiated by the Group with the tabling of proposals by the European Community and the United States. The European Community's approach concentrated on tightening up notification requirements, including counter notifications, and establishing a mechanism with which Contracting Parties could jointly review such notifications. The United States' proposal in addition to suggesting the creation of a working party to clarify definitions and conduct comprehensive reviews of notifications, calls for recognition that the activities of state trading enterprises, including all types of marketing boards, are subject to GATT disciplines.

MTN Agreements and Arrangements ... 16-18 October

The Group concentrated on the Agreement on Anti-Dumping Practices. Singapore suggested that before looking at possible drafting changes to the Agreement, the Group must first agree on the basic principles and objectives. It then presented an outline of principles and objectives aimed at ensuring that anti-dumping rules are not used for protectionist purposes nor as disguised safeguard measures and that they do not operate contrary to the public interest. Some participants expressed general support for the new proposal; another view was that the submission was not balanced in that it dealt only with issues of interest to countries which are reportedly the subject of anti-dumping actions. The Group then discussed systematically a wide range of issues related to the Code.

India submitted a paper clarifying an earlier proposal relating to the Agreement on Customs Valuation. It said that customs administrations, especially in developing countries with high tariff structures, face the problem of undervaluation of imports. This often results from collusion between the importing and exporting companies

and this was one reason why a number of developing countries have not been able to accede to the Code. India proposed that the Code provide more flexibility to enable customs administrations to reject the declared values in certain defined situations.

Subsidies and Countervailing Measures ... 19-20 October

Participants resumed discussion of the issues outlined in the Mid-Term Review framework, on the basis of proposals tabled by Canada, Switzerland and Japan at the previous meetings (see NUR 030 and 031). Some participants urged stronger disciplines on countervailing action, in particular the need for establishing a clearer causal link between subsidized imports and injury to a domestic industry before the imposition of a countervailing measure. Many participants favoured a sunset clause whereby countervailing measures would be terminated five years after their imposition. On the issue of the use of remedies in cases of adverse effects of subsidies in third country markets, some delegations saw unilateral measures similar to countervailing measures as the only effective remedy while some others objected to any unilateral action in this area. Some participants stressed the need to reaffirm the Subsidies Code's provision on special treatment for developing countries and maintained that export promotion measures should remain permissible for these countries. On the other hand, some other participants called on the developing countries, especially the more advanced economies, to participate more fully in the framework of rights and obligations in the area of subsidies and countervailing measures.

Tropical Products ... 19-20 October

The Group welcomed the contribution on tropical products made by Yugoslavia as well as an additional contribution made by Malaysia. Singapore announced it would contribute to negotiations in this area through bindings at a ceiling level of 20 per cent of its duties on coffee beans, pepper and cocoa. The United States announced that President George Bush had signed the Presidential Proclamation for implementing the US contribution made at the Montreal Mid-Term Review with effect from 18 October 1989. Canada reported that its Montreal contribution was approved on 19 October 1989, and would be made retroactive to 1 July 1989.

Canada introduced its proposal suggesting the use of a tariff-cutting formula complemented by the request-and-offer method. This proposal was also submitted to the other "market-access" groups (Tariffs, Non-Tariff Measures, Natural Resource-Based Products, Textiles and Clothing, and Agriculture; see NUR 031). Several participants welcomed the comprehensive nature of the proposal which covered tariffs, non-tariff measures and all products and involved broad participation while others observed that it did not reflect the special attention accorded to tropical products in the Punta del Este

Declaration and did not envisage more significant contributions by developed countries. The Nordic countries (Finland, Iceland, Norway and Sweden) noted their highly liberalized import regime on tropical products but expressed readiness to make additional contributions provided other participants do the same thing. The ASEAN participants (Indonesia, Malaysia, Philippines, Singapore and Thailand) said they would soon table a proposal calling for, among other things, the elimination by developed countries of all duties on unprocessed tropical products and the substantial reduction of duties, through a formula supplemented by request/offer procedures, on semi-processed and processed products. In exchange developing countries would make contributions including market-opening measures in tropical products and other product sectors. At the end of the meeting, the Chairman underlined the importance of reaching an understanding on procedures for the further conduct of negotiations at the next meeting of the group scheduled for 29 November - 1 December 1989, and urged participants to submit proposals to this end.

Tariffs ... 23 October

The Group resumed work on finding a common negotiating approach to the tariff negotiations. The Chairman suggested a possible negotiating framework, developed from his consultations with participants, which specified a tariff-cutting formula supplemented by request-offer negotiations. Many participants welcomed this suggestion as a good basis for further discussion. However, some of them called for the formula to have a greater harmonization effect (higher tariffs to be cut by a greater percentage), and some others urged that developing countries be given more flexibility in reducing tariffs. On the other hand, the United States maintained it would be pursuing the negotiations through the request-offer method. It declared itself ready to start serious negotiations and reiterated that it could accept requests made in a formula form. The Chairman stressed the limited time available for negotiations and said he would table further suggestions at the next meeting.

Non-Tariff Measures ... 24 October

The Group continued discussion of the following issues: pre-shipment inspection; rules of origin; and fees, dues and other charges on imports (see NUR 031). As called for in its proposal tabled at the previous meeting, the United States urged that the Customs Cooperation Council be asked by the Group to begin preparing technical studies on rules of origin, which would be used as a basis for GATT negotiations. The European Communities considered such action as premature. The United States, Japan, Canada and Poland announced their imminent submission of request lists for bilateral negotiation. Chile called for assurances that participants would not have to offer concessions towards the removal of non-tariff measures which are inconsistent with the GATT. These measures, Chile

emphasized, are covered by the rollback commitment in the Punta del Este Declaration.

Agriculture ... 25-26 October

The United States submitted a comprehensive proposal regarding long-term global reform of agriculture. It covers import access, export competition, internal support, and sanitary and phytosanitary measures - each to be viewed as integral parts of a whole. The reform is designed to guide agricultural production and trade towards a market-oriented system, on the basis of strengthened and more effective rules, and to integrate agriculture fully into the GATT. According to the United States, the cost to consumers and taxpayers of the distortions currently affecting agricultural trade exceeds US\$275 billion annually.

As far as import access is concerned, all non-tariff obstacles such as quotas, variable levies, voluntary restraint agreements, minimum import prices etc., would be converted into tariffs and bound. All tariffs, including those resulting from such a conversion, would be progressively reduced to zero or low levels over a ten-year period. All forms of derogation from existing GATT rules would be eliminated. Article XI:2(c), authorizing certain quantitative restrictions in the agricultural sector, would be eliminated. During the transition period, a safeguard mechanism would operate to protect against import surges.

All export subsidies and export restrictions and prohibitions, including those authorized under Article XI:2(a) to relieve short supply, would be phased out over a five-year period. Only bona fide food aid would be authorized.

The United States identifies three categories of internal support measures:

1. Policies that distort trade, resulting in domestic prices higher than prices prevailing on the world market, and income support policies linked to growth in production, should be phased out by the end of a transitional period of ten years.
2. Income support policies not tied to production and marketing, environment and conservation programmes, bona fide disaster assistance, etc., would be permitted.
3. All other policies that do not meet the criteria for the previous two categories would be disciplined; a reduction in support would have to be negotiated.

For sanitary and phytosanitary measures, a mechanism for notification, consultation and dispute settlement should be established to ensure that measures taken to protect human, animal and plant health are based on sound scientific evidence and are equivalent

to the appropriate standards established by the competent organizations.

For the United States, meaningful agricultural trade reform requires the active participation of all countries; the new rules and disciplines proposed by the United States should be applicable to all. However, longer periods could be granted to developing countries for reform of their agriculture according to their level of economic and agricultural development. Developed countries should also accelerate the reduction of trade barriers and internal support policies for products of priority export interest to developing countries.

Peru, on behalf of Egypt, Jamaica, Mexico and Morocco, called for specific commitments to be undertaken in the negotiations to compensate for the negative short-term and medium-term effects of agricultural reform for net food-importing developing countries. According to OECD figures, the rise in food prices resulting from agricultural liberalization would be approximately 49 per cent for dairy products and eggs, 36 per cent for cereals and 16 per cent for meat. In order to alleviate the burden of the expected increase in prices, net food-importing countries proposed the granting of low-interest loans and credits, increased food aid, early improvement of market access for their agricultural exports, financial resources and technical assistance to enhance purchasing capacity and to allow them to finance development programmes and modernize their agriculture.

Switzerland submitted a more detailed version of the complementary approach it had presented to the September meeting, proposing that countries which found difficulty in accepting generalized reduction of support, for non-economic reasons, could obtain the same result using different means (see NUR 031).

Austria, Australia, Finland, Iceland and, latterly, Sweden and the EEC, have informed the Group of the reductions in support and protection which they intend to implement for 1990, in compliance with paragraph 15 of the Mid-Term Review Decision.

Trade-Related Investment Measures ... 26 October

The Group continued to examine several proposals on the table, in particular the Indian submission and the Japanese proposal presented at the previous meeting (see NUR 031). Some participants welcomed the approach suggested by Japan whereby differentiated disciplines would be established for trade-related investment measures (TRIMs) according to their specific trade effects. Others reiterated serious reservations about the notion of prohibiting TRIMs. Many delegations welcomed the elaboration of development considerations contained in the Indian submission. It was widely felt that the Group had already accumulated the elements necessary to move into the next stage of negotiations.

MORE

Trade Related Aspects of Intellectual Property Rights ... 30 November-
2 December

Much of the meeting was devoted to standards of intellectual property rights. Four new proposals on the subject were tabled.

A communication from New Zealand stressed the need to keep to a set of minimum standards which should be no more detailed or complex than is necessary to address the major causes of trade distortion, in order for them to be incorporated into domestic legislation without having to be harmonized. Parties to an agreement should undertake to accord protection as least as adequate and effective as the standards contained in the principal international intellectual property conventions, in particular the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works.

New Zealand considered that the Berne, Geneva and Paris Conventions provide adequate protection for copyright, neighbouring rights and industrial designs and models. For patents and trade marks, New Zealand specified the content of the standards it considers desirable concerning subject matter and term of protection, rights conferred and criteria for their acquisition. The agreement should prohibit misleading use of geographical indications to deceive consumers as to the place of origin of goods.

In addition to these minimum standards, New Zealand considered the agreement should also include obligations to ensure that they are respected. It should incorporate common GATT principles - transparency, national and m.f.n. treatment - dispute-settlement mechanisms modelled on GATT procedures, including those for technical barriers to trade, and contain provisions on means of enforcement and on trade in counterfeit goods. The Agreement should also include transitional arrangements to secure the fullest possible participation in the results of the negotiations.

The detailed submission from Canada underlined the importance of adequate standards for international trade and for the elaboration of a satisfactory international agreement. An adequate standard should be neither too detailed - which would involve GATT in harmonizing domestic intellectual property legislation - nor so general as to make practical application and dispute settlement impossible. Standards included in the Agreement should be based on the GATT principles of national and m.f.n. treatment, transparency and the prevention and settlement of disputes.

In Canada's view the negotiations should be comprehensive, addressing all eight major intellectual property areas identified by the Group: patents, trade marks, geographical indications, copyright, neighbouring rights, integrated circuits, industrial designs and trade secrets. Canada was in favour of an enhanced effective level of intellectual property protection; all countries moving towards a

common adequate standard of protection but not necessarily detailed harmonization. Parties should be required to comply with the substantive obligations of the Paris and Berne Conventions.

The communication from Korea emphasized the need for a balance between protection and use of intellectual property rights. Full consideration should be given to existing international arrangements and the public policy objectives underlying each national system. Transitional arrangements and procedures for transfer of technology should be allowed for the adjustment of each participating country's domestic regulations, especially in new areas where no international agreement exists. Korea stressed that unilateral or bilateral actions should be avoided during the negotiations.

Korea's submission dealt with seven of the areas identified and excludes trade secrets. It set out the conditions, term and subject matter for protection. It also dealt briefly with enforcement procedures, pointing out that the optimum method of protecting intellectual property rights varies according to a country's administrative and cultural background. The Agreement should give only the general guidelines.

Peru also tabled a communication setting out guidelines designed to achieve a balance in the negotiations, between intellectual property rights and developing countries' objectives with regard to development and transfer of technology. With respect to patents, Peru considered that certain sectors or products should be excluded from patentability, as being essential for the welfare of the population, such as pharmaceutical products produced under a generic name.

Peru considered that conditions constituting restrictive business practices should not be imposed on licensees by patent or trade mark owners. It also argued that trade secrets do not fall within the negotiating group's mandate. On the other hand, urgent multilateral action is needed to curb trade in counterfeit goods, not only for the benefit of legitimate trade but also to protect consumers.

In addition to examining these new proposals, the Group discussed in turn each of the eight areas of IPRs on which it had been suggested that standards should be established. On enforcement, the Group examined not only the proposals presented by Korea but also a paper from Japan setting out its views on enforcement at the border. This envisaged the establishment of a system whereby the owner of an intellectual property right could seek the suspension of the importation of goods suspected of infringing that right.

Safeguards ... 30 October, 1 and 2 November

The group completed its first reading of the Chairman's draft text (see NUR 030). Based upon the many comments made by participants the Chairman will produce a revised draft in time for the next meeting of the Group in late January.

Much of the discussion was devoted to structural adjustment and response to safeguard measures. With regard to the former, there was a difference of emphasis between those countries which consider that safeguard measures at the border should be secondary to internal government assistance measures to secure adjustment, and those who believe that structural adjustment should be the responsibility of producers.

With respect to responses to safeguard measures, there was discussion about the role and value of retaliation. Many small and developing countries cannot effectively resort to retaliation. They also consider that if the existence of the possibility of retaliation is driving some countries to take measures outside the GATT system, then it would be better to abandon retaliation and rely on tougher disciplines on safeguards themselves. Others, however, feel that the possibility of retaliation has a useful effect on the decision-making process and is a GATT right they do not wish to relinquish without careful consideration.

In a discussion on non-governmental safeguard measures, the existence of industry-to-industry restrictive arrangements was raised, with participants pointing out that it would be dangerous to leave such options available when more effective disciplines were secured on governmental behaviour.

Textiles and Clothing ... 31 October-1 November

India tabled a proposal outlining the steps to be taken towards the phasing out of restrictions in the textiles and clothing sector under the MFA. It called first for a freeze from the beginning of 1990 on new trade restrictions in this sector. After the current Protocol of Extension of the Multifibre Arrangement expires on 31 July 1991, India suggested that the integration process begin immediately with the elimination of certain types of restrictions. The remaining quotas should be phased out over five years, that is, by 31 July 1996. India, stressing the importance of textiles and clothing exports for developing countries, warned that for many participants the very success of the Round would depend on results in this negotiating area.

Some exporting participants expressed general support for the new submission. The Nordic countries (Iceland, Finland, Norway and Sweden) welcomed the proposal as concrete and feasible. On the other hand, the European Communities and the United States said the Indian approach lacked proper balance in not taking into account the interests of importing countries, including the establishment of strengthened GATT rules and disciplines. The Group also received a Canadian proposal, tabled in the other "market access" groups (see Tariffs, NUR 031), specifying a formula supplemented by request-offer negotiations for cutting tariffs. Many delegations welcomed the Chairman's suggestion that the Group, starting at the next meeting,

should structure its discussions around the specific issues which have emerged from its examination of the various proposals.

Natural Resource-Based Products ... 6 November

Participants considered a new submission from the United States which suggested that the Group take on a complementary role with respect to other negotiating groups. In the US view, fish and forestry products should be negotiated in the Agriculture Group while tariffs, non-tariff measures and subsidies on natural resource-based products should be dealt with in the relevant groups. It suggested that participants conduct a full review, in early 1990, of progress made in the other groups to determine whether substantive negotiations would be required in the Group itself. In the initial discussion on this submission, Japan, the Nordic countries and Hungary expressed general support for the US approach, while on the other hand the European Communities, Chile and Australia pointed to trade problems specific to this sector and urged the Group to stick to its negotiating mandate.

Functioning of the GATT system ... 6 and 9 November

The Group held a first exchange of views on the report by the Director-General of GATT on ways of achieving greater coherence in global economic policy-making through strengthened relationships with other relevant international organizations. As requested in April 1989, the Director-General, Mr. Arthur Dunkel, held talks on this subject with the Managing Director of the International Monetary Fund and the President of the World Bank, and submitted to the Group an exploratory report on the possibilities of co-operation with these organizations.

The report looks at three possible aspects of co-operation:

(1) Strengthening of links between trade, financial and monetary policies. This is primarily a matter for decision by governments, at both international and national level. Nevertheless, the heads of the three institutions can play a role by keeping in touch with each other and by continuing to draw attention to the interrelationships among the problems.

(2) With regard to links between trade policy and the trade liberalization process, GATT could be consulted on the content of trade reforms that countries are invited to implement by IMF and World Bank loan programmes, so as to ensure that the measures taken are fully consistent with GATT rules and that potential trade problems arising from them are taken into account.

The report also examines the possibility that developing countries might obtain credit in the GATT multilateral negotiations

for trade policy reforms introduced in the context of Fund or Bank programmes.

(3) It was suggested that multilateral resources should be available to support the trade liberalization process. The Bank said it was ready to consider additional financing needs resulting from the Uruguay Round; it recognized, in particular, possible needs arising from significant tariff reductions or from the effects of higher world prices for previously subsidized agricultural products on food-importing countries.

The IMF stated that the Fund would continue to provide support for trade liberalization adopted by a member in the context of its overall programme, as well as special facilities for members faced with such contingencies as temporary shortfalls in export earnings. The IMF and World Bank could also continue to support technical assistance activities aimed at trade liberalization.

The heads of the three institutions stated their readiness for further consultations on these various co-operation options.

Services ... 23-25 October

Much of the meeting was occupied by discussion of the various comprehensive proposals so far tabled - those by New Zealand and Switzerland which were presented at the previous meeting, and new papers from the United States, Singapore, Peru, Korea and Austria. The European Community presented ideas on mfn/non-discrimination and the definition of services.

The United States is the only participant, to date, to table a near-complete draft legal text of a framework agreement. The draft envisages the coverage of all service sectors except those specifically excluded in national schedules. It contains a number of market-access provisions including establishment, cross-border provision of services, temporary entry for service providers and licensing and certification. Further articles cover national treatment, non-discrimination, domestic regulation of services, transparency, payments and transfers, short-term measures for balance of payments reasons, and general exceptions. It establishes a Committee on Trade in Services as well as dispute settlement procedures. Not only would signatories be able to place reservations in the schedules relating to particular provisions and particular services, they would be able to list additional commitments as well as any further protocols or special arrangements to which they are party. The agreement would come into force on 1 January 1992 and, no more than three years later, would be subject to further negotiations aimed at the strengthening of its obligations, increasing the coverage of services and reducing the number of reservations.

The US draft was widely welcomed as a far-reaching contribution to the work of the Group. Many participants sought clarifications of the plan. Some expressed concern that there appeared to be too much

room for exclusions and reservations, others that it omitted any reference to the treatment of regional trading groups - customs unions for instance. But the most frequently voiced concern was the apparent lack of reference to matters of concern to developing countries and the promotion of the service sectors of those countries.

India was among a number of participants to stress the necessity of a balance between the interests of developed and developing countries in a services framework. The Montreal Mid-Term Review declaration had to be recognised in spirit and letter. The objectives were essentially to promote and strengthen domestic services capacities in developing countries and to increase their export earnings in the services sector. Those objectives would have to be spelled out and not - as the United States had contended - be left to be inferred from general language. India considered that attention would have to be given to arrangements for infant industries which, in the services sector, would need more extensive protection than in the goods area.

Development considerations were pursued in the proposal from Singapore. It envisaged developing countries having longer time periods to implement their concessions and being able to give preferences for domestic service providers over external suppliers and incentives for domestic services development. It also suggested a safeguard provision against detrimental corporate practices of external service providers. The Singapore proposal also discussed the relative merits of a framework based upon liberalization in agreed sectors and one resting on individual national schedules of offers and exceptions.

A communication from Austria spelled out that country's ideas on some of the elements which would form a services agreement. It envisaged a cautious approach to progressive liberalization with some sectors excluded and others subject to national annotations covering deviations from general provisions. Progressively, through further negotiating rounds, markets would be opened, new sectors and transactions covered, discriminatory regulations reduced and so on.

Korea presented a proposal on the structure of a General Agreement on Trade in Services. It outlined a two-stage approach in which the Agreement would be constructed and initial commitments made over the coming year followed by the negotiation of further concessions periodically after the end of the Uruguay Round. As well as the principles and rules outlined in the Montreal text, Korea considered that the framework should also include provisions on subsidies and countervailing measures, government procurement, anti-dumping, dispute settlement and obligations of local governments.

Participants discussed the role of non-discrimination/most-favoured nation treatment in a services framework. The European Community had tabled a paper on this question envisaging a balance of rights and obligations in which the right to substantial benefits

would hinge upon the assumption by each signatory of an appropriate minimum - though not necessarily similar - level of mutual obligations leading to overall reciprocity. The Community proposed liberalization commitments based upon unconditional mfn among signatories. A specific provision would be necessary to allow more rapid liberalization under agreements between a limited number of signatories on a regional basis. Another provision would relate to non-application of commitments where one signatory considers that the level of commitments of another is inadequate. There would also be a need for provisions to determine the origin of services provided.

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.