

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

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LATIN AMERICAN CONSULTATION MEETING ON
MULTILATERAL TRADE NEGOTIATIONS

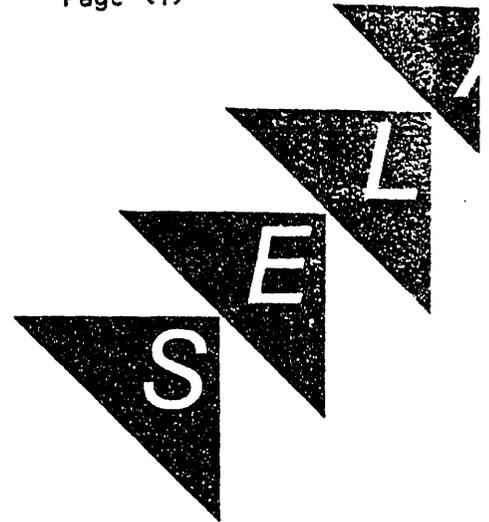
The policy recommendations of the Latin American Consultation Meeting on Multilateral Trade Negotiations, held on 29-31 May 1986, have been sent to the Director-General by the Ambassador of Nicaragua with a request that they be circulated to the Preparatory Committee.

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Consultation Meeting on
Multilateral Trade Negotiations
Montevideo, 29 to 31 May, 1986

Permanent Secretariat

SP/RC-NCM/DT No 2

LATIN AMERICA AND THE NEW ROUND OF MULTILATERAL
TRADE NEGOTIATIONS

Policy Recommendations

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Multilateral Trade Negotiations
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TRADE NEGOTIATIONS

Policy Recommendations

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PRESENTATION

This document has been prepared by the Permanent Secretariat of SELA in accordance with Decision No 224 of the Latin American Council, for the purpose of collaborating with the Member States in the definition of a regional strategy in relation to the proposed multilateral trade negotiations within GATT.

An attempt has been made to draw up a brief document encompassing the main elements which could be involved in the common position of Latin American countries. The document includes the main conclusions drawn from broader studies undertaken by the Permanent Secretariat on matters to be dealt with in the multilateral trade negotiations 1/.

Several international organizations co-operated in the study of the various issues dealt with in the document, particularly UNCTAD, WIPO, the World Bank, ECLAC, SIECA, CARICOM and UNDP 2/. However, the Permanent Secretariat of SELA assumes sole responsibility for this document.

1/ See, in particular, SELA, Latin America and the International Trading System, SP/CL/XI.O/DT No 7.

2/ UNDP/ECLAC/UNCTAD Project, "Apoyo al Sector Externo de América Latina" RLA/82/012.

I. INTRODUCTION

1. The discussions in GATT on the possible initiation of a new round of multilateral trade negotiations have coincided with one of the most critical periods in the economic history of Latin America and the Caribbean. In the area of finance, the problems of indebtedness, the restrictions on access to external credit and adjustment policies have been hindering chances of regional recovery and development. Furthermore, in their trade relations, Latin American countries have been encountering increasing difficulties in expanding and diversifying their exports. Protectionist measures, discrimination and the various forms of graduation are limiting the region's trade possibilities.

Trade and Finance

2. It is in this context, therefore, that the interests and priorities of the countries of the region should be examined in the proposed multilateral trade negotiations. Evidently, these negotiations would be of the utmost interest to Latin America and the Caribbean, were they to result in the strengthening of international trade, ensuring secure, stable access to markets for regional exports and preventing the application of the kinds of restrictive and discriminatory measures which have proliferated in recent times.

3. However, it is also evident that the present financial situation of the majority of the countries in the region constitutes a serious limitation to their effective participation in the negotiations. The Latin American countries must be completely free to adjust their trade policies to the exigencies of their monetary and fiscal policies, and this

raises some doubt as to the advisability of their assuming trade commitments of a multilateral nature.

4. Moreover, were the current squeeze to persist, Latin American and Caribbean countries would be unable to take full advantage of the eventual benefits that could be derived from the negotiations. The financial restrictions and adjustment policies applied by the countries in the region have had a negative effect on investment levels and, therefore, on production. The medium- and long-term consequences of this reality are difficult to predict. The ability of Latin American countries to compete in international markets has thus been seriously impaired. Consequently, the region will be unable to benefit from any trade liberalization if it lacks the required financial resources for recovering investment levels and adapting to changes in world demand. The ability to adapt is, today, a key factor for the success of development strategies 1/. It is obvious, therefore, that Latin American countries will show more interest in the proposed multilateral trade negotiations if international action is aimed at solving the monetary and financial problems which particularly affect their economies 2/.

The Discussions in GATT

5. There is broad consensus in the international community about the seriousness of the current situation in

1/ See SELA, Latin America and the International Trading System, SP/CL/XI.O/DT No 7, pp. 1-7.

2/ The agreements of the Consensus of Cartagena and the political dialogue which it proposes represent the region's basic position in relation to its financial problems.

the multilateral trading system. The 1982 GATT Ministerial Declaration and the UNCTAD VI agreements on this subject reflected this consensus, but were not followed by effective action to solve the numerous difficulties. It can be said that the current decline of the international trading system is more pronounced than ever. There has been increasingly frequent recourse to bilateralism, and unilateral, discriminatory measures are adopted, taking no account of multilateral commitments. Trade "wars" are increasingly frequent between the developed countries, whose regulations and legislations are becoming stricter and more restrictive, and protectionist pressures are being intensified, particularly affecting developing countries.

6. The holding of a new round of multilateral trade negotiations has been proposed as an effective way of solving these problems. Discussions on the initiation of such negotiations have gained momentum since the end of 1985. At the regular GATT meeting of that year, the contracting parties decided to set up a Preparatory Committee to "determine the objectives, content and modalities of the multilateral trade negotiations, as well as participation in the same". It was also pointed out that "in the work to be done by the Preparatory Committee, importance should be attached to the issue of standstill and rollback, treatment of developing countries and safeguards". The Preparatory Committee will work until July 1986 and its conclusions will be submitted to a GATT ministerial meeting to be held in Punta del Este, Uruguay, from 15 September of this year.

7. In the course of the debates, the developing countries have made various statements defining their position

in relation to the trade negotiations 1/. The Latin American Council has also expressed its position in this respect at its last two meetings 2/. These statements reaffirm the commitment of the developing countries to maintain and strengthen the multilateral trade system and to demand fulfillment of previous commitments. Emphasis has also been placed on the need to assign priority to the issues of standstill and rollback, the treatment of developing countries and safeguards. Furthermore, it has been pointed out that the negotiations should be confined to trade in goods, covering manufactured and semi-manufactured products, agricultural products and livestock, and products obtained from the development of natural resources, and should include all tariff and non-tariff barriers.

8. The positions expressed by developed countries have coincided with a number of these goals. In other areas, however, serious divergences remain. One of the most important is the persistent proposal that the multilateral safeguard clause in GATT Article XIX be amended to permit the application of discriminatory measures ("selectivity"), and in this context to legalize so-called voluntary export restraint agreements.

9. The position of some developed countries with respect to the so-called "new issues" is also a matter of serious preoccupation. These countries have proposed to incorporate within the GATT framework commitments with respect to services, intellectual property, technology and investment. These countries are seeking to draw up certain disciplines governing

1/ GATT L/5744 and L/5818.

2/ See SELA, Decisions Nos 193 and 224 of the Latin American Council.

international relations in these matters and to promote market liberalization in each of these areas. However, it is not clear what benefits the developing countries would derive from these efforts. The countries of Latin America have therefore expressed their reserve in this respect 1/.

10. Generally speaking, it can be said that the proposed negotiations will be designing the trade system to govern international trade relations for the rest of this century, and an attempt will be made to reorganize international trade relations in such fashion as to reflect the changes which have taken place in the world economy in recent years.

11. The objectives of the industrialized countries include greater access to the markets of the future, that is to say, the markets of the developing countries, which are those possessing the greatest growth potential. This is an attempt on their part to ensure the future expansion of their economies, based on new products and production techniques which would reflect their "comparative advantage". This explains, on the one hand, the emphasis placed by the industrialized countries on the need to obtain the agreement of the developing countries to hold the new round; and on the other hand, their interest in including in those negotiations the new issues of services, high technology and investments. The insistence on achieving greater "integration" of the developing countries into the international trade system, together with a certain measure of "reciprocity" on their part, is also aimed at this objective.

1/ See SELA, Caracas Declaration, paragraph 9, 7 December 1985 and Decisions Nos 153, 192 and 225 of the Latin American Council.

12. Latin American countries are therefore faced with both a challenge and an opportunity to improve and strengthen the trading system so as to make it more responsive to their trade and development needs, while identifying and resisting these forces which would convert the system into a mechanism for preserving indefinitely the current inequitable international division of labour. This will involve active collaboration with developed countries on certain issues and firmly opposing them on others. Active and co-ordinated participation in the negotiations by Latin American and other developing countries would appear to be the only viable option in pursuing their objectives and defending their interests.

II. OBJETIVES OF THE NEGOTIATIONS

Basic Principles

13. Multilateral trade negotiations would be of great significance to the Latin American countries were they to result in an international trade system responsive to their interests and development needs. In this respect, the objectives of greatest interest to the countries of the region are related to the following points:

- i. expanded and more secure access to the markets of the industrialized countries, in order to achieve export expansion and diversification;
- ii. strengthening of and respect for multilateral disciplines and non-discrimination, and,

- iii. full application of the provisions and commitments relating to differentiated and more favourable treatment for the developing countries 1/.

14. Basically, it would be a question of achieving an international trade system allowing for the continuous and timely adaptation of the developing countries' production activities and trade to the changes in world demand, particularly in the more dynamic sectors.

Structural adjustment

15. In this context, the question of structural adjustment is of great relevance. Trade liberalization and secure access to markets is required to allow Latin American countries to benefit fully from the continent's resource endowment. However, it is becoming apparent that comparative advantage in the modern world is less a matter of resource allocation than the ability to adapt production and exports to new technologies and world market demand, including through more effective integration of services and manufacturing. An international structural adjustment process in which developed countries continually move into the production of more sophisticated,

1/ The delegation of India, on behalf of the developing countries, presented to the Preparatory Committee various proposals relating to this issue, stressing the fact that the principle of differentiated and more favourable treatment is an integral and inalienable part of the General Agreement and of the MTN Codes; and pointing out the need to quantify, as far as possible, the practical application of said principle. This communication was presented on 15 April 1986.

technologically advanced products, leaving developing countries to specialize in semi-processed industrial and agricultural goods and light manufactures would imply the latter being permanently confined to their present inferior position in the international division of labour. It would seem essential, if trade is to provide a stimulus to the growth of Latin American countries, that they pursue with vigour, policies aimed at adapting to and developing new technologies and productive processes. This should be taken into account in the multilateral trade negotiations and in the changes to be introduced to the international trading system.

Other international actions

16. It is obvious, however, that not all problems of the world economy nor of the developing countries will be solved in the multilateral trade negotiations. Decisive action must be taken in other areas of critical importance for Latin America's trade, financial and economic development. Such action should include changes in the international monetary and financial system, the co-ordination of macroeconomic policies among the main industrialized countries and solutions to the problems of commodities.

17. Some of the problems arising in the trade sector stem from the poor functioning of the international monetary system. Protectionist measures have been exacerbated by the instability of exchange rates, and the macroeconomic policies of the main industrialized countries have given rise to a noteworthy increase in interest rates, with serious consequences for the Latin American countries. Foreign debt problems have led to a drastic reduction of imports in a large number of developing countries, including, obviously, Latin American

countries. This has had a negative effect on their economies and on the economies of the industrialized countries, as well as on the international trading system as a whole. The initiation of multilateral trade negotiations should, therefore, be accompanied by a firm commitment on the part of the international community to conduct parallel negotiations designed to promote changes in the functioning of the international monetary and financial system 1/.

18. Note must also be taken of the need for economic policy co-ordination among the developed countries whose impact is greatest in economic and international trade terms. In the past few months, the potential of such policy co-ordination, as well as the benefits therefrom for all countries, has been manifested. Since the September 1985 meeting of the so-called Group of 5 (United States, United Kingdom, West Germany, France and Japan) for the purpose of defining co-ordinated actions in relation to the overvaluation of the dollar and interest rates, significant progress has been made in these areas, with favourable results for Latin American economies.

1/ This possibility appears to be gaining ground. In his State of the Union address in February of this year, President Reagan suggested that it would be advisable to determine whether an international monetary conference should be held, in keeping with the earlier suggestion of Secretary of the Treasury, James Baker. This matter has also been raised in congressional debates relating to authorizations for the participation of the Executive Branch in the multilateral trade negotiations. Moreover, in non-governmental circles, negotiations in the monetary and financial areas are widely supported. See, for example, G.C. Hugfbauer and J.J. Schott, Trading for Growth: The Next Round of Trade Negotiations, Institute of International Economics, Washington, September 1985.

19. As regards commodities, it must be borne in mind that they continue to be of great importance to countries in the region. Approximately 80 percent of their exports consist of this type of goods. International trade problems regarding these products have been considerably aggravated in recent years. According to UNCTAD figures, 1985 prices for commodities exported by the developing countries were 32 percent lower than in 1980 1/. Market instability and price fluctuations for these products entail significant consequences for the trade policies of most countries in the region. If viable solutions are not found in this field, any success which may eventually be achieved in the multilateral trade negotiations may well be to no avail. In the negotiations proposed within GATT, only a few aspects of the general problem of commodities are to be dealt with, provided the agenda includes trade in agricultural products, tropical products and other products obtained from natural resources. The discussion will involve tariff and non-tariff issues, but not important matters such as prices, marketing and processing. Consequently, it would be advisable for the Latin American countries to stress the need for multilateral action in the area of commodities as a necessary complement to any actions being pursued in the context of the new round 2/.

1/ UNCTAD, Boletín Mensual de Precios de Productos Básicos, several issues.

2/ The definition of a specific proposal in this respect could emerge from the Latin American Meeting on Commodities which has been promoted by the Presidents of Peru and Uruguay. The UNCTAD, ECLAC and SELA secretariats are currently preparing several papers on the subject.

III. CONTENT OF THE NEGOTIATIONS

20. In considering the various issues to be included in the multilateral trade negotiations, it must be recalled that to date no agreement has been reached in this respect. There is a somewhat broad understanding that the negotiating agenda would cover the different points in the 1982 Work Programme. However, as far as the so-called new issues are concerned, there are still differences of opinion.

21. The following are some recommendations concerning the various issues and the way in which they should be approached. A distinction is made between issues which should be considered in the first stages of the negotiations (including the preparatory work), and the issues of greatest interest to the Latin American countries.

a) The initial stages:

Standstill

22. The commitment undertaken by the GATT contracting parties in paragraph 7 (i) of the 1982 Ministerial Declaration, to refrain from adopting or maintaining measures incompatible with the General Agreement, has not been fulfilled. Instead of such measures being reversed, they have proliferated in recent years, with particularly sharp repercussions on the trade interests of the developing countries.

23. Nevertheless, it is obvious that, for a round of multilateral trade negotiations to be conducted on a firm foundation and in order to avoid distortions in the negotiating

process, there must be an agreement by all participants that no new measures will be introduced to restrict or distort trade. It must also be made clear that it would be unacceptable for any countries to increase restrictions in order to enhance their bargaining power.

24. Consequently, the initiation of the negotiations should be preceded by an agreement on standstill, which would only allow for the adoption of measures strictly in accordance with the rules of the General Agreement. GATT should be notified of any such measures and a mechanism should be established for the follow-up and surveillance of the standstill commitment by the GATT Council 1/.

25. One of the basic objectives of the standstill commitment should be that of avoiding the application of measures in the so-called "grey zone", particularly "voluntary" agreements on the restriction of exports. Likewise, the standstill commitment should cover the non-application of graduation criteria within the framework of the General System of Preferences, with a view to obtaining concessions from the developing countries during the negotiations, as seems to be the intention of the modifications introduced into the United States system of preferences 2/.

Rollback

26. Furthermore, it would be altogether inappropriate and unacceptable for restrictions incompatible with the General

1/ This proposal reflects the key points of submissions made in this respect by a group of developing countries (among which are Argentina, Brazil, Cuba, Nicaragua and Peru) to the Preparatory Committee, on 10 April 1986.

2/ See SELA, Latin America and the United States Trade and Tariff Act, SP/CL/XI.O/DT No 10.

Agreement to remain in force during the trade negotiations. A firm commitment is therefore required from all countries currently applying such measures to eliminate them within a period to be established beforehand, which should at any rate not exceed three years. This commitment should be applied to all merchandise trade sectors, including textiles and clothing, and the elimination of these illegal measures must in no case be contingent upon the granting of concessions by the countries affected.

27. It has been suggested that the practical application of the rollback commitment should include the elimination of a certain number of measures as a pre-condition for negotiations and that the process itself might involve the following stages: 1/

- i. prior to the initiation of negotiations, the elimination of a sizeable number of the restrictive measures which would be included in the rollback commitment;
- ii. within a three-year period at most, or roughly equivalent to the first phase of the negotiations (whichever is lesser), the gradual elimination of remaining measures against developing country imports, which are incompatible with the General Agreement or are based on "waivers" granted in accordance with Article XXV;
- iii. The GATT Council or the Negotiations Committee (of the new round) would act as a surveillance mechanism and ensure the transparency of the rollback process,

1/ See SELA, Latin America and the United States Trade and Tariff Act, SP/CL/XI.O/DT No 10.

with an obligation for countries to notify their actions and for the GATT Secretariat to supply additional information.

Safeguards

28. An agreement on safeguards is essential for the adequate functioning of the international trading system, and would provide a further contractual basis for the "standstill" and "rollback" undertakings. The negotiation of an improved multilateral safeguard system has been underway for over a decade. In the meantime, the inadequacy of the present system has been demonstrated by its failure to prevent a proliferation of discriminatory protective measures, many directed against Latin American countries.

29. The main reason for the inability of GATT contracting parties to reach agreement on safeguards has been the insistence of certain developed countries that GATT Article XIX should be modified to permit the application of safeguard action on a "selective" (i.e. discriminatory) basis. This constitutes the greatest single threat to the international trading system and the possibility for Latin American countries to increase their share of world trade.

30. It is of vital interest to Latin America that a binding agreement be reached on safeguards based on the unconditional most-favoured-nation clause, which clearly eliminates any possibility of discrimination in the application of safeguard measures. The economic criterion of serious injury for the implementation of safeguard measures should be tightened, a mere threat of injury should not be acceptable, and their application should be subject to short, fixed time limits.

and multilateral surveillance. Action would normally be taken through price, not quantitative, measures.

31. The delegation of Brazil has proposed an approach consisting of the adoption of a "protocol" which would modify or complete the present requisites for the adoption of safeguard measures stipulated in Article XIX. The adoption of a protocol would offer the advantage of being binding for all contracting parties, which would not be the case were a safeguards code to be approved similar to those adopted during the MTN, which are only applicable to their signatories.

32. The Brazilian proposal, which is widely supported by the developing countries group, is based on the following points:

- i. the most-favoured-nation principle is not negotiable and must therefore govern the system;
- ii. safeguard measures must only be applied in cases of emergency or serious injury;
- iii. safeguard measures must be applied only on a temporary basis and for a short period, which should not, in principle, be extended;
- iv. safeguard measures must not be used as a substitute for structural adjustment, which should be carried out through other types of measures which do not transfer the burden of adjustment to the exporting country;
- v. the threat of injury cannot be used as a criterion for the adoption of safeguard measures. In order for this to occur, there must be effective proof of a sudden and unexpected increase in imports, and this must be the cause of the serious damage;

- vi. safeguard measures should consist of tariff increases or, in exceptional cases, tariff quotas. In this respect, more favourable treatment could be accorded to the developing countries, allowing them to apply other types of safeguard measures, such as temporary suspension of imports of the product which is causing the damage; and,
- vii. strict surveillance of the system should be kept through a Safeguards Committee.

33. Until agreement on safeguards is reached it would be illogical for Latin American countries to accept any further trade commitments in the course of multilateral negotiations, as there would be no guarantees as to the integrity of concessions made in their favour. Therefore, the agreement on safeguards must precede conclusions in other areas of the negotiations.

b) The Various Issues to be Discussed

Tariffs

34. The rounds of multilateral negotiations held up to now have brought about a substantial reduction in tariff averages. This has led to the suggestion that tariffs would not be assigned priority in the next negotiations. It must be noted, however, that both in the tariffs of the industrialized countries as a whole, and especially so in certain production sectors, there has been clear tariff escalation which particularly affects the exports of the developing countries.

35. It must also be added that the Generalized System of Preferences continues to be a mechanism applied unilaterally by the developed countries; it does not cover all goods and suffers from various limitations which restrict its effectiveness. Furthermore, in recent times, new restrictions have been incorporated into it and attempts are even being made to

use the preferential systems as an instrument for negotiation so as to obtain concessions from the developing countries which benefit from them. The GSP does not therefore provide a sufficiently stable basis to allow developing countries to use it as a dynamic mechanism for the expansion and diversification of their exports.

36. In conclusion, as far as tariffs are concerned, sufficient scope exists to continue the liberalization process. The negotiations would have to be aimed at reducing the existing tariff progression and harmonizing the various tariffs of the industrialized countries, for they show substantial differences. In addition, the perfecting of the Generalized System of Preferences would be a useful contribution in this context.

Quantitative Restriction and Other Non-tariff Measures

37. The existence of non-tariff measures seriously limits access to the markets of the developed countries. These restrictions are applied above all to sectors of special interest to Latin America. In effect, it has been estimated that 28 percent of agricultural exports are affected by non-tariff measures in the markets of the developed countries. These figures are even higher in the case of garments (77 percent); yarn and fabric (62 percent) and steel (41 percent).

38. In the case of steel, it is important to note that protectionism has increased considerably in recent years. Trade in this sector is currently governed by a price control system

and "voluntary" export restraints. Several other barriers (recourse to countervailing duties and antidumping as well as marking requirements) have been erected, in order to restrict further the steel trade. As a result, Latin American iron and steel exporters have been limited to an insignificant share of industrialized country markets, which have to a large extent been reserved, for local and developed country producers, which are the traditional exporters 1/.

39. Consequently, priority must be assigned to an effort to have non-tariff restrictions eliminated in every case where they are contrary to the principles and rules of the General Agreement and, whenever they are compatible with said principles and rules, an effort must be made to eliminate their trade-distorting effects.

40. The elimination of quantitative restrictions and other non-tariff barriers should take place within the framework of the aforementioned standstill and rollback commitments and safeguards.

Agriculture

41. For all practical purposes trade in agriculture is excluded from GATT disciplines. This is due to the following:

1/ For a broader discussion of the problems facing Latin American steel producers, see SELA, The European Community's Steel Policy and its Implications for Latin American Countries (SP/CL/XII.O/DT No 11) and SELA, Latin America and the U.S. Protectionism: The Steel Case (SP/CL/XII.O/DT No 8).

- i. special rules with respect to export subsidies and quantitative restrictions on agricultural products;
- ii. the waiver obtained by the United States in 1955 permitting that country to maintain restrictions in a wide variety of agricultural products;
- iii. the operation of the EC Common Agricultural Policy, which protects the internal price supports Community's essentially through variable levies on imports and export subsidies, the illegality of which has been difficult to establish in GATT, due to unbinding of tariffs and the weakness of the rules on agricultural export subsidies;
- iv. the continual existence of "residual" quantitative restrictions (e.g. by Japan), applied in a manner inconsistent with GATT obligations;
- v. regulations applied ostensibly for health and sanitary reasons.

42. Although efforts have been made to address the problems of trade in agriculture within the multilateral framework, not much progress has been achieved. The main results of the Tokyo Round in this respect were a price fixing arrangement on dairy products - that has been considerably weakened with the recent decision by the U.S. to leave the arrangement; an agreement to manage trade in bovine meat and the consolidation of beef quotas in the TSUS. On the other hand the Code on Subsidies retained and even enlarged the differences in disciplines between agricultural and industrial products; and the Code of Technical Barriers to Trade has yet to demonstrate its effectiveness to deal with health and sanitary regulation.

43. The Latin American countries should press for a comprehensive solution which would stabilize world trade products and provide them with improved access to markets, having such objectives as:

- i. reduction of tariffs, including tariff bindings on agricultural products to reduce the protective scope of variable levies and similar charges;
- ii. the elimination of non-tariff barriers, it being understood that the multilateral safeguard protocol mentioned above would fully apply to agricultural products and that residual quantitative restrictions would be dealt with in this context;
- iii. the elimination from GATT obligations of waivers which permit restrictions on agricultural products;
- iv. the renegotiation of the Code on Subsidies and Countervailing Duties in order to impose tighter and clearer disciplines on subsidies on agricultural products;
- v. strengthening of the application of the Code on Technical Barriers to Trade so as to eliminate those health and sanitary regulations which restrict agricultural exports from Latin America;
- vi. conversion of the Arrangement on Bovine Meat into an instrument for trade liberalization rather than trade management, with the objective of improving access to markets for Latin American exports.

44. It is advisable for Latin American countries to consult with other countries sharing similar objectives in the agricultural sector as to the possibilities of a common approach.

Tropical Products

45. As early as 1963, the GATT Contracting Parties decided to take the necessary measures to eliminate all duties and non-tariff measures on tropical products 1/. Later, developing countries were successful in having tropical products recognized as a "special and priority sector" in the Tokyo Declaration, and a separate negotiation on tropical products was held during the early stages of the Tokyo Round. The negotiations were intended to cover tariff, non-tariff barriers and other measures affecting trade in tropical products in primary form¹ or at any stage of processing.

46. At the GATT Ministerial Meeting in 1982 it was decided to hold consultations and "appropriate" negotiations aimed at liberalization of trade in tropical products, including in their processed and semi-processed forms 2/. However no significant progress has been achieved so far.

47. Although some developed countries have recently improved access for certain tropical products, basically in the framework of their GSP schemes, no further steps have been taken in the Committee on Trade and Development to proceed to the stage of "appropriate negotiations" as called for in the Ministerial Declaration. Difficulties have been encountered to agree as to what is involved in that process and more recently developed countries have expressed the view that further progress seems only possible in the broader framework of a new round of multilateral trade negotiations.

1/ See Conclusions and Resolutions adopted by the Contracting Parties at their Ministerial Meeting of May 1963. The EC (6) reserved its position regarding the general conclusions on trade in tropical products.

2/ The following products have been studied: tropical beverage items; spices, flowers, plants, etc.; certain oil seeds, vegetable oils and oil cases; tobacco, rice and tropical roots; tropical fruits and nuts; tropical wood and rubber; and jute and hard fibres.

48. Latin American countries should insist upon the priority nature of negotiations on tropical products and early implementation of their results, irrespective of results on other areas of the negotiation. The negotiations should result in free access on a non-reciprocal basis for all exports of tropical products, in both their semi-processed and processed forms, to developed markets. Where this involves erosion of preferential margins enjoyed by certain developing countries, additional compensation should be provided.

Products obtained from the exploitation of natural resources

49. In many natural resource sectors a combination of a variety of barriers, including quantitative restrictions and other non-tariff measures, tariffs and particularly tariff escalation providing high effective rates of protection, impede access to markets especially for processed resource and agricultural products. The result has been to deprive Latin American countries of the value added in such processing.

50. Regarding fishery products, in particular, the position of certain developed countries appears to be that they will make access to their markets for these products conditional upon the granting of fishery rights for their vessels in the territorial seas of the exporting countries. Latin American countries should reject categorically any such attempt to trade access to markets for the relinquishment of national sovereignty over natural resources, in the case of fisheries or any other resource. Latin American exporters of fishery products should consult with other exporting countries with a view to establishing a common position on this issue.

51. Latin American countries should seek to initiate comprehensive negotiations with respect to each of the natural resource product categories, with the objective of eliminating all barriers (both tariff and non-tariff) to their access to the markets of the developed countries.

Textiles

52. For more than twenty years trade in textiles has been governed by special rules representing a major departure from the GATT system. The current Multi-Fibre Arrangement (MFA III) will expire on July 31st this year and substantial negotiations on the future of the MFA are underway.

53. The EEC has expressed its intention to take firm steps to show more flexibility in the application of the provisions of the MFA 1/. However, this would be subject to other participating countries making parallel efforts to open up their markets as far as possible according to their level of development and their economic potential.

54. Considering developments in the U.S. Congress, the U.S. position will not be any more flexible than in the past. On the contrary, the U.S. Administration has expressed its intention to "...most aggressively renegotiate the Multifibre Arrangement (MFA) on terms no less favourable than at present" 2/. The U.S. has also announced its intention to continue to

1/ The EEC recently indicated that it will eliminate the restrictions affecting exports from Colombia, Mexico, Guatemala and Haiti. See Ei Universal, Caracas, 27 April 1986.

2/ President Reagan's comments on the occasion of his veto to Congressional legislation on textiles and apparel. (December 1985).

take vigorous actions against alleged unfair trading practices by third countries.

55. Developing country exporters of textiles and clothing emphasised at their recent meeting in Beijing that "the multi-lateral commitments by the developed countries, including those undertaken by GATT Ministers in 1982, required substantial liberalization of restraints on developing countries' exports of textiles and clothing and the phasing out of the restrictive and discriminatory regime governing their exports of these products to the developed markets" 1/.

56. Although negotiations relating to the MFA will have concluded by 31 July of this year, before the initiation of the trade negotiations in GATT, the position adopted by the developed countries with regard to the way in which international trade in textiles will be regulated in the future will give an indication as to the general attitude they will adopt in the new round. Consequently, the Latin American countries would do well to assess this behaviour at the opportune moment. It would be paradoxical to ask the developing countries to participate in a process of global liberalization, while maintaining a protectionist and discriminatory system in a sector such as textiles, which is of the utmost importance for their trade and development strategies.

Multilateral Trade Negotiations (MTN) Agreements

57. One of the main results of the Tokyo Round was the approval of various codes which interpret or regulate the

1/ Meeting of the Programme of Co-operation Among Developing Countries Exporters of Textiles and Clothing and the International Textiles and Clothing Bureau. Beijing, 4-8 March 1986.

application of certain provisions of the General Agreement and of the Agreements on Beef and Veal, Dairy Products and Civil Aviation. However, difficulties have been encountered in the functioning of these agreements.

58. In some cases, the benefits of these agreements have not been extended to all the contracting parties, including the Latin American countries, which is contradictory to the MFN treatment provided for in Article I of GATT and to the 1979 Decision which referred specifically to this subject 1/. Moreover, the developing countries, signatories to the Code of Subsidies and Countervailing Duties, have been denied their benefits until they accept the additional conditions imposed unilaterally by some industrialized countries.

59. On the other hand, the application of the Codes has in practice given rise to differences in the levels of rights and obligations between the different contracting parties in such important areas as subsidies and antidumping. In effect, the Codes are regulated and interpreted within the framework of committees of signatories, in which only the countries which have acceded to the Codes participate. Since most of the developing countries have not signed the Codes, they are excluded from these decisions, although they participate in the committees as observers.

60. Finally, the disciplines of the Codes have not succeeded in avoiding a dramatic increase in restrictive measures, particularly countervailing duties and antidumping.

1/ In accordance with the Decision of 28 November 1979 relating to Action of the Contracting Parties in relation to multilateral trade negotiations, the agreements resulting from the MTN cannot affect the rights of the GATT Contracting Parties according to Article I relating to the MFN clause. See GATT, Basic Instruments and Selected Documents, Twenty Sixth Supplement, 1980, p. 201.

61. The Codes of the Tokyo Round should be applied in accordance with Article I of GATT, and it should be compulsory that any future agreement which may be negotiated under the auspices of GATT be in accordance with this obligation of unconditional MFN treatment. It is also necessary to improve the special, differentiated treatment stipulated in the codes, in favour of the developing countries, since it is clearly insufficient. Lastly, a way must be found to avoid a new negotiation on each occasion in order for this differentiated treatment to be applied.

Settlement of Disputes

62. Many proposals have been put forward to introduce further reforms and improvements into the GATT dispute settlement mechanism. These deal with mediation, time limits, adoption of reports, surveillance, etc. Although procedural improvements to streamline the process are desirable and should be implemented within the normal GATT mechanisms, the main problem facing the dispute settlement process cannot be solved through procedural devices. The problem arises from the fact that the ultimate recourse to a contracting party "winning" a case is to withdraw concessions (i.e. retaliate) with respect to the offending country. Latin American countries have not considered this a viable response in such situations, given the imbalance in economic power when the EC, United States or Japan is involved.

63. Meaningful improvement of the dispute settlement mechanism can only be achieved through (i) greater political commitments by the major trading powers to their multilateral obligations; (ii) increased precision and binding nature of such obligations; (iii) conformity of domestic legislation .

with multilateral trade obligations and elimination of inconsistency and even conflict between domestic trade legislation and multilateral trade commitments.

64. A successful conclusion to the negotiations would imply such a result. However, in the meantime, in order to defend their rights and improve their overall negotiating credibility, Latin American countries should:

- i. initiate actions jointly under GATT Article XXIII, where relevant;
- ii. arm themselves with the necessary legislation for withdrawing trade concessions;
- iii. implement such compensatory withdrawals where justified under Article XXIII, and where the political or economic impact of such action would be meaningful.

IV. NEW ISSUES

65. In the course of the preparatory work for the GATT Ministerial Meeting of 1982 and, subsequently, during the discussions on the holding of a new round of multilateral trade negotiations, the industrialized countries, and particularly the United States, insisted on the need for said negotiations to include "new" issues such as services, investments, high technology and intellectual property. Other countries firmly opposed these initiatives, and the differences of opinion have prevented an agreement being reached as to the agenda and objectives of the negotiations. The Latin American countries have made statements, on various occasions, in relation to these proposals.

Services

66. In the initial debates on these new issues, little was known of the specific objectives pursued by the industrialized countries, particularly in relation to services. This is now clearer. The exchange of opinions on services which has taken place within the framework of GATT in the past two years, together with the presentations made by the industrialized countries in relation to their objectives in the multilateral trade negotiations, and the adoption of certain legislative instruments, such as the United States Trade and Tariffs Act, have considerably clarified the situation in this respect 1/.

67. The Permanent Secretariat of SELA has carried out various studies in this area 2/, which have shown the possible consequences for the Latin American countries of the inclusion of services in the proposed negotiations within GATT. Following are some of the consequences mentioned:

- i. the possibility that the negotiations may deal more with the specific legislations of the developing countries based on public policy considerations, or on the pursuance of development objectives (for example, those relating to the treatment of foreign investment), than with "obstacles" to trade;

1/ See SELA, Latin America and the International Trading System, op. cit., Chapter IV, pp. 95-120.

2/ See SELA, Services and the Development of Latin America, SP/RCLA/SERV/DT N°2/Rev. 1; Methodological Note for Service-Sector Studies, SP/CL/XI.O/DT N° 15; International Trade and Foreign Direct Investment in Data Services, SP/CL/XI.O/DT N° 17; Data Services in Latin America and the Caribbean, SP/CL/XI.O/DT N° 14.

- ii. the possibility that the industrialized countries may demand concessions in the service sector, in exchange for the granting or maintenance of concessions in the goods sector;
- iii. the possibility that the industrialized countries may apply trade reprisal measures against those countries whose legislations are considered to be obstacles to trade, or against investments in services; that they may "unduly" protect intellectual property rights which are destined to the autonomous development of technological capacities; or the purpose of which is to control the activities of transnational corporations.

68. In the light of these considerations, it would seem that the best alternative for the developing countries would be not to include the subject of services in the proposed multilateral trade negotiations. Nevertheless, it is to be noted that, in practice, this alternative might result in the negotiations not being held, since the industrialized countries have indicated that the inclusion of services would be a necessary requisite for their participation in said negotiations. Furthermore, the United States has indicated that if this were to happen, they would attempt to achieve their objectives in the service sector by means of "plurilateral" negotiations (with groups or interested countries), or bilateral negotiations.

69. Another alternative which has also been discussed is that of dealing with service-related issues parallel to the study of the traditional negotiation issues. This, in fact, is what has been happening in GATT. The subject of services is discussed in a special group and the discussions on the content and modalities of the new round take place in another

group (first a group of High Officials and then in the Preparatory Committee). The problem with this alternative, if a similar procedure were to be followed in the negotiations themselves, is that some of the aforementioned risks would continue to exist.

70. A third alternative would be to convene a diplomatic conference for the specific purpose of examining the "new" issues. This approach has been suggested in the course of the discussions which have taken place in GATT and has also been considered in informal meetings, apparently enjoying a certain degree of acceptance. If this alternative were to be chosen, it would be advisable to stipulate from the beginning that all interested countries could participate in a conference of this nature, that all issues of interest to the participants could be raised, and that secretariat support could be chosen bearing in mind the activities pursued by different international organizations related to the subjects that might be included in the agenda of the conference. Another advantage offered by a conference of this kind, held autonomously and independently of existing institutions and their norms, is that it would allow for a definition, in complete freedom, of the international commitments and the principles which could be applied to the issues submitted for consideration therein.

High Technology Goods

71. Trade in high technology goods was another of the "new" issues raised by the United States 1/. The latter's interest

1/ According to the United States National Sciences Board, the following would be considered as high technology goods: (i) chemical products; (ii) electrical machinery; (iii) non-electrical machinery; (iv) aviation appliances and parts; and (v) professional and scientific utensils.

in this issue stems, basically, from its feeling that there is excessive governmental interference (both in the developed countries and in some of the more advanced developing countries), in research and development activities (R and D), and in the production and trade of high technology goods. According to the United States, this situation would pose obstacles for access to the markets of these countries, would be a threat to the competitiveness of United States firms and would even jeopardize future investments in the sector, owing to the substantial amount of resources involved and the need to develop economies of scale (broad markets) for investments in the sector to be profitable.

72. From the point of view of the developing countries, the inclusion of this issue in the negotiations might well lead to the questioning of some of their national technological development policies 1/. Other issues which could be dealt with in these negotiations, such as tariff reductions, would be of greater interest to the developing countries.

Investments

73. Initially the United States proposed that the subjects to be dealt with in the GATT work programme include investment matters related to trade, which would involve those aspects of investment policies and regulations which entail consequences

1/ A precedent which should be taken into account in this respect is the existing conflict between the United States and Brazil in relation to the latter's law on informatics, currently under investigation by the United States by virtue of Section 301 of the 1974 Trade Act, which allows for the application of trade reprisals against countries which maintain policies or legislation are considered to have an effect on United States trade.

for trade. In this context, the United States mentioned the so-called "export performance requirements", which some countries, particularly the developing countries, demand of the transnational corporations which set themselves up in their territories.

74. Subsequently, in the course of discussions relating to the holding of a new round of trade negotiations, the United States expanded its objectives in this respect and expressed interest in initiating a process designed to establish a multilateral contractual framework to regulate practices which distort or restrict investment flows.

75. This United States proposal is closely related to the services issue since, as has been shown in various studies ^{1/}, services delivery, that is to say, trade in the sector, normally requires some form of investment in the place where the service is to be delivered. Consequently, an international trade regime on trade in services also implies a consideration of matters related to investments. This has, in fact, been one of the main reasons why the developing countries have been opposed to the inclusion of the service issue in the negotiations.

76. The policies and legislations of the countries of the region in relation to foreign investments, designed in terms of their development interests and objectives, would be submitted to international scrutiny, if this issue were to be included in the discussions, with consequences similar to those mentioned in the case of services. Furthermore, it must be recalled that in matters of foreign investment and related

^{1/} SELA, Services and the Development of Latin America, op. cit., and UNCTAD, Los Servicios y el Proceso de Desarrollo, TD/B/1008, 2 August 1984.

issues, the developing countries have, in the past, taken several initiatives, without having obtained the expected results up to now. One of these initiatives which is worthy of mention relates to the negotiations for drawing up codes of conduct for transnational corporations and the international transfer of technology, under the auspices of the United Nations Commission on Transnational Corporations and UNCTAD respectively. These initiatives should be taken into account in the discussions on investment issues which may be raised in GATT.

Intellectual Property

77. The discussion in GATT on different issues related to intellectual property stems from the introduction of the issue of trade in counterfeit goods in 1979, when the delegations of the United States and the EEC proposed a draft agreement on the matter. The basic objective of the draft was to get the contracting parties to adapt their laws, regulations and administrative practices, in order that the holders of intellectual property rights (particularly trademarks) be given the opportunity to confiscate at the border those products which were suspected of being counterfeit. However, due to the uncertainty surrounding the legal and institutional aspects of this issue, the draft agreement did not receive sufficient support to be adopted as a code during the Tokyo Round.

78. 1979 also witnessed the culmination in WIPO of preparations for the Diplomatic Conference for the Revision of the Paris Convention on the Protection of Intellectual Property which has not yet concluded. The action in WIPO stemmed from the initiative of the developing countries and the latter's desire for a balance between the prerogatives of the holders

of intellectual property rights (particularly patents) and their own development interests.

79. Following the 1982 GATT Ministerial Meeting, in which the subject of trade in counterfeit goods was raised once again, the contracting parties decided, in 1984, to create a Group of Experts who, after six meetings held in 1985, were unable to reach a consensus as to whether or not collective action should be taken within the framework of GATT 1/. The subject is currently under study by the Preparatory Committee which examines matters related to the multilateral trade negotiations. WIPO, in turn, plans to hold an Experts Group Meeting on the matter during the first half of 1986. This group will study the relevant provisions of the Paris Convention.

80. The Paris Convention regulates the protection of industrial property rights, including trademarks, and it basically protects them against imports of counterfeit goods through Article 9. There are other articles which converge towards the same objective. The General Agreement on the other hand, is only tangentially linked to the matter of counterfeit goods, since the main article which refers to the matter (Article XXD) stresses the fact that safeguards against the importation of these products must not imply an illegal trade obstacle. This observation is also valid for the other GATT articles quoted in support of the claim to competence of the General Agreement.

1/ This is an issue in which the United States seems to be increasingly interested. Recently, the Secretary of Commerce, Malcolm Baldrige, and the United States Trade Representative, Clayton Yeutter, announced that they would introduce a bill of law on this subject entitled "Intellectual Property Rights Improvement Act of 1986". See SELA, Trade Newsletter, No 2, March/April 1986.

81. Since the issue of trade in counterfeit goods was raised in GATT, the developing countries have stated individually, but in a co-ordinated fashion, that:

- i. They do not deny the existence of the phenomenon of trade in counterfeit goods, neither do they question its illegality.
- ii. The Paris Convention on the Protection of Industrial Property allows for the problem to be tackled both at the border and in the production site, the provisions of Article 9 of the Convention being fundamental.
- iii. Since the Paris Convention is one of the agreements administered by WIPO, that forum should promote a discussion designed to regulate the basic norms.
- iv. The connection between the General Agreement and the issue raised is purely marginal and is basically expressed in Article II, paragraph d), the purpose of which is not to protect industrial property rights, but to avoid such protection from serving as an excuse to place obstacles in the way of legitimate trade.

V. MODALITIES OF THE NEGOTIATIONS

82. Until such time as the objectives and the content of the proposed multilateral trade negotiations have been defined, it will be impossible to consider in detail the modalities which may eventually be adopted for the negotiations. Consequently, only a few general ideas are presented regarding the result of the negotiations, participation in them and the proposals of the industrialized countries relating to a greater "integration" of the developing countries into the international trade system.

Results of the Negotiations

83. Certain countries have taken the position that the negotiations should be conducted as a single operation and package, with negotiation on all subjects covered in the opening declaration proceeding in parallel fashion.

84. This approach should be rejected by Latin American countries, as it is unacceptable that unfinished business from earlier rounds and action in areas of interest to developing countries where negotiations have been proceeding, such as tropical products, should await agreement on areas where little preparatory work has been undertaken, or where fundamental differences in approach among developed countries may result in long, drawn out negotiations.

85. Consequently, it would seem advisable that any agreements reached in the negotiations, in relation to the different sectors, be put into practice immediately, without waiting for the results in other sectors. To this end, various timetables should be established for the conclusion of the negotiations on the different issues.

Participation

86. All developing countries, regardless of their status in GATT, should be permitted to participate fully and at all stages of the negotiations. Regional and international organizations such as SELA, ECLAC and UNCTAD should be given observer status.

Balance of Rights and Obligations

87. Finally, emphasis should be placed on the need for the principle of differentiated and more favourable treatment to continue supporting the participation of the developing countries, including those of Latin America, in the negotiations and in the international trade system. In this respect, the objectives set forth by the developed countries of achieving a better "balance" and greater "integration" of the developing countries in the trade system should receive due attention. It is evident that the intention of the industrialized countries in insisting that the developing countries assume a higher degree of commitment in the negotiations is to obtain greater access to the latter's markets. For the time being, this new criterion of "reciprocity" is aimed mainly at the more advanced developing countries (the so-called NICs), which are also the most attractive markets. However, if the thesis of the developed countries were to be imposed, this would imply the setting of new rules for the participation of all the developing countries in the multilateral trade system 1/.

VI. LATIN AMERICAN JOINT ACTION

88. Latin American joint action in the proposed multilateral trade negotiations should be understood to be a permanent coordination and consultation activity, both in the preparatory

1/ For a more detailed discussion of the theses advanced by the industrialized countries on this question, See SELA Latin America and the International Trading System, op.cit. pp. 113-116.

phase and throughout the whole negotiation process. There are several forums which could be mobilized. In the first place, the Latin American Council could define the general policy guidelines and carry out an annual assessment of the negotiations, bearing in mind the strategy and objectives of the region.

89. Regular co-ordination activities would have to be carried out each time it is necessary, in the course of the negotiations, in order to examine some matter or matters of particular interest to the region, or to adopt a certain stance in relation to the proposals presented by other countries. It would be advisable to set up a Latin American Committee or Co-ordination Group to help in these co-ordination activities.

90. The Permanent Secretariat of SELA could provide this Committee or Group with the same type of secretarial support as was provided during the Tokyo Round of negotiations. Such secretariat support would include carrying out the necessary studies and analyses for an adequate participation of the region in the negotiations, based on a work programme defined by the countries themselves in terms of their specific interests. ECLAC, UNCTAD, CARICOM and SIECA, among others, could collaborate in this work, and since this effort would imply substantial financial expenses, support could be requested from UNDP and other funding sources.

91. It is also important to underline the importance of Latin American co-ordination with the other developing countries. For the Tokyo round of negotiations, the Group of 77 set up a Co-ordination Committee which played an outstanding role in the whole process. In the preliminary phase, and by virtue of this action, the basic points of view of the developing

countries were reflected in the Tokyo Declaration and, throughout the negotiations, it allowed for a permanent exchange of information and the definition of joint positions. It is generally acknowledged that it was the resolute action of the developing countries at the end of the negotiations that prevented an agreement on safeguards which would have legitimized "selectivity". This action was possible, to a large extent, because the Co-ordination Committee facilitated the adoption of firm positions in this respect. It would be well, therefore, to begin to draw the attention of the developing countries to the need to set up a mechanism for co-ordination and reciprocal exchange of information.

92. The negotiations essentially reflect power relationship and these are determined by the ability to impose a particular line of conduct. The bargaining power of the developing countries depends on their unity of purpose and solidarity in action.