

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.TNC/W/89/Add.1

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Special Distribution

Trade Negotiations Committee

PROGRESS OF WORK IN NEGOTIATING GROUPS: STOCK-TAKING

MARKET ACCESS

Issues where substantial breakthroughs are needed:

On tariffs: improve and confirm offers; reduce the number of tariff items where no offer has been made; ensure that high tariffs, tariff peaks, low tariffs and tariff escalation are adequately addressed and to increase bindings at meaningful levels and for a substantial proportion of national tariffs;

On sectoral plurilateral negotiations, including NRBPs: clarify the status of proposals (confirm or otherwise the offers), relating to the plurilateral sectoral negotiations aimed at either reducing tariffs to zero or at their harmonization; ensure that particular interests of participants are adequately addressed; decide whether or not the results of these negotiations are supplementary to the mid-term review target of tariff reductions;

On tropical products: confirm and improve the conditional offers; deal with specific problems, i.e. tariff escalation, quantitative restrictions, selective internal taxes and levies, and compensation for the erosion of preferential arrangements and GSP margins;

On credit for tariff bindings: develop practical guidelines for assessing, in the bilateral negotiations, the adequacy of the scope and levels of tariff bindings by developing countries; credit to be given for such bindings towards the mid-term review target of tariff reductions;

On non-tariff measures: deal with outstanding product specific NTMs in bilateral negotiations; decide on how to deal with security of NTMs concessions and their binding, on the application of Article XXVIII to the withdrawal or modification of concessions and on the possibility of granting credit for these concessions;

Recognition for autonomous liberalization measures taken by many developing countries since the beginning of the Uruguay Round;

Recognition by participants of contributions by developing countries in accordance with the principle of special and differential treatment;

GATT SECRETARIAT

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Decisions on the modalities for the final stage of the market access negotiations, that is, a global auction process where the package of agreements in the tariff and non-tariff measure areas should be arrived at.

TEXTILES AND CLOTHING

The central problem is the so-called "economic package", consisting of the product coverage of the agreement, the percentages for the integration of products in stages, growth percentages for quotas on products not yet integrated, and the duration of the agreement.

The following are the other main outstanding problems:

Reconciling the fact that less than a third of the participants in the Uruguay Round are members of the MFA, while the terms and conditions of the liberalization process and the integration of the textiles and clothing sector into GATT should be treated as part of a single undertaking. Linked to this issue are problems such as:

- the coverage of the transitional safeguard mechanism;
- the handling of non-MFA restrictions on textiles and clothing products;
- the handling of fraud and circumvention;

The operation of the transitional safeguard clause as it relates to the finding of serious damage and the application of actual restrictions; the reference period for, and the duration of safeguard measures, and the terms to be provided for growth and flexibility;

Special and differential treatment for special categories of exporters;

Issues linked to other GATT rights, obligations and procedures:

- recourse to additional trade measures on products covered by this agreement, such as anti-dumping measures;
- recourse to GATT Article XIX during a certain period following the date of removal of all quantitative restrictions on the product concerned;
- the possibility of adjustment of provisions of the agreement with respect to a party found not to be complying with GATT rules and disciplines;
- the rôle and location of the relevant body or bodies within the GATT structure; in this transitional agreement a speedy dispute settlement procedure will be essential.

AGRICULTURE

Without attempting to be exhaustive, and in addition to the points raised in MTN.TNC/W/89, the following issues must be addressed:

In the domestic support area, the basic approach centres on the concept that all domestic support at national and sub-national level will be subject to reduction except for policies causing minimal distortion of trade and production ("Green Box"). The Green Box will be defined by a combination of an illustrative list and criteria.

The size of the Green Box is crucial. If it is opened up too widely, trade-distorting support may be perpetuated to an extent which might undercut the value of the commitments in the other areas. But an appropriate Green Box is an important tool in facilitating structural adjustment in agriculture while being an efficient tool in the pursuit of non-trade concerns, such as environmental issues, regional problems and aspects of food security.

The reduction commitments on domestic support outside the Green Box ("amber" policies) are to be expressed through an Aggregate Measure of Support (AMS) or through equivalent commitments where the calculation of an AMS is not practicable. The AMS would cover market price support, non-exempt direct payments and any other non-exempt support. This basic approach would not necessarily exclude scope for negotiating specific commitments on components of the AMS.

In addition to agreement on the size of the Green Box, other issues remain to be resolved include:

- What would be the appropriate product breakdown for commitments on domestic support?
- Would amber support below a certain (small) percentage of the value of production be exempt from reduction ("de minimis" provision)?
- Should any special provision be made concerning the actionability of green or amber policies?

In the area of market access, the concept of tariffication is emerging as the fundamental pillar of the reform process. It involves a full package of its own, including the conversion of non-tariff measures into customs duties ("tariff equivalents"); the binding of these tariff equivalents; the maintenance of current access; new minimum access opportunities through tariff quotas; and, as an important additional element, a special safeguard mechanism designed to prevent disruption of domestic agriculture in the course of the reform process. Its key features

include triggers based on import volume and prices (c.i.f. import prices in domestic currency) and a surcharge as remedy. Recourse to it would not require compensation.

The crucial point of the product coverage of tariffication aside, decisions are needed on certain details of the methodology to be applied for tariffication and:

- What would be the conditions for, and the size of, the minimum access commitments and on what basis would they be undertaken? Would minimum access opportunities expand over time?
- What would be the quantity and price thresholds which would trigger the special safeguard, and the specific features of the surcharge in any price-based safeguard action?
- What modalities would apply for reducing tariff equivalents? Would the same modalities apply for agricultural products subject to ordinary customs duties only?
- Should there be some flexibility in reducing tariff equivalents for selected items, e.g. through some delay in implementation? If so, which items would qualify and subject to what conditions?
- Would all existing customs duties be bound?

Turning to export competition, substantial and progressive reduction of support is as much of concern to exporters as it is to importing countries who are expected to gradually open their markets.

In addition to reduction commitments on support, the emerging building blocks of a solution in this area include separate disciplines on certain specific export subsidy practices; general anti-circumvention provisions; and provisions concerning possible negative effects of commitments on net-food importing developing countries, and in particular on the least-developed countries.

The gaps in positions among participants have to be further narrowed before these building blocks can be put into place. Questions include:

- Would the policy coverage of reduction commitments be established through a generic definition plus an illustrative list or through a definitive list?
- Should the reduction commitments operate on the quantity of products exported with subsidies or on the budgetary outlays involved, or on a combination of the two? Could reductions in budgetary outlays for individual product sectors be combined with a ceiling commitment on quantity, or vice-versa?

- Should there be upper limits on export subsidies in per unit terms in order to circumscribe targeting practices?
- Should there be limitations on the extension of export subsidies to new products? In this respect: what about new markets?
- How would export subsidies on agricultural primary products incorporated in exported processed products be treated?
- Finally, what would be the future framework of rules governing the export competition area?

This substantial list of questions related to the three areas of domestic support, market access and export competition does not detract from the great degree of progress that has been achieved in identifying the political options and clarifying the technical possibilities. However, the political choices have now to be made.

The same holds true for the fourth leg of the negotiations on agriculture, sanitary and phytosanitary issues. A detailed draft agreement covering this area was already tabled last year. Final consensus requires agreement on a few outstanding issues, on which consultations are currently under way.

The participants in the negotiations on agriculture have recognized that developing countries should have some flexibility concerning commitments, in line with the agreement that special and differential treatment is an integral part of the negotiations.

RULE-MAKING

Anti-Dumping

Underlying the large number of issues yet to be resolved in the anti-dumping negotiations is the difficulty of finding an acceptable compromise between the objective pursued by many participants of a reform and strengthening of existing multilateral rules in such areas as the methodology for determining the existence of dumping and injury, and the objective pursued by other participants of introducing new provisions in order to address certain practices which are perceived to undermine the effective enforcement of anti-dumping measures. Thus major outstanding questions concern the proposed changes to the rules for the determination of dumping and the possible introduction of measures to prevent circumvention of anti-dumping duties which allegedly occurs when, following the imposition of an anti-dumping duty, exporters of the product subject to such a duty assemble the product (in the importing country or in a third country) from parts or components originating in the country subject to the anti-dumping duty. Other issues which remain to be resolved relate to:

- the rules in Article 3 of the current Code regarding the determination of the existence of injury;

- criteria and procedures for determining whether a petition is filed "on behalf of" a domestic industry;
- de minimis margins of dumping and the possible quantification of a negligible level of import volumes;
- the modalities of imposition and assessment of anti-dumping duties and the duration of anti-dumping duties;
- retroactive application of anti-dumping duties; and
- dispute settlement.

Subsidies and countervailing measures

In the area of subsidies and countervailing measures, the key question is: are the participants ready to accept, as a counterpart for improved disciplines on the use of subsidies in general, that some subsidies which are not meant to have any trade distorting effects may be non-actionable (i.e., neither countervailing measures nor multilateral countermeasures will normally be taken against them). The second key question is the scope of special treatment for developing countries. If a satisfactory solution is found to these two issues, participants will have indispensable parameters to resolve other outstanding problems. These other problems have been identified in the commentary to the subsidies and countervailing section in MTN.TNC/W/35/Rev.1 and in communications from several delegations. In particular, among the issues on which further work has to be done are such questions as: specificity in the case of subsidies granted by sub-federal authorities; territorial application of the concept of specificity; subsidy disciplines for economies in transformation to market economy; transitional arrangements for the full implementation of new disciplines and certain procedural aspects and questions of definition relating to countervailing measures.

Safeguards

The three main issues which the participants have to resolve are: quota modulation (i.e., whether in an overall import quota, the share allocated to countries which are found to be contributing more to global injury, could be lower than the share allocated to them on the basis of recent patterns of trade), the time period allowed for phasing out grey area measures such as voluntary export restraints and orderly market arrangements, and the provisions which would preclude the use for safeguard purposes of measures other than those provided for in the agreement. Other issues in the safeguards area include a waiving of the right of retaliation under certain situations (i.e., contracting parties agree not to exercise their right of using retaliatory action against a safeguard measure provided the duration of the measure is less than an agreed time period), quantitative definition of domestic industry for the purpose of injury (i.e., what proportion of the relevant domestic industry should be injured to justify the use of safeguard measures), the question of whether safeguard measures should be limited to border measures (e.g., tariffs) or should include internal measures (e.g., subsidies) for assisting

adjustment, the duration of initial safeguard action and of the extension period allowed under specific circumstances for further use of these measures, and the provision of special and differential treatment to developing countries.

TRIMS

The questions which must be resolved in order for a TRIMS agreement to be possible are: the nature of disciplines in regard to measures inconsistent with Articles III and XI of the GATT - whether a list of such measures should be explicitly specified as being prohibited; the nature of disciplines on export performance requirements - whether they should be prohibited or subjected to the condition that they should not cause adverse trade effects for other countries; the design of a test to determine whether such adverse trade effects are being caused including the specification of which TRIMS it would apply to; any special provisions for developing countries; the transitional arrangements needed in respect of any measures which are to be eliminated; and the future work of a TRIMS Committee.

GATT articles

Among the seven texts on GATT provisions which are now awaiting adoption, two require decisions to be made before they can become effective. On Article XXV:5 (waivers) it is necessary to decide whether an expiry date can be agreed for existing open-ended waivers, and in relation to the Protocol of Provisional Application, where the proposal is to abolish the "grandfather clause" under which legislation inconsistent with Part II of the General Agreement has been maintained, the date on which such abolition would take effect has to be decided. The remaining texts relate to Articles II:1(b), XVII, XXIV, XXVIII and XXXV.

With respect to GATT's balance-of-payments provisions proposals have been made to clarify and strengthen the existing provisions and procedures without undermining recourse to balance-of-payments measures. The proposals relate to the procedures for consultations in the Balance of Payments Committee, including their nature, timing and periodicity, to the notification and documentation to be provided as a basis for consultations, and to Committee conclusions. They also contain some elements relating to the use of balance-of-payments measures, essentially intended to clarify and confirm understandings contained in the 1979 Declaration on Trade Measures Taken for Balance of Payments Purposes.

Other subject-areas covered by the Negotiating Group on Rule-Making and Trade Related Investment Measures¹

Regarding the draft text on technical barriers to trade, there is an outstanding question concerning the treatment of local and non-governmental

¹Technical barriers to trade, customs valuation, government procurement, import licensing, preshipment inspection and rules of origin.

bodies. Corrections of a purely technical nature have been made to the texts on import licensing procedures and preshipment inspection; such corrections may also need to be made to the draft text on rules of origin. Finally, with respect to a number of these subject-areas, the question of the final legal form of the texts remains to be decided.

TRIPS

Decisions are required on three categories of issues to complete the TRIPS negotiations.

First, decisions are required on some twenty key issues concerning the level and nature of the standards of protection of intellectual property rights to be included in a TRIPS agreement. The main points for decision lie in the areas of copyright, geographical indications and patents, although there are some outstanding issues in other parts as well. In the patent area, for example, it remains to be decided to what extent it will be possible to agree that patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced, as well as to determine the term of patent protection. In the area of geographical indications, it has to be decided whether additional protection should be available for wines and spirits, and the scope of and conditions on exceptions to such protection. In the area of copyright, outstanding issues include the nature of protection of computer programs and of rental rights. Since the outstanding issues are still essentially as contained in the Chairman's commentary to the text in MTN.TNC/W/35/Rev.1, a full list is not included here.

The reason why the list is essentially unchanged is that there has been a general reluctance to settle these issues until there is a perception that the Uruguay Round negotiations as a whole are in their final lap. While these TRIPS issues, which will essentially determine the level of commitment in a TRIPS agreement, are therefore linked in terms of globality with the Round as a whole, some have a more specific linkage, for example that between agriculture and geographical indications and that between textiles and TRIPS provisions on trademarks, industrial designs and enforcement.

A second category of decision that remains to be taken are those that will govern the timing of the economic impact of the results. This concerns not only the duration of the special transition periods that developing and least-developed countries will be entitled to, but also the extent to which the new obligations will apply to existing works, inventions and other subject matter as well as certain specific proposals regarding products whose marketing is subject to delay due to regulatory requirements. In regard to these matters, it is clear that participants are not only sensitive to the specific issues arising in regard to the phasing-in of TRIPS commitments, but also to how the timing of their economic impact compares with that of commitments that will be entered into in other areas of the Uruguay Round.

The third set of issues that have to be settled concerns the institutional framework for the international implementation of the results of the negotiations on TRIPs. These matters are under discussion in the Negotiating Group on Institutions. Closely related to the outcome on this matter are the arrangements for the multilateral settlement of disputes.

INSTITUTIONS

In the area of dispute settlement, the Negotiating Group on Institutions has succeeded in revising the Brussels Understanding and setting up a Consolidated Text on dispute settlement rules and procedures. Controversial issues still outstanding in the dispute settlement area are as follows:

- The quasi automaticity of the decision-making process to set up panels and adopt panel or appellate body reports which has been linked to the renunciation to apply unilateral measures inconsistent with the General Agreement. Several participants feel that this issue is linked to the overall results of the negotiations.
- The maintenance of the 1966 dispute settlement procedures for developing countries. Some participants oppose the idea of a two-tiered dispute settlement mechanism. Developing countries have insisted on the need to maintain these procedures as a special and differential treatment option which would still be subject to the existing non-quasi-automatic rules.
- The procedures that will govern non-violation complaints.
- The application of coordinated dispute settlement principles and rules to all the agreements negotiated in the Uruguay Round.

In the area of the functioning of the GATT System, participants in the Negotiating Group have recommended that the TPRM be confirmed and have supported the adoption of a decision aimed at improving the notification procedures. Discussions are continuing on the contribution of the GATT to achieving greater coherence in global economic policy-making.

In the institutional area, the Group has been considering the Final Act and possible institutional arrangements. The idea of a single undertaking which would cover all results of the negotiations including TRIPs and Services, and which all participants in the negotiations would be required to accept, continues to be controversial. A proposal to include in the Final Act an outline of provisions establishing a new institutional framework with overall responsibility for an integrated dispute settlement procedure and a regular TPRM is currently under consideration.

SERVICES

The General Agreement on Trade in Services (GATS) will be built on three pillars: the Articles of the Agreement, the sectoral annexes or annotations dealing with the specificities of certain sectors and initial commitments to liberalize trade in services. The acceptability of the GATS will depend upon the strength of these three pillars. They are inextricably linked. Further work and decisions are required with respect to each of the three pillars.

A great deal of work has been carried out in arriving at over 30 draft Articles of Agreement (a number of which are now completed). While further work is required with respect to some of the Articles, much of the work is of a technical nature and can be completed soon. Important decisions will be required, however, with respect to some outstanding matters. In particular, the circumstances under which governments can apply restrictions to protect their balance of payments, whether general exceptions can be taken from the obligations of the Agreement on cultural grounds and under what circumstances governments would not have to apply the provisions of the GATS to the services provided by another Party.

While the work relating to Articles on the scheduling of commitments is close to completion, a further clarification of considerations relating to the negotiation of commitments additional to those provided for in the Articles (i.e., relating to market access and national treatment) is required before the need for, and/or, content of, such an Article could be decided.

An article which is critical to the Agreement relates to the extension of most-favoured-nation treatment. The approach adopted in the recent discussion of m.f.n. has concentrated on identifying, in the light of confidential submissions by governments to the Chairman of the GNS, the legal possibilities for dealing with requests for, and disciplines to limit, any such exemptions. While this technical work is highly developed, the critical decisions to be taken relate to the nature and extent of measures which governments will seek to exempt from the general m.f.n. obligation. The linkage being made to the completion of the initial commitments negotiations and exemptions from m.f.n. is also critical in nature.

The second pillar relates to annotations and annexes. The annexes which were sent to Brussels included those containing procedures relating to m.f.n. exemptions (Basic Telecommunications, Audiovisual Services and the Transport Services sector), those considered necessary to take account of sectoral specificities (Telecommunications Services and Financial Services) and the Annex relating to the movement of persons as a mode of delivery.

In the final analysis, the nature of, or need for, annexes providing for m.f.n. exemptions will to a large extent depend on the outcome of the work relating to the legal possibilities for seeking m.f.n. exemptions. With respect to those annexes taking account of sectoral specificities, the Telecommunications Services Annex is highly developed. Despite recent

positive movement in the direction of completing outstanding work, the Financial Services Annex still requires important decisions to be taken; in particular, as to whether the Annex itself should be trade liberalizing. In respect of the Annex relating to the movement of persons providing services, the principal decisions have been taken.

Third, the work on initial commitments has progressed since Brussels and the number of offers tabled to date exceeds 40. There has also been progress in the consultations as reflected in the revision of offers and the requests for improvement in offers. The extent of liberalization of trade in services that will follow from the Uruguay Round, however, will depend not only on the initial commitments to comply with the concepts, principles and rules as elaborated in the Articles of the Agreement and the Annexes, but also the extent to which participants will seek exemptions from the m.f.n. obligation. Important negotiating relationships exist between the negotiation of initial commitments and the taking of exemptions from the general obligations.