

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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URUGUAY ROUND - NEGOTIATING GROUP ON AGRICULTURE

Improving the GATT Rules and Disciplines

Submitted by the European Community

**I. Background**

The Punta del Este Declaration states that, with regard to agriculture, the aim of the negotiations is "to achieve greater liberalization of trade in agriculture and bring all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines."

This aim was reiterated in the Geneva Agreement of 8 April, according to which "the strengthened and more operationally effective GATT rules and disciplines, which would be equally applicable to all contracting parties, and the commitments to be negotiated, should encompass all measures affecting directly or indirectly import access and export competition."

In pursuit of these aims, the participants were invited to put forward detailed proposals by December this year. The European Community presents, in this paper, its position on the guidelines for negotiations on improving the GATT rules and disciplines for agriculture. The scope of the provisions to be reformed in order to facilitate market access should be as wide as possible in order to avoid a situation where national rules which vary from one contracting party to another lead to different obligations under the General Agreement. Thus, the Community intends to make further proposals, taking into account the development of the negotiations, proposals which would cover other support systems with similar effects with the measures treated in this document.

As laid down in the Punta del Este Declaration, the Community has explored both the approaches adopted in the text of the recommendations adopted by the CONTRACTING PARTIES at their 40th meeting, which were in line with the GATT Ministerial Programme of 1982, and those suggested by the Committee on Trade in Agriculture. This document does not deal with the special and differentiated treatment of less-developed countries. The Community will come back on this aspect in the near future.

GATT SECRETARIAT

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## II. The Community's approaches

### A. Guidelines

Work in the Uruguay Round is not intended to alter the bases of the General Agreement, but to improve the current rules relating specifically to agriculture. The GATT rules can be strengthened and made more operationally effective by maintaining the particular status of agriculture and by improving the existing texts.

It is true that, in many cases, measures at the border are an integral part of the support system, support having a broader scope. In order that GATT rules reflect more adequately that point, one of the objectives should consist of a global approach which tightens up, within the GATT rules, the existing links between domestic measures and measures taken at the frontier, as was advocated by the CONTRACTING PARTIES at their 40th meeting. Such an aim suits the approach taken in these negotiations, an approach which covers for the first time concrete disciplines on the internal level of support, reflecting the acknowledgement that the liberalization of agricultural trade must be realized by a support reduction.

Lastly, while the European Community considers that one of the aims of the negotiations is to achieve a better production balance through the gradual, substantial, concerted and balanced reduction of support, such a reduction must also allow the dual-price system to be maintained. In its statement of 26 October 1987<sup>1</sup> the Community has already presented the arguments for the GATT rules taking better account of dual-price situations.

### B. Provisions on support commitments

The Geneva agreement of 8 April of this year lays down that the long-term objective of the negotiations is to achieve a gradual and substantial reduction in support. This presupposes as a starting point both a definition of support and rules relating to support and to its measurement.

The General Agreement does not at present include any such provisions regarding support. Article XVI(1) of the Agreement, which concerns subsidies, lays down that subsidies must be notified if they affect imports or exports and that any contracting party which grants a subsidy causing serious prejudice to the interests of another contracting party must, upon request, examine the possibility of limiting the subsidization.

This provision reflects a misunderstanding of the problems, as it makes a distinction between domestic subsidies on the one hand and export subsidies on the other. It did not permit the correction of the imbalances affecting agricultural world markets. It is why it is now necessary to enter into a process of negotiations of commitments for a substantial and progressive reduction of support.

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<sup>1</sup>MTN.GNG/NG5/W/24 of 5 November 1987

The Community has already put before the contracting parties several contributions concerning the measurement of support.<sup>1</sup> It considers that the definitions and rules put forward in this respect should be adopted.

Commitments by the contracting parties on an aggregate measurement of support should subsequently be integrated either into the General Agreement or into a special agreement, if only with a view to spelling out the consequences of failure to comply with a commitment and, in particular, the possibility of granting compensation.

Integrating these commitments on the aggregate measurement of support within this type of legal framework should allow the strengthening of disciplines on production in the case of market access restrictions and also on those applicable to export subsidies. Commitments on limiting support which exceed the Article XVI(1) discipline mentioned above should ensure greater security for the rights and obligations of the contracting parties in this field. In addition, commitments taken by contracting parties on the general measure of support should allow account to be taken of the essential elements of the level of import protection and export support.

C. Provisions on access

(a) Quantitative restrictions and other measures with similar effects

As regards access, including access to agricultural markets, Article XI(1) of the General Agreement lays down the principle banning restrictive measures "other than duties, taxes or other charges" on imports and exports.

These provisions, which come under the heading "General Elimination of Quantitative Restrictions", mean that duties should in principle constitute the only authorized measure for protection at the frontier.

The philosophy of Article XI is that quantitative restrictions are authorized for imports, subject to two basic conditions: the first is that the restrictions must be necessary to the enforcement of governmental measures to restrict the quantities of the like domestic product permitted to be marketed or produced; the second is that the restriction must not be such as to reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions.

Some contracting parties have tried to limit access to agricultural products by means, having similar effects to quantitative restrictions, some of which are not explicitly covered by the General Agreement and, in addition, do not permit a minimum access to be respected. Some other contracting parties have tried to obtain waivers and derogations to the provisions of Article XI. These

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<sup>1</sup>MTN.GNG/NG5/W/96

various types of measures should be subject to disciplines equivalent to those applicable to quantitative restrictions.

Various recent panel reports have stressed that it has never been possible to consider the above-mentioned conditions laid down by Article XI as being met, owing to the difficulty of applying them.

The aim of the negotiation being, in particular, to make the GATT rules more operational, it seems necessary, rather than to leave Article XI as it stands, to consider an improvement of the functioning of the rules of this Article, with the objective of a production control which could be translated into a commitment on support and access. For the Community, the plan to improve these operating rules should precede any extension of the scope of Article XI. But, if the rules of Article XI are to be limited to quantitative restrictions, the Article can remain unchanged.

The condition regarding the effective control of production could be realized by another means. Thus, and in particular, in the case of extension of the scope of Article XI to more than quantitative restrictions, support commitments should be considered to be equivalent to disciplines relating to effective production control if it can be demonstrated that these measures contribute to the restriction of production. The necessary degree of restriction of production will remain to be defined. Maintaining access could also be more easily ensured if there were a commitment on production control via the gradual, substantial, concerted and balanced reduction of support.

(1) Quantitative restrictions

Quantitative restrictions should remain within the scope of Article XI. However, the conditions for their application should be made clearer and more operational.

Thus, a study should be made of the establishment of a more direct link, and one susceptible of development, between the volume of quotas - established by the restrictions - and the variations in production or marketing in the country importing the agricultural product concerned.

In the cases where the establishment of a more direct and dynamic link between quotas and changes in the level of the control production will not be sufficient to render access more predictable, commitments on a level of minimum access should be considered.

The effectiveness of Article XI should be ensured by bringing all quantitative restrictions maintained under protocols of accession, derogations or waivers, "grandfather clauses" or State-trading rules into line with the improved Article XI instrument.

(2) State trading enterprises, boards and other State agencies

Quite aside from any amendments to the rules, it should first of all be borne in mind that, the way things stand, the expressions "import restrictions" and "export restrictions" in Article XI of the General Agreement also refer to restrictions applied by means of State-trading transactions.

The aim of the negotiations should be to prevent the governments concerned from avoiding their obligations regarding import and export measures by means of the activities of these and equivalent enterprises.

In cases where the activities of such enterprises - boards, for instance - have the effect of quantitative or equivalent restrictions, these activities should be subject not only to Article XVII, but also to Article XI, amended along the lines set out above.

Should the activities of such enterprises and other bodies lead to a de facto import prohibition, a minimum access should be considered. If such a minimum access cannot be obtained, it should be possible for the exporting country to take compensatory measures to restore the balance of rights.

In other cases - i.e. where there are no quantitative or equivalent restrictions resulting from the activities of State enterprises or boards - these bodies should continue to be governed by the provisions of Article XVII, which also need to be improved.

Improving the disciplines of Article XVII should also mean:

- Applying them to all structures allowing intervention in the export or import process.

Such an extension would cover all the operating methods of such agencies as boards and marketing bodies, whether or not these are under the direct or indirect control of a government;

- strengthening the procedures for notifying invitations to tender so that the principle of non-discrimination may apply satisfactorily.

(b) Voluntary restraint arrangements

Voluntary restraints have grown up outside the framework of the General Agreement.

The fact that voluntary restraint agreements have similar effects to quantitative restrictions should favour their submission to Article XI provisions. But one must take into account the fact that in the case of voluntary restraint agreements, there is often an understanding between both interested countries.

The future treatment of such arrangements under GATT rules is being examined by the Negotiating Group on Safeguards, and we must await the Group's findings.

However, at this stage, we can imagine voluntary restraint arrangements in agriculture being made subject to certain disciplines.

The contracting parties could, before any agreement, in general, examine proposed voluntary restraint agreements in the light of various criteria relating, for example, to their transparency, restrictions on their duration and the effects of quotas on suppliers not party to the agreement concerned.

(c) Other mechanisms

1. Customs duties

We have already seen that one of the fundamental principles of the GATT is that customs duties and not quantitative or other restrictions are the principle form of protection authorized.

However, Article XXVIII bis states that "customs duties often constitute serious obstacles to trade" and that "negotiations on a reciprocal and mutually advantageous basis" should be "directed to the substantial reduction of the general level of tariffs".

With this in mind it should be possible to follow the procedures laid down in the Agreement for negotiations on agricultural tariffs.

2. Variable levies

In the case of variable levies, import access conditions should first of all be modified by the contracting parties' commitments aimed at reducing domestic support. A change in the ratios and differences between domestic prices and world prices should result from the limitation of support.

Furthermore, certain constraints could be placed on the operation of variable levy systems. Thus if the rate of the variable levy is a function of the relationship between the world price and the entry price, the method of calculation of the entry price, as taken into account for the variable levy should be open to negotiation which would include other subjects such as support and protection re-balancing.

A transparent method of calculation should also ensure that the amount of the variable levy is strictly limited to the difference between external prices and the entry prices as defined in advance.

3. Minimum import prices

Although minimum prices are designed to protect the relationship between domestic prices and a fluctuating world market price, their effect is to some extent similar to that of customs duties, import prices being raised to improve the competitiveness of national production.

In this sense, minimum import prices should be limited to the level of domestic prices in respecting obligations resulting from possible tariff consolidations.

D. Provisions relating to export competition

1. First, it must be remembered that these provisions relating to export competition are part of the support system. And the objective of these negotiations consists of strengthening the disciplines for all forms of support affecting, directly or indirectly, trade.

During its work referred to above, the GATT Committee on Trade in Agriculture considered the following two options for export subsidies:

- improving the existing rules;
- prohibiting export subsidies, with certain exceptions.

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Improving the existing rules would appear to be the more appropriate of the two options considered earlier:

- because this procedure could be integrated into the current attempts to reduce the levels of support, such an undertaking providing a regulatory framework for export subsidization practices;
- because it would allow certain gaps and inadequacies in the existing rules to be corrected, such faults having led to uncertainty as to the rights and obligations of contracting parties in the field of export subsidies.

## 2. Aspects which should be covered by this examination

It should be possible to introduce disciplines concerning the level of subsidies, which should not exceed the difference between the world market price and the exporting country's domestic price; rules should also be drawn up concerning the prices to be used, such rules being laid down where appropriate in a code. It should thus be possible to use the f.o.b. price on a representative market as the world market price. In due course, appropriate provisions should be adopted for products for which there is no representative reference market.

If Article XVI:3 is to be made operational again and the concept of an "equitable share" is to work as a preventive measure, it will be necessary to define in advance - and in any case more explicitly than at present - a clear reference period based on the most recent years to serve as the basis for calculating the equitable share of each contracting party. The expression "previous representative period" contained in Article XVI:3 would thus be defined as the average of three of the five most recent calendar years. This would enable only the period during which market conditions were the most normal to be adopted, and the reference in the said Article to "special factors" could be deleted.

Where the level of subsidized exports exceeds the reference level (the latter being based on the above-mentioned reference period), the mechanism could be improved by making the exporting country responsible for proving that the share which it has acquired is not more than its equitable share.

The obligation to limit subsidies applied to exports of commodities which are incorporated into processed agricultural products to the difference between the price of the commodity on the domestic market and the price on the world market should be emphasized and clarified. The possibility of a subsidy limited in this way would, however, be recognized only in cases where the above-mentioned difference is not minimal.

## 3. Practices in the field of export credits

The Community has been a party to the arrangement on guidelines for officially supported export credits concluded within the framework of the OECD since it entered into force in 1978. This agreement - or "consensus" - does not cover agricultural products. The Community believes it should be extended - and made applicable in the GATT framework - so that all exporters of such products will in future be bound by it.