

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG14/W/42

9 July 1990

Special Distribution

Group of Negotiations on Goods (GATT)
Negotiating Group on the Functioning
of the GATT System

Original: English

COMMUNICATION FROM THE EUROPEAN COMMUNITY

The following communication has been received from the delegation of the European Community with the request that it be circulated to members of the Group.

ESTABLISHMENT OF A MULTILATERAL TRADE ORGANIZATION (MTO)

At this crucial stage of the negotiations, the priority of all participants should be to achieve a substantive outcome in the Uruguay Round. The Community considers that, in the light of the successful outcome of the Round, consideration should be given in the Brussels Ministerial to a decision in principle to establish a Multilateral Trade Organization. With this communication, the Community wishes to put forward its ideas, as to the reasons for and the functions of such a Multilateral Trade Organization. An examination of these ideas could provide the basis for a political decision at the Brussels Ministerial, which could then lead to rapid subsequent work on the establishment of an MTO.

COMMUNICATION OF THE EUROPEAN COMMUNITY ON THE STRENGTHENING
OF THE INSTITUTIONAL BASIS OF GATT

1. Multilateral trade is today recognized as a mainstay of the world economy. For more than forty years, the multilateral trading system has sustained the expansion of world trade. Yet the institutional base for this remarkable achievement has been, and still remains, a provisional arrangement, set up in the face of the failure to establish the International Trade Organization (ITO) in 1948.

If multilateral trade is to be given its head, and is no longer to be considered primarily as an adjunct of external policies, it deserves its own permanent institution alongside the International Monetary Fund and the World Bank established in Bretton Woods at the time.

2. The Ministerial Declaration of Punta del Este provides in Part I(E)-Functioning of the GATT system (FOGS), that negotiations shall aim to develop understandings and arrangements.... "(ii) to improve the overall effectiveness and decision-making of the GATT as an institution, including, inter alia, through involvement of Ministers". Prior to Montreal, negotiations in this area have essentially focused on greater involvement of Ministers and, as a result, Ministers recommend that CONTRACTING PARTIES decide to meet at Ministerial level at least once every two years. However, in order to fulfil entirely the negotiating mandate, it is necessary to deal with the strengthening of GATT as an institution in order to ensure that the future multilateral trading system will organizationally be able to administer the outcome of the Round in all areas effectively.

3. The European Community pursues the following objectives with this submission:

(a) to establish a legal basis for actions that ensure the effective implementation of the results of the Uruguay Round Negotiations and in particular to adopt dispute settlement procedures in principle applicable to all separate multilateral trade agreements;

(b) to establish a sound institutional framework for the new GATT and in particular for its Director-General and Secretariat;

(c) to provide the new GATT with the adequate institutional basis to co-operate in equal terms with other international organizations, in particular the International Monetary Fund and the World Bank, so as to ensure that trade policy is fully reflected in the continuous process of ensuring greater coherence in global economic policy-making.

4. The essential elements guiding our reflections are as follows:

(a) The GATT is still only a trade agreement entered into force on a provisional basis. The Community has already proposed to phase out the "grand-father clause" contained in paragraph 1(b) of the Protocol of Provisional Application, but the GATT would still lack a proper institutional basis.

(b) As a result of the Tokyo Round Multilateral Trade Negotiations a number of separate agreements referred to as GATT Codes, were concluded. Some of these agreements are intended to interpret and complement existing GATT provisions, others contain entirely new obligations. Membership of these codes varies and is in some cases limited to a few GATT contracting parties only. Separate membership entails a risk of fragmentation of the multilateral trading system.

Despite the fact that the GATT Secretariat services the different Tokyo Round Agreements there remains a need for a common institutional framework to ensure greater effectiveness in the administration of the separate agreements. This should in particular be in the interest of those GATT contracting parties which are not also signatories of all of the separate agreements negotiated under GATT auspices.

(c) Difficulties have also arisen in the context of trade disputes to which the General Agreement and a particular Code or several Codes may be relevant because there is no competent body to examine a matter in the light of all applicable multilateral agreements. In this respect a Multilateral Trade Organization would be able to implement common dispute settlement rules, negotiated within the Uruguay Round and in principle applicable to all multilateral trade agreements (without excluding the possibility of specific adaptation of procedures to take into account the specificity of each agreement). Common dispute settlement procedures do not prejudice the issue of whether retaliation across different sectors would be authorized, which is a question of substance that should be discussed in the appropriate Negotiating Groups. The proposal for an MTO should therefore be examined on its own merits.

(d) As a consequence of the establishment of the Trade Policy Review Mechanism the GATT, in addition to its contractual nature, is becoming the international body where the impact of contracting parties' trade policies and practices on the multilateral trading system is examined.

(e) In view of the distinction between trade in goods, covered by the GATT, and trade in services, the final paragraph of the Ministerial Declaration of Punta del Este provides for a decision of Ministers "meeting also on the occasion of a Special Session of CONTRACTING PARTIES regarding the international implementation of the respective results of the negotiations".

In general terms, the results of the negotiations could be embodied in:

- decisions by CONTRACTING PARTIES on the basis of Article XXV;
- protocols amending or complementing the General Agreement;
- separate international agreements (such as the MTN Codes).

It must be recognized that at least with respect to trade in services, it is difficult if not impossible to integrate the results of the negotiations into the General Agreement through a decision of

CONTRACTING PARTIES or a protocol amending the GATT. The likelihood that there will be a separate agreement on trade in services accentuates the need for a common institutional framework.

(f) Paragraph (iii) of Part 1(E) of the Ministerial Declaration mandates the negotiators "to increase the contribution of the GATT to achieving greater coherence in global economic policy-making through strengthening its relationship with other international organizations responsible for monetary and financial matters". The two main international organizations concerned, the World Bank and the International Monetary Fund, have a strong institutional basis. It would therefore be appropriate, in the context of enhancing co-operation among the three institutions, as envisaged in a separate submission by the Community, to ensure that the GATT also participates on a strong institutional basis.

5. There could be different options and models with respect to the strengthening of the institutional basis of the international trading system. A pragmatic and realistic approach for which precedents already exist and which would solve the problems mentioned in this submission would be the conclusion of a purely organizational convention without substantive provisions. The organization thus established would act as an umbrella for the administration of the GATT and other multilateral trade agreements (e.g. Tokyo Round Codes, Services agreement).

6. In the light of the above considerations, the European Community proposes that at the end of the Uruguay Round and to consolidate the results achieved in the Round, Ministers should consider the establishment of the new GATT as a Multilateral Trade Organization. The main elements of such an organizational treaty would be:

- provisions on membership and on a common organizational structure.
- a legal basis for taking actions concerning the implementation of the results of substantive negotiations and in particular for adopting dispute settlement procedures in principle applicable to all multilateral trade agreements;
- the establishment of an international Bureau or Secretariat consisting of a Director-General and his staff;
- budgetary provisions;
- provisions on the legal capacity of the organization, privileges and immunities of its staff, relations with other organizations and final provisions (amendments, entry into force, etc.).

Establishing such an Organization would not alter the substantive rights and obligations of contracting parties or signatories under the existing multilateral trade agreements. It would, however, provide the institutional and organizational framework to ensure that questions of administration and implementation of the different agreements can be dealt with in an effective manner.