

INFORMATION

GENERAL AGREEMENT ON TARIFFS
AND TRADE
ACCORD GÉNÉRAL SUR LES TARIFS
DOUANIERS ET LE COMMERCE

CENTRE WILLIAM-RAPPARD, 154, RUE DE LAUSANNE, 1211 GENÈVE 21, TÉL. 022 31 0231

GATT/1395
10 September 1986

GATT MINISTERIAL SESSION - BACKGROUND NOTES

During discussions over the past two years, which have culminated in the Ministerial Session in Punta del Este, a wide range of subjects have been proposed as possible elements in a new round of multilateral trade negotiations. In order to assist journalists in covering the meeting, the attached notes attempt to outline some of the historical background.

The subjects covered are not exhaustive. Their inclusion here does not imply that they will necessarily be included in a Ministerial Declaration on a new round; equally, the absence of any subject does not imply a judgement of its importance to the round. It should also be kept in mind that only some of the issues raised in these notes need be addressed by the Ministers in Punta del Este; others will be taken up in the negotiations themselves.

These notes are not, in any way, intended to prejudice the position of individual Contracting Parties or the outcome of the Ministerial Session itself.

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MINISTERIAL MEETING, SEPTEMBER 1986, URUGUAY

STANDSTILL AND ROLLBACK

'Standstill' can be defined as an undertaking by governments not to introduce new restrictive or trade distortive measures that are inconsistent with the General Agreement or, according to one view, with arrangements negotiated under the GATT. Additionally, it could be extended to a requirement that measures taken in conformity with the General Agreement should not go beyond what is necessary to remedy situations expressly provided for in the rules and should not be introduced to improve negotiating positions.

'Rollback' or 'phase-out' refers to the gradual elimination of existing inconsistent GATT measures or their transformation to eliminate the inconsistency. It is thus the next stage on from standstill.

It is recognized that the development of protectionism since the end of the 1970s has made necessary the adoption of firm commitments in this field, going beyond simple efforts by governments to do their best to avoid the adoption or maintenance of such measures. There is also a generally accepted view that credible machinery will be necessary in order to observe and ensure the enforcement of these commitments.

Previous 'standstill' commitments

Standstill commitments were undertaken in GATT's first tariff conferences, in particular the Dillon Round (1960-62). In the Kennedy Round (1963-67), such a commitment was introduced for the benefit of the developing countries only, subject to reservations in the case of "special and compelling circumstances". In fact, there was no need for it because, in both the Kennedy and the Tokyo Round (1975-79), the negotiators had established a base year for calculating tariff reductions.

As far as tariffs are concerned, standstill commitments have lost their importance because more than 90 per cent of the customs duties of most industrialized countries are bound in the General Agreement - which in effect constitutes a permanent standstill arrangement. On the other hand, non-tariff measures restricting or disturbing trade have become the principal elements of trade policy and can more usefully be made the subject of standstill commitments.

The Ministerial Declaration of November 1982 contains, in paragraph 7(i), an individual and collective commitment by the contracting parties "to make determined efforts to ensure that trade policies and measures are consistent with GATT principles and rules and to resist protectionist pressures in the formulation and implementation of national trade policy and in proposing legislation; and also to refrain from taking or maintaining any measures inconsistent with GATT and to make determined efforts to avoid measures which would limit or distort international trade". However, the nature of this commitment seems to have been interpreted in different ways, and it has not prevented the subsequent introduction of measures which, whether or not consistent with the General Agreement, have limited or distorted trade.

Discussions in the context as a new round

In the preparations for launching new multilateral trade negotiations, standstill and rollback have been identified as a question of priority importance, along with improvement in the multilateral safeguard system and the treatment of developing countries, all these subjects being regarded by developing countries as linked. At the present time, all countries agree on the need for a firm commitment on standstill; opinions differ somewhat on the scope and modalities of any rollback commitment.

TREATMENT OF DEVELOPING COUNTRIES

Background

Special and differential treatment for developing countries derives from recognition of the difficulty of ensuring equality of rights and obligations - the basis of the General Agreement - between contracting parties at different stages of development. The principle is contained in Article XVIII and, since 1966, in Part IV of the General Agreement. It was reaffirmed in the Tokyo Round (1973-1979) by the agreement reached on an 'Enabling Clause'.

In the context of multilateral trade negotiations, this principle means that the developed countries do not expect reciprocity and do not seek to obtain concessions inconsistent with the development, financial and trade needs of developing countries. Moreover, developed countries should pay particular attention to the trading problems of developing countries and seek to accord them, whenever possible and appropriate, more favourable treatment than their developed partners.

The Enabling Clause also provides that less-developed countries expect that their capacity to make contributions or negotiate concessions will improve with the progressive development of their economies and improvement in their trade situation.

The high level of debt now burdening developing countries has given a new dimension to the need for these countries to benefit from increased access to export markets.

Previous experience in the GATT

The first tariff negotiations took place on the basis of equal treatment. Experience showed, however, that developing countries had not been able to participate effectively. It was only with the opening of the Kennedy Round (1963-67) that the developed countries indicated that they would not expect reciprocity from developing countries and that they would consider the contributions of such countries in the light of their economic, development and trade needs.

The principle of special and differential treatment in favour of developing countries was reaffirmed in the Tokyo Round (1973-79); the tropical-products sector received special and priority attention and concessions granted by the developed countries in this area were implemented ahead of schedule, from 1977. Nevertheless, at the end of both the Kennedy and the Tokyo Rounds, developing countries felt that they had not gained substantial advantages from the negotiations. The reductions in tariffs ultimately proved to be less for products having an export interest for developing countries, while the codes on non-tariff measures contain special provisions for developing countries which they consider inadequate.

The 1982 Ministerial Declaration contained a commitment by the contracting parties to ensure effective implementation of GATT rules in favour of developing countries and to accord special treatment to the least developed of them. It invites developed countries to facilitate the trade of developing countries and to lower the tariff and non-tariff barriers encountered by their exports.

In November 1985, the Contracting Parties identified definition of the treatment to be accorded developing countries in a new round of international trade negotiations as being a matter of priority importance.

SAFEGUARDS

Background

Discussions on the safeguards issue has been focussed on Article XIX - sometimes referred to as the "escape clause" - of the GATT. This article permits, in defined circumstances, emergency action to be taken against imports which are causing, or threatening to cause, serious injury to domestic producers of the products in question. The contracting parties affected by such action are able to seek compensation for lost exports through consultations with the country taking safeguard action. Where compensation cannot be agreed in this way, they are entitled to retaliate, in equivalent terms, against the trade of that country.

During the Tokyo Round, attempts were made to reach agreement on the application and interpretation of Article XIX; in particular, to resolve the long-standing difference between those contracting parties who believe that action must be taken on a non-discriminatory basis - i.e. against all suppliers - and those who believe that it should also be possible to direct such action solely at a single supplier. Other related issues have concerned the duration of safeguard action; the criteria to be used in assessing injury to the domestic producer; whether or not the government taking such action should undertake commitments concerning structural adjustment in the industry concerned; and questions relating to the transparency of the measures taken.

Current discussions in the GATT

The GATT Ministerial Declaration of 1982 envisaged a comprehensive understanding on safeguards including the issues mentioned above. Although successive chairmen of the Contracting Parties undertook consultations to achieve such an understanding in the years following the Ministerial Meeting, there was little progress, in particular because of the failure to reconcile the fundamental difference of approach on the question of the selective or non-selective use of safeguards.

Matters have also been complicated by the fact that in recent years there has been a tendency for contracting parties to take emergency actions which are not consistent with the terms of the General Agreement, in particular through discriminatory bilateral agreements providing for export restraints and other market-sharing arrangements. Around 120 arrangements of this kind are known to the GATT Secretariat, although, because both the importing and the exporting countries have agreed to them, they are seldom scrutinized or discussed in formal GATT bodies. So-called "voluntary" restraint arrangements - often also termed 'grey area' measures - are especially common in the steel, domestic electronics, automobile and machine tool sectors. What is done to deal with these problems also depends on the terms of the "rollback" commitment built into the Declaration and the action taken to implement it.

The safeguards question - and the problem of 'grey area' measures - has been regarded as one of the most pressing issues for a new trade round since, in the view of many delegations, the absence of an agreement casts doubt on the value or security of agreements negotiated in GATT. More fundamentally, it is at the root of two of the most worrying tendencies in national trade policies of recent times: the drift towards discriminatory trade measures and the apparently reduced respect for the GATT rules in general.

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AGRICULTURE

Background

At present, trade in agricultural products accounts for approximately ten per cent by value of world trade. This proportion declined slightly in 1985, owing to a decrease of two and a half per cent in agricultural exports by volume, and certainly more in terms of value. At the same time, however, agricultural production has continued to expand, with the result that the surpluses in international markets have helped to fuel tension and a form of guerilla warfare in subsidies between the major exporters.

GATT rules as regards quantitative restrictions and subsidies are more flexible for agricultural products. It is generally recognized that, in some respects, these rules lack precision and leave room for different interpretations which often hamper the definitive settlement of disputes affecting agricultural trade.

Past and current discussions in the GATT

Agriculture was somewhat neglected in earlier negotiations, although the non-tariff barrier codes adopted after the Tokyo Round apply also to agricultural products and two sectoral arrangements, covering dairy products and bovine meat trade respectively, were negotiated. In general, protection, enforced by a wide variety of measures, is greater than in the industrial sector, and the degree of binding of customs duties is less.

The 1982 Ministerial meeting called upon GATT members to bring agriculture more fully into the multilateral trading system by improving the effectiveness of GATT rules and disciplines and, through their common interpretation, to seek to improve terms of access to markets and bring export competition under greater discipline.

On the basis of these directives, the Contracting Parties adopted, in November 1984, a series of recommendations prepared by the Committee on Trade in Agriculture. These recommendations seek to promote the liberalization of trade in agriculture and to bring all measures affecting trade in agriculture under more operationally effective rules and disciplines, with particular reference to improving terms of access to markets, bringing export competition under greater discipline, reinforcing the linkages between national policies and trade measures (especially between quantitative restrictions governed by Article XI and subsidies under Article XVI). The more effective implementation of special and differential treatment for developing countries would also be an objective.

The Committee on Trade in Agriculture concentrated on three major areas:

- (1) quantitative restrictions and other measures affecting imports and exports;
- (2) subsidies affecting trade in agriculture;
- (3) sanitary and phytosanitary regulations and other technical barriers to trade.

It also drew attention to the need for ensuring fuller transparency of policies and measures affecting trade in agriculture. The Committee further agreed that account should be taken of the need for a balance of rights and obligations among GATT members as well as of the special needs of developing countries and of the specific characteristics and problems in agriculture.

The initial agreement on agriculture in the Committee has been the subject of much further detailed work which was designed to elaborate possible approaches to negotiation.

TARIFFS

Background

Tariffs have been the GATT's traditional and most successful field of activity. While there are exceptions, the tariff is, in principle, the only instrument of protection allowed by the General Agreement. Under Article II, contracting parties can "bind" their tariffs - meaning they are fixed and can only be raised if compensation is negotiated under the terms of Article XXVIII.

Although the seven rounds of trade negotiations that have been held in GATT since 1947 have considerably reduced the level of tariff protection in industrialized countries, there are still some peaks of tariff protection for sensitive goods whose export is often of interest to developing countries. The level of tariff protection for agricultural products is generally higher than for manufactures. In developing countries, not only is the level of customs duties higher than in developed countries, on average, but the degree to which such duties are bound is much less; as a result, they can be raised without engaging in negotiations for granting compensations provided by Article XXVIII.

The value of trade affected by tariff reductions resulting from the Tokyo Round amounted to some US\$300 billion. The weighted average of the duties (i.e. the level of duty weighted by the volume of trade in the product concerned) of the nine main industrial markets was brought down from 7.0 to 4.7 per cent for industrial products, a reduction of 34 per cent. In contrast, the comparative average was 35 per cent before the creation of the GATT and 15 per cent before the Dillon Round, at the end of the '50s. In general, the largest reductions affected the highest duties, with the result that the customs tariffs of the principal countries have largely been drawn closer to one another or "harmonized". On the other hand, reductions were smaller in the agricultural sector, having been made through a different negotiating procedure.

The implementation of the tariff reductions agreed on in the Tokyo Round was, in principle, to be staggered until 1 January 1987 but some developed countries have already completed all their duty reductions.

Tariff problems outstanding

Although tariff negotiations have been somewhat overshadowed by more recent interest in non-tariff measures, they are expected to retain considerable importance in a new round of negotiations. The main questions at the present time are the following:

- Should "nuisance" duties be eliminated, i.e. customs duties of less than 5 per cent, whose cost of collection is greater than the fiscal receipts they produce?
- Should a harmonizing formula of tariff reduction be adopted similar to that of the Tokyo Round? Should it also apply to agricultural products?

- Should tariff escalation, which means the application of higher duties as the degree of processing of a product increases, be tackled? Tariff escalation covers sectors of special interest to developing countries such as textiles and clothing, leather and leather products, tropical products and processed agricultural products.

- What commitment should be undertaken with respect to the binding of tariffs, which is important for their predictability?

QUANTITATIVE RESTRICTIONS AND OTHER NON-TARIFF MEASURES

Background

Article XI of the General Agreement contains a general prohibition of all forms of quantitative restrictions. It is, however, subject to exceptions. Article XII, for example, authorizes a country, under certain conditions, to restrict its imports in order to safeguard its financial and balance-of-payments position; this exception is further widened in favour of developing countries (Article XVIII:2(b)). Another exception in Article XI authorizes countries which limit their production of agricultural products to restrict also their imports of those products.

Although considerable progress has been made in removing quantitative restrictions since the immediate post-war period - when they constituted the most widespread form of protection - elimination of those remaining has proved difficult. This applies especially to trade in textiles (governed by the Multifibre Agreement), steel and certain products of interest to developing countries.

Past and current discussions in the GATT

One of the major results of the Tokyo Round was the negotiation and conclusion of "codes" on certain non-tariff measures (in particular, subsidies and countervailing measures, technical barriers to trade, and customs valuation). Negotiations on quantitative restrictions and other non-tariff measures were conducted by a procedure involving the submission of bilateral requests and offers, although the results were modest.

The 1982 Ministerial Declaration revived efforts in this sector by creating a group responsible for reviewing existing quantitative restrictions and other non-tariff measures, the grounds on which they were maintained, and their conformity with the General Agreement. The objective was to eliminate the quantitative restrictions which were not in conformity or to bring them into conformity, and to achieve progress in liberalizing those which were in conformity. Particular attention was to be given to restrictions affecting the interests of developing countries. In October 1986, the group will proceed to a multilateral review aimed at making progress in eliminating measures which are not in conformity and in liberalizing those which are.

The question of quantitative restrictions and other non-tariff measures has also been dealt with within the framework of the discussions concerning the launching of the new round of trade negotiations. Many delegations take the view that restrictions which are not in conformity with the provisions of the General Agreement cannot be the subject of mutual concessions and must be dismantled unilaterally.

Others, however, have stressed that such an approach raises a number of problems, such as an agreed definition of non-conforming measures. The precise formulation of commitments regarding the standstill and the dismantling ('rollback') of protective measures is one of the principal points to be settled in the context of the Ministerial Declaration.

TROPICAL PRODUCTS

Background

Although trade in tropical products does not represent a large percentage of world trade, it is important to developing countries which are the principal suppliers. The sector covers items like beverages (coffee, tea, cocoa), spices and essential oils, cut flowers, plants, certain oilseeds, vegetable oils, tobacco, rice and tropical roots (e.g. manioc), fruits such as bananas and fruit juices, tropical wood and rubber, jute and hard fibres. It is a sector in which the principle of more favourable treatment for developing countries can be applied, as was the case in the Tokyo Round. However, some of these products (e.g. vegetables and oilseeds,) are substitutable and can compete with products of temperate zones, while others (e.g. rice, sugar, tobacco) are grown by both developed and developing countries.

World trade in tropical products and their prices, generally, have declined appreciably in recent years, with severe consequences for the export earnings of developing countries.

Previous treatment in the GATT

In the Tokyo Round, tropical products were treated as a special and priority sector. Of 4,000 dutiable items for which requests for concessions were made by developing countries, most-favoured-nation concessions and GSP contributions were granted with respect to 2,930. Most of these concessions were implemented ahead of schedule in 1976-77. Liberalization was particularly marked for coffee and tea and their extracts, spices, cocoa and cocoa products, and miscellaneous meat and animal products. The results of the negotiations were less favourable in respect of non-tariff barriers, in particular domestic taxes on coffee, cocoa, tea and bananas.

Consultations for further liberalizing the tropical products sector were held following the November 1982 Ministerial meeting. Certain potential improvements were identified but it was not possible to make further progress towards concrete results.

During the meetings of the Preparatory Committee, it was suggested that the tropical products sector should be regarded as a special sector calling for priority attention in the forthcoming negotiations. It remains to be seen whether these negotiations should be finished and their results implemented before completion of the negotiations on other topics, whether any reciprocity will be expected for concessions granted in this sector, what products would be covered and what liberalization measures would be taken.

PROBLEMS OF TRADE IN CERTAIN NATURAL RESOURCE PRODUCTS

Background

Trade of natural resource products, at their various stages of processing, is of a great importance both for developing countries and for certain developed countries producing these products.

Canada was one of the principal promoters of a sectoral approach in the Tokyo Round, with a view to obtaining a greater degree of liberalization of trade for certain ores, metals and metal manufactures and for wood and paper products, at all stages of processing.

This approach - which was not finally adopted - was also of interest to developing countries, in particular because it would have enabled them develop their raw-material processing industries, especially leather and leather products, wood, pulp, copper, handicrafts, as well as fish and fisheries products.

The 1982 Ministerial Declaration took up the question in a new form, by providing for an examination of the trade problems in certain natural resource products within the competence of the GATT (non-ferrous metals and ores, forestry products, fish and fisheries products). The examination dealt with tariff and non-tariff barriers and other measures affecting trade. The working party concerned was able to make recommendations for greater liberalization only for some of these products, since trade in fisheries products appeared to be influenced by non-commercial factors, such as access to fishing grounds.

Treatment in a new trade round

It is proposed that the new round should seek to reduce or to eliminate barriers to trade in these products and to create a more predictable environment for trade and investment in industries based on the use of natural resources. Several questions will have to be answered, however. What would be the products involved? Should there be a sectoral approach or should this liberalization be sought within the framework of general negotiations? In that case, should special negotiating procedures be established? Should a broadening be envisaged in the field of application of the Generalized System of Preferences, which already partly covers these products? Some of these questions may, however, be left to be dealt with in the course of the negotiations and need not be the subject of decisions at Punta del Este.

CODES AND ARRANGEMENTS RESULTING FROM THE TOKYO ROUND

Background

Apart from the Code on Anti-Dumping Practices, which goes back to the Kennedy Round (1964-67), all of the agreements or "codes" on non-tariff barriers resulted from the Tokyo Round (1973-79). Most are based on provisions of the General Agreement, which they clarify or supplement. That is the case in particular for the Codes on Subsidies and Countervailing Duties (Articles VI and XVI), on Anti-Dumping Practices (Article VI), on Customs Valuation (Article VII), on Import Licensing (Article VIII) and on Technical Barriers to Trade (Article XX(b)). Furthermore, the Code on Government Procurement constitutes an extension of the GATT's activities, while the Code on Trade in Civil Aircraft represents a sectoral free-trade agreement. Lastly, two international arrangements bring trade in dairy products and bovine meat under agreed international disciplines.

Past and current discussions in the GATT

The 1982 Ministerial Declaration invited each Committee responsible for administering a Tokyo Round agreement or arrangement to examine the difficulties encountered in the implementation of its code and the reasons why a larger number of countries had not accepted it. A working party was created to carry out an overall review of the question; in addition, in view of the fact that the Code on Subsidies and Countervailing Duties had given rise to special difficulties, a Working Party has recently been established to promote discussion in this sector. The Working Party on MTN Agreements and Arrangements has not identified general obstacles or generic problems inherent in the codes; it felt that the low participation of developing countries in the codes was due to questions of economic interest and to their reluctance to accept additional obligations without clearer indication of the additional benefits which they would obtain.

In general, it is believed that the codes have had a beneficial effect on the trading system by strengthening existing disciplines, but that improvements could be made in them, such as the clarification of certain ambiguous terms in the Subsidies Code, the mutual acceptance of test results in the matter of standards for the Code on Technical Barriers, and the broadening of the sphere of application of the Code on Government Procurement.

The main question that arises is how to bring about these improvements and whether a closer relationship can be established between the codes and the GATT so as to strengthen the unity and the consistency of the GATT system. Some countries feel that these codes cannot simply be included in the GATT as, in general a two-thirds majority is required for amendment of the rules of the General Agreement. Some countries also feel that any improvements to be made in the codes should be within the competence of the Committees administering them. For others, these questions should be dealt with in multilateral trade negotiations.

As to greater participation by developing countries in the codes and arrangements, some countries feel that an overall study would be appropriate while others think that it would be more profitable for each Committee or Council to examine, case by case, the specific problems faced by developing countries in accepting the code or arrangement in question. Some of these again are issues that may be addressed in the course of the negotiations themselves.

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REVIEW OF GATT ARTICLES

During the work of the Preparatory Committee, there were proposals that various articles of the General Agreement should be reviewed with regard to their effectiveness, their relevance to trading realities today or in the context of previous GATT experience with their functioning. Some of these - for instance, Articles XI and XVI in the context of trade in agriculture - are referred to in other briefs. Of the others, those most frequently mentioned were Articles XVII, XXIV and XXVIII.

Article XVII - State trading enterprises

The General Agreement recognizes that state enterprises or enterprises benefiting from exclusive or special privileges granted by the State (such as a monopoly) might be operated so as to create serious obstacles to trade and, accordingly, lays down certain obligations regarding the operations of such enterprises, in particular in Article XVII. Some countries have suggested that, in order to ensure that these provisions and procedures work effectively, certain provisions should be clarified in the new round and improvements made to the notification and surveillance procedures designed to check whether the basic obligations are being complied with.

Article XXIV - Customs unions and free-trade areas

Article XXIV of the General Agreement recognizes the value of closer integration of national economies. It permits the conclusion of regional agreements that provide for more favourable trading terms for countries party to such agreements, and consequently the waiver, under certain conditions, of the principle of most-favoured-nation treatment.

There has recently been some concern regarding the proliferation of preferential agreements and the danger that a mosaic of different trading régimes might be substituted for the equality of treatment that should result from the application of the most-favoured-nation principle. In other words, there is a fear that the exception may become the rule and may lead to the weakening of the GATT. Moreover, some countries believe that examination by the contracting parties of such agreements and their compliance with the General Agreement takes place too late - often when the agreements are already in force. Such examinations, in any case, seldom lead to unanimous conclusions.

Article XXVIII

Article XXVIII of the General Agreement allows a country to modify or withdraw a concession previously accorded and bound in the GATT - for example, an increase in customs duty. Such modification must be preceded by negotiation with those contracting parties determined to have a principal supplying interest, and be subject to consultation with parties having a substantial interest. The purpose of these negotiations and consultations is to maintain the balance of existing rights. The concepts of principal supplier and substantial interest are the subject of explanatory notes to the General Agreement. In case of disagreement on compensatory adjustment, countries having a principal supplying interest or

a substantial interest are free to withdraw "substantially equivalent concessions" within certain time-limits. The parties may also have recourse to the dispute-settlement machinery of the General Agreement.

It appears that increased invocation of Article XXVIII is causing concern as regards the stability of tariff bindings. There is also speculation concerning the need for a better adaptation of Article XXVIII to new developments in international trade.

FUNCTIONING OF THE GATT SYSTEM*

Background

It is often said that one of the objectives of any new round of negotiations should be to improve the functioning of the GATT system and to restore its integrity and credibility. The GATT system is taken to mean, on the one hand, the system of rules of the General Agreement and of the various legal instruments negotiated within the framework of the GATT - such as the Codes and Arrangements resulting from the Tokyo Round - and, on the other, the institution intended to ensure the application of those rules.

The profound changes that have occurred in international trade relations since the creation of the organization, in particular the economic difficulties which members of the GATT have had to face, and the ways - not always consistent with the rules of the General Agreement - in which they try to resolve them, appear to have severely strained the functioning of the system.

Improvement in the functioning of the GATT as an institution is a subject of recent interest. In the Tokyo Round negotiations, the emphasis was more on improvement of the legal framework governing the conduct of trade; an Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance was reached in 1979.

The 1982 Ministerial Declaration declared the determination of the contracting parties to preserve the unity and consistency of the GATT system and to ensure that the GATT remains a forum for negotiation and consultation.

Subsequently, the functioning of the institution has been discussed in the special sessions of the Council held to review developments in the multilateral trading system, and the surveillance which it has exercised on recent trade policy measures.

In March 1985, an independent group chaired by Mr. Fritz Leutwiler, set up to consider the problems of the international trading system and to propose measures to remedy them, put forward some of the current ideas concerning improvement of the functioning of the institution. In particular, the group suggested establishing a permanent body in GATT at ministerial level.

Some specific proposals have been made in the Preparatory Committee; they are aimed at more regular ministerial involvement in the work of the GATT, as is the case in other organizations, and at strengthening the Consultative Group of Eighteen, and instructing it to examine questions relating to the functioning of the GATT system. The streamlining and strengthening of the rôle of the Secretariat, and closer co-ordination of the GATT's work with the work of other institutions such as the IMF and the World Bank, dealing with monetary and financial matters, were also proposed.

* The questions relating to the functioning of the GATT system are dealt with in three separate notes: they cover dispute settlement, notification and surveillance, and purely institutional questions, which are dealt with here.

NOTIFICATION AND SURVEILLANCE

Background

It is generally agreed that an effective notification and surveillance system is essential for the functioning of the General Agreement (see also the note prepared on that subject) and hence of the international trading system, for it helps to ensure transparency of the measures taken by governments and effective monitoring of the way in which they comply with their commitments under the General Agreement. However, since there is now a multiplicity of notification procedures through various GATT bodies, in particular the committees administering the agreements of the Tokyo Round and the Council of Representatives, it has been suggested that simpler and more efficient procedures may be desirable.

Recent developments

The Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, negotiated in the Tokyo Round as part of the Framework Agreement Governing International Trade, strengthened the existing GATT procedures in this area. In particular, it requires all contracting parties to notify the adoption of any trade measure affecting the operation of the General Agreement. It also provides for regular and systematic review of developments in the international trading system.

As to the 1982 Ministerial Declaration, it contained a commitment by the members of GATT to refrain from taking or maintaining any protectionist measures inconsistent with the GATT, and to ensure increased transparency of trade measures and the effective resolution of disputes through improvements in the operation of the pertinent procedures.

The Council was instructed by the Contracting Parties to carry out, twice a year in special sessions, a review of developments in the international trading system in the light of commitments undertaken in 1982. These reviews have brought out, in particular, the inadequacy of the notifications received by the Secretariat for the performance of its surveillance functions. Many protectionist measures - such as the so-called voluntary restraint and orderly marketing arrangements - are taken outside the framework of the GATT and consequently are not covered by notification requirements.

There is a widespread view that existing procedures regarding notification and surveillance need to be simplified and made more effective, whether in the context of the new round of negotiations or within the framework of GATT's normal activities. It is also recognized that an effective notification and surveillance mechanism is essential to monitor the implementation of any commitments that might be undertaken, in the context of the new round of multilateral trade negotiations, on standstill and the phasing out of protectionist measures (see also the note prepared on standstill and rollback).

It remains to be seen whether or not a new body will be established to carry out surveillance functions in the context of a new round and how the responsibilities of any such new body would be related to the existing work of the GATT Council.

DISPUTE SETTLEMENT

Background

Dispute settlement is a cornerstone of the GATT, underpinning the contractual framework of the General Agreement. Any contracting party can turn to GATT for equitable settlement of a case in which it believes that rights accruing to it under the General Agreement are being nullified or impaired by another contracting party. The proper functioning of dispute settlement procedures is especially necessary to protect the rights of small and developing countries with limited retaliatory power.

Consultation and dispute settlement procedures are essentially governed by Articles XXII and XXIII of the General Agreement. The former provides for consultation on any matter affecting the operation of the General Agreement. If the parties fail to arrive at a mutually satisfactory solution, the complaining party may, under Article XXIII, ask the GATT Council to establish a working party (open to all contracting parties) or a panel (composed of experts acting in their personal capacity) to study the case. The group concerned hears the arguments of the parties and transmits its conclusions to the Council, which is empowered to make recommendations to the parties.

Although dispute settlement procedures have been somewhat overworked in recent years, they have on the whole been effective. It is agreed, nevertheless, that there is room for improvement.

Improving the system

The Tokyo Round strengthened existing GATT consultation and dispute settlement procedures. In particular, it accelerated the procedures and strengthened the right of any contracting party to secure the establishment of a panel despite the objections of another party.

The 1982 Ministerial Declaration further improved dispute settlement mechanisms by strengthening the possibilities of conciliation and by establishing rules and more definite time-limits for the establishment of panels and the formulation of recommendations, as well as for their implementation.

In the context of a new round, it is recognized that there would be little meaning in negotiating further GATT obligations if there were no confidence that they would be effectively implemented. It has been suggested that the new round of negotiations should include a full and thorough review of dispute settlement procedures with a view to eliminating remaining weaknesses, such as delays in the initiation of procedures and inadequate compliance with panel recommendations. At the same time, attention has been drawn to the lack of clarity in some recommendations due to ambiguities in some of the GATT rules themselves and consequently divergent interpretations. Some countries have felt that improvement in procedures would be ineffective unless it was supported by the political will of the parties to comply with their commitments and the recommendations of panels.

TRADE IN COUNTERFEIT GOODS

Background

Trade in counterfeit goods has increased in recent years. It covers a great variety of goods, not only de luxe products (watches, perfumes, haute couture, fine leather goods), but also products that may affect public health and safety, such as pharmaceuticals, aircraft parts, etc., which are produced and sold in many countries, both developed and developing.

Counterfeiting consists of manufacturing products under a name which is not genuine. It encroaches on intellectual property rights, in particular on trademarks which are protected under the Paris Convention administered by the World Intellectual Property Organization.

Past and current discussions in the GATT

The question of trade in counterfeit goods appeared for the first time in GATT's 1982 work programme. The Ministerial Session instructed the Council to examine the question with a view to determining whether joint action in this field would be appropriate and, if so, the modalities for such action, having regard to the competence of other international organizations.

The consideration of this question was resumed by the Contracting Parties in November 1984. A group of experts met to facilitate discussions on this subject. The group failed to arrive at a unanimous opinion as to the need for multilateral action in this sector or as to the competence of GATT. Some countries feel that trade in counterfeit goods is a major problem and that the trade-related aspects of counterfeiting should be covered by a code of conduct instituting co-operation among the countries concerned, aimed at strengthening frontier controls and discouraging trade in such products, while avoiding barriers to trade in non-counterfeit goods. Such multilateral action would supplement that of other international organizations as well as legal action at the national level. Other countries consider that the competent organization in the matter is WIPO, and that GATT should concentrate its attention on more urgent problems within its sphere of competence.

The main questions that arise are the following:

- Is GATT competent to deal with the matter?
- Should this problem be tackled in a new round of trade negotiations?
- How should the competence of other organizations be taken into account?
- Would a code on counterfeiting cover only trademarks, or also other aspects of intellectual property?

TRADE IN SERVICES

Background

It is commonly accepted that the services sector is increasingly important for developed and many developing economies and that it occupies a significant and growing place in world trade. Since national data on services is still of a low quality, estimates of the actual levels of services trade cannot be made in any reliable form. Estimates of its relative importance, however, indicate big differences from country to country. The two attached tables illustrate the relative importance of services with respect to GDP and total exports of goods and services for a number of countries.

While there is no agreed definition of the services sector, the discussions which have so far taken place in the GATT on this subject have covered the following: banking, insurance, transport, telecommunications (including films and broadcasting), computer services, consulting and other business services, tourism, distribution services, health services, education services.

Discussions in the GATT

Although in a limited way the General Agreement does touch upon some of these industries - for instance, film quotas are the subject of Article IV - the work of the GATT since its inception has been almost wholly concerned with trade in goods.

Discussion on whether the GATT should take up the question of trade in services in a serious way and, perhaps, evolve some framework of rules and disciplines began in the early 1980s. The United States promoted the idea prior to the Ministerial Meeting of November 1982. The Ministers decided upon a programme of work which provided for the exchange of information on national examinations of issues in the services sector, and for a review of the results of such examination, so as to determine whether any multilateral action was appropriate and desirable.

The 1982 Ministerial decision was further elaborated by a decision of the November 1984 Session of Contracting Parties. In line with that decision, a series of meetings were held during 1985 and early 1986 to facilitate the exchange of information on issues in the services sector. This exchange was, for the most part, based upon sixteen national examinations presented by Australia, Belgium, Canada, Denmark, the European Communities, Finland, France, the Federal Republic of Germany, Italy, Japan, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom and the United States.

To assist the meetings, the Secretariat prepared an analytical summary of the information contained in the national studies. It also prepared summaries of information made available by a number of international organizations which had conducted work in the services area. The discussions in the meetings provided an opportunity for all delegations to comment on the studies and on the information provided by relevant international organizations.

The discussions on the national examinations were concentrated on four main areas. The first concerned the general characteristics of services and included consideration of the problem of defining the term itself. In addition, thought was given to the importance of services in the world and in national economies.

The second area of discussion was concerned with basic concepts relating, *inter alia*, to "traded" or "tradeable" services, and to statistical problems and methodologies. It was generally recognized that available data is inadequate and that international comparisons can therefore be misleading.

The third point of discussion concerned national and international regulations governing individual service sectors and problems identified in relation to international transactions in services. The national studies had noted many types of regulations applying to services in their respective countries and some of them emphasized the growing number of measures, usually of a regulatory nature, which acted as constraints on the development of international trade in services. Some delegations drew attention to the national objectives, often of a non-economic character, served by some regulations.

The meetings also looked at the issues raised in the studies in connection with possible multilateral action on services. At the November 1985 Session of Contracting Parties, it was decided to continue the exchange of information and that Contracting Parties would consider recommendations at their next Session - in fact, the Ministerial Meeting.

Although, by the Summer of 1986, a considerable amount of detailed examination of the various studies had taken place, there remained major differences between the Contracting Parties. Some believed that the GATT should now move on to a new, more concrete, phase of work with the clear objective of creating general and particular trade rules for services. Some were unconvinced but prepared to take the process further while others felt that the exchange of information should continue as before.

Some countries continued to feel strongly that the GATT had other important priorities apart from the issue of services, in particular because the GATT rules on trade in goods were being so severely abused. These countries have contended that the GATT is not the competent international institution to deal with trade in services. In the context of a new round, some countries were concerned that there might be a 'trade-off' between concessions affecting trade in goods for concessions - or progress - in a negotiation affecting trade in services.

Some countries have made clear that the idea of a new trade round only makes sense to them if the subject of trade in services is part of it: especially so, given the growing economic importance of the sector and the present lack of internationally agreed trade rules and disciplines. Equally, they do not accept the arguments against the GATT's competence to deal with trade in services.

In these circumstances, it has not proved possible for a set of agreed recommendations to be devised for transmission to the Ministerial Meeting. Instead, Ambassador Jaramillo of Colombia, who has chaired the Services meetings, will make a report to the Meeting on his own responsibility and it will be for Ministers to decide if, or how, services should be treated in a new trade round. It should be noted that the matter was also raised in the Preparatory Committee and proposals for negotiations in this area have been put forward by some delegations, in the context of the documentation transmitted by the Preparatory Committee to the Ministerial Meeting.

TABLE A38. - GDP AND TRADE IN GOODS AND SERVICES^a IN 1973 AND 1984

(Shares and average annual rate of growth in percentages)

	Share in GDP								Growth between 1973 and 1984					
	EXPORTS of:				IMPORTS of:				GDP	EXPORTS of:		IMPORTS of:		
	Goods		Services		Goods		Services			Goods	Services	Goods	Services	
	1973	1984	1973	1984	1973	1984	1973	1984						
United States	5.4	6.1	2.9	3.9	5.4	9.1	2.2	3.4	9.7	10.8	12.5	15.0	14.3	
Canada	20.9	26.4	3.4	3.7	18.7	21.5	6.1	8.3	9.4	11.7	10.1	10.8	12.5	
Japan	8.7	13.7	2.0	3.4	7.9	10.1	2.9	4.1	10.4	15.0	15.7	12.9	13.8	
Belgium-Luxembourg	36.7	51.0	13.1	34.4	35.3	52.0	11.5	32.3	5.9	9.1	15.6	9.7	16.4	
France	14.3	18.8	4.9	11.4	14.0	19.7	4.7	9.9	6.3	9.0	14.7	9.6	13.9	
Germany, Fed. Rep.	18.8	26.7	4.8	7.6	14.5	23.0	6.1	8.5	5.4	8.8	9.9	9.9	8.5	
Italy	14.3	20.9	6.4	7.6	16.7	22.7	5.1	6.9	7.7	11.5	9.3	10.7	10.7	
Netherlands	36.3	49.0	14.5	19.4	34.6	44.5	12.0	19.1	6.7	9.6	9.6	9.2	11.3	
Spain	7.4	14.3	7.3	8.7	12.2	16.8	3.5	5.4	7.7	14.3	9.4	10.9	12.1	
United Kingdom	16.2	22.0	10.9	11.4	19.7	23.3	8.3	9.1	8.1	11.2	8.5	9.8	9.1	
Austria	18.7	24.1	11.9	17.3	24.8	29.6	6.8	12.9	7.9	10.4	11.7	9.6	14.3	
Switzerland	23.4	39.5	12.2	20.4	27.7	42.3	5.6	12.2	7.5	12.7	12.6	11.7	15.4	
Brazil	7.7	12.9	1.2	1.5	7.9	6.6	3.9	7.8	9.3	14.5	11.8	7.6	16.4	
Hong Kong	56.7	55.3	8.5	17.6	65.7	56.1	6.1	11.9	15.2	15.0	23.8	13.6	22.4	
Korea, Rep. of	24.3	31.7	6.3	8.8	27.9	32.9	5.7	9.8	17.9	20.8	21.6	19.7	23.8	
Mexico	3.8	13.7	4.9	4.7	6.7	6.4	5.1	10.0	11.1	24.8	10.7	10.7	18.5	
Singapore	42.8	86.3	38.1	51.6	92.8	(120)	20.2	31.9	14.3	22.0	17.5	17.2	19.1	
Taiwan	42.1	52.5	6.3	7.8	34.6	36.9	7.9	11.1	16.5	18.9	18.9	17.2	20.3	

^aIn nominal terms; services include income receipts and payments.

Sources: IMF, Balance of Payment Statistics; International Financial Statistics and national statistics.

TABLE A39. - SHARE OF SERVICES IN TOTAL EXPORTS OF GOODS AND SERVICES^a
(Percentage shares in 1980)

10	10 to 15	15 to 20	20 to 25	25 to 30	30 to 40	40 to 50	More than 50
Algeria	6 Bahrain	13 Australia	17 Cameroon	21 Argentina	28 Belgium-Lux.	38 Antigua & Barbuda	44 Bahamas
0 Chad	11 Bolivia	11 Costa Rica	18 Germany, Fed. Rep.	21 Bangladesh	26 Colombia	32 Austria	45 Barbados
9 Cuba	9 Brazil	13 El Salvador	15 Iceland	24 Botswana	27 Denmark	31 Egypt	41 Cyprus
Qyena	5 Burma	13 Finland	19 Ireland	21 Burkina Faso	29 Dominica	39 Fiji	43 Greece
Indonesia	2 Canada	13 Guatemala	17 Korea	24 Central Afr. Rep.	28 France	37 Israel	41 Grenada
Liberia	2 China	15 Hong Kong	18 Kuwait	24 Chile	25 Haiti	30 Paraguay	42 Jordan
Libyan Arab Jamah.	6 Congo	11 Ivory Coast	17 Mali	22 Dominican Rep.	27 India	- Senegal	46 Maldives
Nigeria	7 Ecuador	14 Japan	20 Pakistan	22 Ethiopia	28 Jamaica	32 St. Lucia	48 Malta
Oman	3 Gabon	14 Madagascar	16 Sao Tomé & Princ.	23 Gambia	27 Kenya	35 St. Vincent	47 Nepal
Papua New Guinea	9 Honduras	12 Nether. Antilles	17 Sierra Leone	21 Italy	27 Mexico	39 Western Samoa	41 Panama
Reunion	9 Hungary	13 New Zealand	19 Sri Lanka	21 Mauritania	27 Norway	34	Lesotho
Uganda	3 Nicaragua	12 Peru	19 Sweden	22 Mauritius	25 Portugal	33	Seychelles
Zaire	7 Niger	10 Suriname	19 Thailand	21 Morocco	26 Somalia	35	Tonga
Zambia	9 Malaysia	13 Swaziland	17 Trinidad & Tobago	24 Netherlands	30 Spain	39	Yemen Arab Rep.
	Philippines	13 Syrian Arab. Rep.	18 Turkey	21 Rwanda	27 Sudan	33	Yemen, People's 66
	Solomon Isl.	14 Togo	17	St. Christopher	27 Switzerland	30	Dem. Rep. of
	South Africa	12 Zimbabwe	16	Singapore	27 Tunisia	40	
	Saudi Arabia	10		Zanzibar	29 United Kingdom	34	
	Taiwan	14			United States	35	
	Venezuela	14			Uruguay	34	
					Yugoslavia	34	

^aIncluding income receipts.

Sources: IMF, Balance of Payment Statistics; and International Financial Statistics; and national statistics.