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NEGOTIATIONS INTENSIFY AS GROUPS GET DOWN TO DETAILED DRAFTING

With less than three months to go before the Brussels Ministerial Meeting, the negotiating process intensified at the end of August and during September. Many of the groups moved into informal sessions aimed at achieving progress in the draft agreements presented by chairmen to the July meeting of the Trade Negotiations Committee. An average of eight meetings a day have been taking place in GATT headquarters in Geneva. The intensity of work in Geneva and the efforts to develop new negotiating positions in capitals have served to demonstrate the continued high-level commitment to achieving a full and ambitious package of Uruguay Round results in December.

Among the meetings which have taken place since the previous bulletin are the following:

Agriculture ... 27-29 August

Two main questions were discussed: GATT rules and disciplines for agriculture and approaches to be followed by participants in tabling their offers. However, it appeared that participants were not in a position to enter into substantive negotiation on rules and disciplines before having an idea of what their partners intended to put in their offers and therefore, that only preliminary discussion on this topic was possible at this stage.

The Chairman emphasized that, given the time constraints, the Group had to discuss in parallel what improvements in the GATT rules and disciplines regarding agriculture should be elaborated in the field of internal support, market access and export competition, and how they should be included in specific commitments. As for internal support, a wide range of positions were expressed, both on the nature

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of the negotiating approach to be followed and on the sequence of time and the priority to be given to solving the problems. Certain countries favoured a legal approach based on the elaboration of rules regarding the use of an Aggregate Measure of Support, before undertaking specific commitments; others were of the opinion that priority should be given to specific commitments. In other words, the former thought that modification of Article XVI:1, which regulates the use of internal subsidies, should come first, and that new legal instruments should be elaborated to cover the special nature of the concessions to be given on reducing internal support. The latter considered that exchange of concessions could be conducted on the basis of Article II.

To illustrate their positions, the EC communicated to the Group a draft Code on the interpretation of Articles XVI and XXIII of the General Agreement with regard to agricultural support, the United States a paper on rules and disciplines to be followed for an aggregate measure of support, and Switzerland a more general proposal on rules governing agricultural trade.

In the field of market access, specific safeguards, food security and possible modification of Article XI were discussed. According to a working paper prepared by the Secretariat, specific safeguards for agriculture could be seen as the logical counterpart of an in-depth and overall reform of trade in agriculture; they would be linked to tariffication and therefore be of a transitional nature. They could be based either on an increase in volume or a decrease in prices. Exporting countries expressed in general more interest in a safeguard based on volume, and importing countries in one based on prices. The relationship with "normal" safeguards under Article XIX was also raised.

As for food security, Japan presented a paper in which it further elaborated its position, calling in particular for the establishment of an Article XXI(bis) permitting border adjustments for food security reasons. This was considered by some countries as a step backward. Japan also asked for the review of Article XI on quantitative restrictions and Article XX(g) on measures taken for conservation of natural resources.

Canada stressed the need to improve Article XI in order to make it more operational and increase the discipline on its use. Some other parties thought that Canada's concerns could be answered in the framework of tariffication, with tariff quotas being established for certain products.

In the field of export competition, it was noted that one of the main problems to solve was the definition of export subsidies and subsidies affecting trade. Developing countries stressed the need to have special and differential treatment.

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As for approaches to be followed in tabling offers, the Chairman reminded participants that some important points, such as the choice of the techniques of reduction and the depth of the cuts, were still not agreed on. He urged participants to reach a degree of consensus on these items by the beginning of October.

GATT Articles ... 3-5 September

The United States tabled a proposal on Article XXXV - which deals with the non-application of the General Agreement between particular contracting Parties - according to which it would be possible for a contracting party or an acceding country to invoke the non-application of the GATT vis-à-vis the other if the outcome of discussions between them was unsatisfactory. Rather than an amendment of the Article, the proposal suggested a practical understanding that discussions between a contracting party and an acceding country prior to or pursuant to the establishment of a GATT schedule of concessions by the latter should not be considered as "tariff negotiations". It was argued that this interpretation would not impose an additional burden on delegations and would remove an impediment to negotiations on tariffs in the context of accession. Preliminary reactions to the proposal were generally positive and some participants indicated their intention to discuss the proposal more fully at the next meeting of the Group.

Against the background of communications made in recent meetings an informal discussion of several provisions of Article XXIV took place. A draft decision on this Article will provide a basis for further discussions.

Referring to its proposal on the Balance-of-Payments provisions the United States said that its intention was not, overtly or covertly, to abolish or otherwise change Article XVIII:B. The right of developing countries with serious balance-of-payments problems to impose temporary trade restrictions, including quantitative restrictions, was not in dispute. The intention was to seek refinements of existing rules which would discourage use of this exemption for purposes other than balance-of-payments adjustment and promote reliance on the least disruptive measures available. It was accepted that flexibility must be preserved both in terms of the types of measures which could be applied and their duration.

The representative of the European Communities said that his delegation had made a proposal at the beginning of the year which was still on the table. His delegation was basing its approach on the 1979 Declaration; it should not be terminated, but areas capable of improvement and extension should be adjusted. He saw considerable importance in the improvement of the procedures in the Balance-of-Payments Committee. The representative of Canada emphasised that experience accumulated over the past ten years had shown that there were ample grounds for improvement of the 1979 Declaration, and that his delegation was prepared to be flexible

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in approaching these matters. The Chairman exhorted delegations to consult among themselves and announced that he would himself carry out extensive consultations.

Trade-Related Aspects of Intellectual Property Rights ... 10 and 21 September

In the course of a long session of informal consultations, participants again discussed the whole of the draft agreement submitted by the Group's Chairman to the TNC in July. In his report to the Negotiating Group on 21 September, the Chairman said that he was relatively satisfied and described the consultations as fruitful; they had allowed some progress to be made, even if there had been no significant breakthroughs on the major issues of substance. He drew the attention of participants to the short amount of time remaining, and said that the coming session, which was to begin on 8 October at the official level and continue at the informal level until 19 October, would be very important. For the purpose, the Chairman had drawn up under his own responsibility a new draft, dated 1 October, indicating the areas of agreement and divergence, which would serve as a basis for the final phase of negotiations.

Several developing countries, while welcoming the transparency and the manner in which the consultations had been held, expressed concern at certain aspects: the tendency to treat intellectual property as a purely commercial issue, without taking account of aspects relating to the transfer of technology, the insufficient attention paid to the national policy objectives of developing countries, and the widening of the mandate to commercial secrets. They recalled that developing countries should not be required to make concessions that were inconsistent with their development needs.

Trade Related Investment Measures ... 10 and 14 September

The Chairman conducted a series of informal consultations on the main substantive issues which had been highlighted by the Chairman of the TNC in July. These included: present obligations of contracting parties; development considerations; and what new disciplines should apply to TRIMS that cannot be related to GATT Articles.

Safeguards ... 11 September

A short formal meeting followed several days of detailed informal consultations on the chairman's current draft of a comprehensive safeguards agreement. Following those consultations, the chairman announced that he would present a further draft narrowing the areas of divergence. The new draft would be the subject of negotiations at the beginning of October and would then be submitted, together with an assessment of remaining difficulties, to the TNC.

The major point of difference continued to be the question of selectivity. In that context, the European Community made a statement

to the formal session in which it affirmed that it was not seeking selectivity, which was a cornerstone of the GATT, but rather a limited specific option which would be neither arbitrary nor discriminatory and would be based on an objective assessment of injury. In the EC's view, to take action against all suppliers in every case can be disproportionate and exaggerated given the objective. Hence governments had reverted to grey-area measures and taken a large proportion of international trade outside the GATT. The EC was proposing the progressive renunciation of all existing grey-area measures, a comprehensive safeguards agreement applied, generally, on a non-selective basis but with a specific, limited option. The Community's position was widely criticized with many delegations unable to detect the difference between selectivity and the proposal for a "specific, limited option". There was doubt that such an option could ever be non-discriminatory.

Dispute Settlement ... 12 September

The Group started a series of informal meetings to intensify detailed discussion and legal drafting of key issues, which had been highlighted in the Chairman's profile to the TNC in July, and which included: interim review stage; consideration of panel reports; appellate review; implementation; compensation and retaliation.

MTN Agreements and Arrangements ... 17 and 18 September

Following the review held on 17 September, informal consultations are continuing on the Codes on technical barriers to trade, import licensing and customs valuation, as well as the Anti-dumping Code. The Negotiating Group will meet formally on 18 and 19 October to adopt the results of the informal negotiations and transmit them to the Group of Negotiations on Goods.

Textiles and Clothing ... 17, 24 and 27 September

During two weeks of informal consultations with delegations, the Chairman explored the possibility of reaching agreement on three of the fundamental issues facing the Group: the implementation of a phase-out programme based on the present multi-fibre arrangement (MFA); a transitional safeguard mechanism; and strengthened GATT rules and disciplines and verification mechanism. At the end of consultations, he said there had been a positive and informative exchange of views which should provide an impetus to the work of the Group as it enters the critical and final stage of its work.

Participants adopted an intensive five-week programme for the negotiations, comprising both formal and informal negotiations, ending on 16 November - a date which the Chairman stressed was the firm deadline for finalizing the work of the Group. The Chairman urged that delegations with full negotiating authority be present in Geneva during the whole period.

Tariffs ... 19 September

The Chairman reported that new submissions from Morocco, South Africa, Sri Lanka and Romania had raised the number of tariff proposals or indicative offers to 45 (the EC counting as one); 24 participants have presented request lists. He reminded participants that the TNC Chairman in July had set 15 October as the deadline for the tabling of tariff offers.

Four countries announced they were substantially improving their offers with the final shape dependent on the outcome of the Round. Thailand said it was considering tariff reductions and bindings on more than 1,000 tariff lines, including agricultural and textile products; tariff rates exceeding 40 per cent would be reduced and bound to 40 per cent. Malaysia said it was adding 600 items to the list of products it had offered for binding at ceiling levels, thus expanding coverage of its proposal to 25 per cent of its total imports. Norway said it was expanding the scope of its offer to include additional sectors, in particular, fish and fishery products. Hong Kong said it was doubling the coverage of its offer (binding at zero tariffs) to about a quarter of its total imports.

The United States announced it would table a comprehensive offer on 15 October which would cover all sectors, including agriculture and textile products. It urged an intensification in the bilateral negotiations, but said it would engage in this exercise only up to 15 November.

Before this formal meeting, participants which had tabled tariff proposals continued the review and assessment of the offers on the table, particularly in the light of the Montreal target of a one-third cut in tariff levels.

Non-Tariff Measures ... 19 September

It was noted that the drafting groups on preshipment inspection and rules of origin had resumed work, and that the TNC Chairman had called for these groups to establish "compromise solutions" by 15 October. On the request-offer negotiations, some 34 participants (the EC counting as one) had submitted request lists, and six participants had tabled offers.

The United States tabled a proposal aimed at ensuring that concessions made to reduce or eliminate non-tariff measures were not subsequently nullified or impaired. Under the US proposal, concessions made on non-tariff measures would be incorporated into the tariff schedules of each GATT member. As had been done in the past for tariff negotiations, a Protocol on NTMs would be drawn up which would, in effect, guarantee that concessions would not be subsequently diluted by the imposition of other measures. Contracting parties compelled to impose NTMs on products covered by concessions would notify their intention to a new Market Access Committee prior to

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imposition of the measures and would undertake to consult with contracting parties on this measure.

In the course of the preliminary discussion which was held on the proposal, many participants welcomed it. At the end of the discussion, the Group agreed that this proposal, together with proposals on the same subject submitted earlier by Uruguay and Australia, could continue to be examined at the joint meetings of the four market access groups, the first of which was scheduled for 21 September.

Natural Resource-Based Products ... 20 September

Under the negotiating procedures adopted in March, 29 participants have so far submitted proposals, submissions or notifications on natural resource-based products. Of the total, seven requests and three offers were addressed directly to the Negotiating Group. Other submissions were notifications of offers or requests tabled in the Tariff and Non-Tariff Groups.

In a brief meeting, a number of participants expressed frustration over what they believed were meagre results so far in the negotiations. Australia and the European Community proposed that the Group undertake a review and assessment of offers on natural resource-based products. This was opposed by some participants who considered that such a review would be nonproductive. The Group agreed to revert to the proposal at the joint meeting of the four market-access groups (see below).

Joint Meeting: Tariffs, Non-Tariff Measures, Natural Resource-Based Products and Tropical Products ... 21 September

The Chairman of the Trade Negotiations Committee suggested in July that these market-access groups hold joint meetings in order "to reduce uncertainties as to where offers should be discussed".

At this first joint meeting of the four groups, many delegations expressed concern about the overall progress in the market-access negotiations. Noting that time was running short, they urged the acceleration of substantive bilateral negotiations. (Note: the week marked the start of the third round of bilateral negotiations conducted by high-level representatives in Geneva.)

The European Community observed that the value of the tariff proposals on the table varied widely, and stressed that offers of binding without substantial tariff reductions would not be sufficient. It also expressed concern about the exclusion of whole sectors, in particular textile products, in some of the offers. On natural resource-based products, it invited exporting countries to negotiate trade liberalization of both imports and exports. On tropical products, it recalled that it had tabled a substantial offer which it said was conditional on contributions from other participants.

Several delegations said the the differences among tariff offers simply reflected the different development levels of participants.

The United States stressed that in the face of the limited time remaining in the Round and the need to consider thousands of tariff lines, participants should intensify bilateral negotiations on market access. It noted that it had suggested a timetable in the Tariffs Group (see above), and suggested that the final period of bilateral negotiations take place from 15 October to 15 November. On the other hand, several participants said the the slow progress in the market-access negotiations was due to the persistent uncertainty as to product coverage. The use of request-offer procedures in the absence of an agreement on a systematic approach such as formula-cutting for tariffs was also mentioned among the causes of slow progress necessitated by the failure of the Tariffs Group to agree on the use of a formula that would cut duties across the board.

The joint meeting provided an opportunity for delegations to announce trade-liberalization offers. Japan said it would be submitting a proposal on mutual elimination of tariffs which contained an offer of duty-free treatment of some 2,000 tariff lines. Indonesia announced that in May, it had reduced tariffs on some 2,300 items.

The Nordic countries and Canada suggested that to provide more time for bilateral talks, the four groups should consider holding only joint meetings. On the other hand, several delegations emphasized the importance of continuing with separate meetings in the light of the individual mandates of the groups.

Participants agreed to hold an informal joint meeting in early November involving countries which have tabled proposals on market-access. They also agreed to Australia's proposal that the Secretariat undertake an assessment of proposals related to natural resource-based products.

Tropical Products ... 24 September

The Group noted that 48 participants had submitted proposals either as separate proposals to this Group or as part of their general offers on tariffs. Requests for improvements of offers had been notified to the Secretariat by Australia, ASEAN countries, China, Colombia, Costa Rica, Cote d'Ivoire, India, Mexico, Sri Lanka and Uruguay.

In his review of progress achieved so far in the negotiations, the Chairman observed that despite the increase in the number of proposals tabled there was need to improve their quality. He urged delegations to accelerate preparations for tabling specific offers as early as possible and not later than 15 October. He recalled that at the joint meeting of the four market-access groups held on 21 September it had been agreed that an informal joint meeting of participants which had submitted proposals would be held in the first

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week of November in order to assess the offers to be tabled by 15 October.

The Chairman also reminded delegations that according to the Mid-Term Review decision the group was required to conduct an evaluation of the results before the formal completion of negotiations. He proposed that the group conduct this evaluation at a date to be set after the joint meeting.

Functioning of the GATT System ... 26 September

The Group continued its discussions of the issues which had been highlighted by the Chairman of the TNC in July: the proposed small ministerial group; the future role of GATT and its Secretariat; and greater coherence in global economic policy-making, including the strengthening of GATT's relationship with the IMF and the World Bank. In addition, the Group reviewed the elements necessary for it to fulfil its mandate with respect to enhancing surveillance in GATT.

The Group considered that it was premature to discuss the issue of a multilateral trade organization until a clearer picture had emerged of developments in the negotiations as a whole.

Subsidies and Countervailing Measures ... 27 September

The Chairman presented a revised draft agreement on subsidies and countervailing measures - the result of intensive consultations he had conducted with participants since May. The new text contained new provisions relating to the establishment of a Committee on Subsidies and Countervailing Measures, detailed notification procedures and surveillance, and an illustrative list of export subsidies. Still to be added were sections on special and differential treatment for developing countries, transitional arrangements, dispute settlement and final provisions.

Many delegations, while reiterating their respective reservations, welcomed the greater clarity and precision of the new text. They described it as balanced and a good basis for the final phase of the negotiations.

During the meeting, the United States proposed adding to the prohibited category in the Chairman's text the following practices: grants to cover operating losses; direct forgiveness of debt; loans at subsidized interest rates; provision of equity capital where the expected rate of return is negative; subsidized loan guarantee programmes; and subsidies contingent upon production performance.

Other delegations questioned the substance and timing of the US proposal. Some participants reiterated their opposition to the prohibition of domestic subsidies, stressing the importance of these subsidies in promoting development. They suggested that the Group focus instead on trade-distortive effects of subsidies. Many

participants doubted the utility of tabling new proposals at this late stage of the negotiations. They urged that work continue strictly within the framework of the Chairman's text.

The Chairman said his revised text would be the subject of continuing informal consultations, and that the next formal meeting of the Group, provisionally scheduled for 8 November, would be its final session.

Services ... 29-31 August

This meeting gave participants a further chance to discuss in some detail the draft framework text first presented by the Chairman in July. At the same time, the Chairman tabled a number of additional provisions not previously included. These covered institutional aspects - including dispute settlement and enforcement, the establishment of a Council to oversee the operation of the framework and the provision of technical assistance to developing countries by the secretariat and by developed parties to the agreement - and a number of final provisions. Among the latter, the Chairman outlined a non-application clause (circumstances in which the agreement would not apply between two parties) and an article permitting the denial of benefits to services or service providers where they originated from a country outside the agreement (recognising that negotiations would be needed to determine rules of origin for traded services).

The GNS also agreed a procedural arrangement for the continuation of work on individual service sectors which has, in recent months been undertaken by a series of working groups. While recognising that sector-specific negotiation was difficult while lack of agreement on certain issues in the main framework persisted, the sectoral working groups were asked to complete their work by 20 October. By that time they should have recommended whether a specific annotation or annex is or is not needed for their sectors and, if so, what are the issues or provisions that should be covered. From the second half of October, an ad hoc and open-ended working group consisting of GNS negotiators and sectoral experts would meet to finalize draft texts of annexes or annotations where they appear necessary.

Services - Audio-visual sector working group ... 27 and 28 August

The first meeting of this working group discussed the economic, technological and cultural importance of the sector and focused on the question of whether a cultural exception - to the general framework or for the sector - would be necessary.

While no attempt was made to define the sector, several delegations indicated that they regarded it as comprising the film, video and television industries, including production, distribution and diffusion. Some spoke of the important technological spin-offs from the sector, including cable and satellite broadcasting techniques and other aspects of telecommunications. It was suggested that the

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sector, especially television and radio, provided an important public service function and that for many countries the protection or promotion of indigenous languages, history and heritage depended heavily on national audio-visual output.

Many delegates noted that the idea of a cultural exception had been discussed in the context of the draft general framework on services. If accepted, this would permit governments to enact measures, which might otherwise be contrary to other provisions, in order to protect cultural values. While many participants have supported the idea of a general cultural exception, it is also possible that a specific annex might be considered at a future meeting to deal with the particular circumstances of the audio-visual sector.

Some delegations considered that neither a general cultural exception nor an audio-visual annex was warranted. The United States, for instance, made clear its view that cultural identity was difficult to define given the tendency towards multi-national film and TV productions. This was not a view supported by other countries with major film industries, like the EC, India, Egypt and Canada. Some discussion was devoted to Article IV of the GATT which covers the administration of screen quotas for cinema films of national origin.

Services - Other sectoral working groups

The sectoral working groups which had been established before the summer met for their second or third meetings in September. Much of their discussion was conducted informally and in the light of the 20 October deadline imposed by the GNS.

The Working Group on Labour Mobility met on 3 and 4 September. Central to the discussion was the question of whether labour mobility could be dealt with adequately in the general framework, whether an annex or annotation might be necessary or whether references in national schedules would be sufficient. Definitional issues included the meaning of the term "essential personnel", the distinction between temporary movement of personnel and immigration issues and the extent to which categories of labour could be distinguished. Some participants saw the question of labour mobility in the context of factors of production and pointed to the need to ensure some symmetry of treatment among all such factors, i.e. movement of labour and capital. There was also discussion of the link between movement of personnel and commercial presence.

The Working Group on Construction and Engineering Services met on 4 and 5 September. Discussion covered a number of market access issues including the nature of commitments in this sector, the role of performance bonds, bidding practices and construction and engineering service packages. The group discussed the relevance of labour mobility, government procurement and subsidies in the sector. It also covered transparency obligations, general regulatory matters and the application of other general framework principles to the sector.

The Working Group on Telecommunications, meeting on 10-12 September, looked in detail at the applicability of provisions in the general services framework as presented by the GNS chairman in July. Given its two previous meetings, the Group already had before it a large selection of proposals and views. Attention was also paid to the potential relationship between the services framework, a possible telecommunications annex and other international arrangements and disciplines.

The Financial Services Working Group held its third meeting on 13 and 14 September, continuing the detailed work related to the specificities of this sector which includes the insurance industry. In particular, the Group looked at a submission presented by Malaysia on behalf of members of the South East Asia Central Banking and Monetary Authorities (SEACEN). This group of countries stated that its members either already had a large foreign financial services presence or had instituted liberalization programmes as part of efforts to achieve steady economic growth. SEACEN was in favour of a financial services annotation as an integral part of the services framework. However, the process of financial liberalization would have to take account of the over-riding importance of prudential considerations, monetary policies and national development objectives. The working group also looked in some detail at the nature of possible balance-of-payments provisions. It was widely noted that such provisions in the GATT existed on the basis of the need for exceptions to the fundamental prohibition of quantitative restrictions to trade in goods. There was no real equivalent to quantitative restrictions affecting trade in services, except perhaps in the context of cross-border provision of services. Nevertheless, some participants felt there was a significant requirement for a BOP exception related especially to financial services.

The Working Groups on Maritime, Land and Air Transport Services met for the second time on 24-28 September. Discussion followed the two main guidelines suggested by the Chairman of the GNS on 30 August, namely the determination of whether a specific annotation/annex was necessary in the sector and, if so, the identification of issues/provisions to be annotated and possibly the nature and content of such an annotation/annex. For all three transport sectors, there was considerable agreement on the need for an annex, though perceptions varied widely as to its function. In the groups on maritime and air transport, the tendency could be discerned on the part of a few delegations towards the inclusion in the annex of derogations with respect to the application of certain general provisions appearing in the draft framework. Considerable attention was devoted to the application of the m.f.n. principle in that respect, especially as it had implications for existing bilateral and multilateral agreements in that area (e.g. the UN Code of Conduct for Liner Conferences, ICAO). There was a wide recognition of the sensitive nature of issues relating to cabotage trades in both maritime and air transport. Differences of opinion regarding the treatment of in-land waterways also became apparent, some countries

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preferring it to be covered by the maritime services working group while others deemed the land transport working group to be the most appropriate forum in that connection. Proposals before the groups included a communication from the Nordic Countries on Maritime Transport Services and a communication from the EEC on Land Transport Services.

Note to Editors

1. Press bulletins on the Uruguay Round are issued regularly and are intended as an indication of the subject areas under discussion rather than as detailed accounts of negotiating positions. Journalists seeking further background information are invited to contact the GATT Information and Media Relations Division.

2. These accounts of negotiating meetings should be read in conjunction with the text of the Punta del Este Ministerial Declaration (GATT/1396 - 25 September 1986), the decisions taken on 28 January 1987 regarding the negotiating structure, the negotiating plans and the surveillance of standstill and rollback (GATT/1405 - 5 February 1987) and the TNC Mid-Term Review decisions (NUR 027 - 24 April 1989). Further copies of these documents are available from the GATT Information and Media Relations Division.

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