

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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MTN.GNG/RM/W/6

28 October 1991

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Group of Negotiations on Goods (GATT)

Negotiating Group on Rule Making and  
Trade-Related Investment Measures

COMMUNICATION FROM THE NORDIC COUNTRIES

The following communication, dated 23 October 1991, has been received from the Nordic Countries with the request that it be circulated.

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Strengthening the GATT system of rules

1. The fundamental importance of a reform of the GATT system of rules in the Uruguay Round cannot be underestimated. The Nordic Countries consider, in order to secure the necessary strengthening of the GATT, that more emphasis must be put on the rules negotiations.
2. GATT is a body of rules, based on rights and obligations. It is also a forum for conciliation and negotiations. These rules are intended to promote a stable and predictable trading environment both for the governments and for the international business community. Without strong rules as the fundament of the GATT system, governments will find it difficult to take on new commitments and to exchange concessions. Thus, they are crucial to further trade liberalization.
3. Needless to say, the strength and effective enforcement of the rules are essential if GATT is to fulfil its rôle. Alarming, reduced respect of the rules presently lead many to question the functioning and credibility of the GATT and even the raison d'être of GATT. This is why the Uruguay Round must not end without a strengthening of GATT rules.
4. Clarification and reform of existing GATT rules are key elements in the Uruguay Round result. In areas where the Round is attempting to expand the present multilateral trading system - agriculture, textiles, services, TRIPS etc. - there is a clear recognition of the importance of strict rules. The same attention should be placed on rules in "traditional" GATT, represented by the General Agreement itself and the Codes. It is quite evident that the rules need to be clarified, revised, supplemented or otherwise reformed in order to adapt to an ever-changing trading environment.

What are the problems?

5. Two fundamentally different, but equally important, problems are at the core of the rules negotiations of the Uruguay Round:

- The present inability to prevent the misuse of existing trade rules on the one hand, and the present disregard of existing trade rules on the other.
- The present inability to effectively address new trading problems and remedy anti-competitive trading practices.

How shall we solve these problems?

6. The first problem has to be solved by a strengthening and more effective enforcement of the existing trade rules. These rules have to be clarified in order to avoid unilateral interpretations. This is necessary to ensure a trading environment that lets competitive advantages determine the pattern of production.

7. The second problem has to be solved by the creation of new trade rules and modernization of the existing rules. Such an outcome of the negotiations will provide countries with appropriate safeguards against anti-competitive behaviour. This is needed to promote further trade liberalization and to prevent unilateral actions and grey area arrangements.

8. Negotiating partners often tend to emphasize one of the two sets of problems over the other. But a balanced Uruguay Round rules reform has to address both. There is a need for legitimate escape clauses and trade remedies on the one hand, but this must not lead to protectionist misuse of GATT rules on the other. It follows that a readiness by all parties to accept both costs and benefits is needed. In short, parties have to be prepared to negotiate and to commit themselves firmly to abide by the final result.

What do we need?

9. In order to ensure an equitable, unambiguous and predictable multilateral trading system for the future, the Uruguay Round has to lead to substantial and balanced reforms in the fields of anti-dumping, subsidies, safeguards, balance of payments restrictions, TRIMS and dispute settlement. The shape of such a rules reform is set out below, taking into account the necessity of balancing the need for safeguards against the need to prevent protectionism. It should be emphasized that this is an effort to describe some elements in a reform of the GATT system of rules. There are other rules areas - TBT, PSI, import licensing etc. - which are not dealt with here but which also are of great importance.

Anti-dumping

10. There has been a substantial increase in the use of the anti-dumping instrument during the last decade. Almost 1500 cases have been initiated during the eighties. An increasing number of countries are using the instrument. Over 90 per cent of the measures taken with reference to the GATT system of rules are anti-dumping measures. It can be argued that the instrument, in some cases, is used as an alternative non-m.f.n. based safeguard measure which hampers normal commercial activities instead of, as intended, an instrument to counteract anti-competitive injurious trade.

11. In order to arrive at a balance which maintains the possibility of legitimate use while effectively preventing misuse of the instrument, the present provisions need clarification and modernization. The need is clearly shown by the increase of disputes in the GATT. The unfair use of the anti-dumping instrument may be exemplified by the malpractices resulting in inflated margins in the calculation of the dumping margin; by the disregard of other injurious factors than the dumped imports and the inclusion of negligible import volumes in the injury determination; by the acceptance of frivolous cases; by the lengthy duration of measures to the point where the instrument assumes a permanent character. These problems have to be recognized and addressed by all parties in the Uruguay Round.

12. On the other hand, if the Round is able to create strict and unambiguous anti-dumping rules, it should not be possible to circumvent them. If a dumping finding is made in accordance with such strengthened rules, provisions preventing circumvention and other forms of avoidance might be called for.

Subsidies

13. There is a widespread understanding of the need to improve GATT disciplines relating to subsidies and countervailing measures. There is also a common recognition of the delicate balance between the need to discipline subsidies that are trade distortive and accepting those subsidies that are not trade distortive.

14. A reform must therefore include certain key elements. Export subsidies and subsidies contingent upon export performance must be prohibited. Carefully defined non-trade distortive subsidies, such as subsidies intended to promote regional development or other important objectives, must be accepted. A strong discipline, with effective and operational remedies, must be found for actionable subsidies.

15. Increased subsidy discipline must also be balanced by increased discipline regarding the imposition of countervailing duties so as to avoid misuse of the instrument. A parallel procedure to anti-dumping must be established since the instruments often are implemented under the same legislation and administered by the same authorities.

### Safeguards

16. An operational safeguard mechanism is an essential part of a reform of GATT rules. If countries are to liberalize their trade régimes and accept new commitments, it is vital that there exist operational safeguard provisions against unforeseen injurious import surges. But, it is just as important that the threshold for the introduction of these actions is high enough to deter from misuse. The rules must only be used in emergency actions.

17. In order to arrive at a balanced solution, a revision of the GATT provisions on safeguards shall be based on the basic principles of the GATT. More concretely, and bearing in mind the legitimate interest of most efficient producers, non-discrimination and global application should be the guiding principles in the use of safeguard measures. In addition, safeguard actions must be clearly limited in time and the possibility of retaliation must not be circumscribed in a manner which invites to misuse. Only a revision which leads to the abolishment of grey area measures strengthens the GATT system on a permanent basis.

### Balance of payments restrictions

18. Strengthened trade rules must also be extended to balance of payments restrictions. The same basic arguments that were advanced for safeguards apply here too. The fundamental principles underlying Article XVIII are not at issue, but the instrument has in some cases been invoked too loosely. A reasonable measure would be to review the functioning of the Balance of Payments Committee in order to strengthen its rôle in overseeing the application of Article XVIII. In that context, more emphasis should be put on the use of price-based measures and time-limited actions.

19. Recently, several countries have disinvoked their use of balance of payments restrictions, reflecting improving economic circumstances. This tighter use of Article XVIII is wholly in line with our aims in the negotiations. The use of balance of payments restrictions should only reflect economic circumstances. Consequently, if these problems recur, appropriate measures could be reintroduced provided the conditions of Article XVIII are fulfilled.

### TRIMS

20. To most governments, investment policy is one of the instruments that may be used to promote the economic development of their countries. As such, it lies outside the scope of the General Agreement. The trade flows generated or modified by investment are, however, like any other international trade governed by the GATT framework of rules. The GATT does not allow government-mandated trade distortions in connection with investment any more than with international trade in general. This is a sound principle, since such distortions harm trade interest of third parties.

21. An important part - but not all - of the TRIMS negotiations is about ensuring that investment rules do not lead to trade distortions that are contrary to the basic rules of the GATT. In making this link explicit, the TRIMS negotiations are about strengthening GATT rules. Against a backdrop of rapidly increasing investments flows, the outcome of the Round would be incomplete without this clarification.

#### Dispute settlement

22. Dispute settlement is at the core of a rule-based trading system. The dispute settlement mechanism at present is too weak and is experiencing a number of problems that open up for unilateral actions. Rulings made by GATT panels are blocked from adoption or if adopted, nevertheless not implemented. A strengthened dispute settlement discipline is needed in order to maintain the credibility of GATT rules with the international trading community. It is also necessary to make parties willing to take on new commitments in other areas and to prevent unilateral actions.

23. Consequently, we must have a strong, independent and effective system. It must not be possible to block panel rulings forever. The dispute settlement system must be capable of handling not only general but also specific problems and when needed, prescribe specific solutions in order to solve practical problems in international trade. It is also important for the functioning of the GATT that there is established a uniform dispute settlement system that covers the entire GATT, including the new areas and all the Codes. A harmonized and integrated system would diminish the risks for forum shopping.

#### Conclusions

24. Only a Uruguay Round that includes a substantive reform of rules would make GATT an effective and credible instrument on which to base the international trading system. Existing rules must be strengthened and clarified in order to safeguard existing rights and obligations. New rules must be introduced so as to adapt the multilateral framework to an ever-changing trading environment.

25. A reform of rules and disciplines will weigh heavily in the Nordic Countries' evaluation of the final package emerging from the Round. The Nordic Countries' acceptance cannot be taken for granted without the final result ensuring an equitable, unambiguous and predictable GATT system of rules.