

URUGUAY ROUND

OF MULTILATERAL TRADE NEGOTIATIONS

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FIRST MARKET ACCESS OFFERS ASSESSED AND NEW INTELLECTUAL PROPERTY DRAFTS TABLED

Market access offers in the tariffs and tropical products negotiations as well as request lists covering non-tariff measures and natural resource-based products were scrutinised in assessment meetings of the relevant negotiating groups in the past month. The United States, Switzerland, Japan and a group of developing countries tabled detailed legal drafts of an agreement on intellectual property while services negotiators agreed to set up special working groups to study sectoral specificities to be taken account of in the services framework.

The following groups have met formally since the previous bulletin.

Safeguards ... 24 and 26 April

The chairman circulated an informal revision of his draft text of a comprehensive safeguards agreement which reflected the results of previous rounds of consultation. After further informal consultations, the chairman announced that he would be putting forward another revision in the coming weeks.

Tropical Products ... 27 April

This meeting enabled the Group to have a first discussion on progress since the adoption of negotiating procedures in February 1990.

In his review of the progress, the Chairman stated that 28 participants had submitted proposals so far, and that this was a

MORE

clear indication of the wish of the participants to start effective negotiations. He pointed out, however, that the achievement of the objective of the fullest liberalization of trade in tropical products required more active participation in the forthcoming period, and urged those participants who had not done so to submit proposals without further delay.

The Chairman also underlined the need to move on to the next stage of improving the proposals and, in this connection, invited delegations to submit request lists as soon as possible for improvements to adjust the proposals.

The Chairman also reminded participants of the target date of July 1990, set by the TNC in April, to reach an outline of preliminary results which would form the basis of final negotiations for an agreement to be tabled at the Ministerial meeting in Brussels in December 1990.

Subsidies and Countervailing Measures ... 30 April-1 May

Proposals related to countervailing measures - by Canada, Hong Kong, Egypt, India, Singapore and Korea - were the main subject of this meeting. In general, these countries called for tighter rules on countervailing action. References were made to previous proposals on factoring in public interest in the determination of injury to a domestic industry, limiting the duration of countervailing measures through a built-in sunset clause, greater transparency in the conduct of investigations, making mandatory the "lesser-duty" rule (the duty should not necessarily be the subsidization margin but rather only the rate necessary for removing injury to an affected domestic industry), and the net-subsidy concept (see NUR 035). Many participants stressed that the new rules should prevent countervailing duties from being used as protectionist measures. The United States elaborated a previous proposal for new rules to prevent circumvention of countervailing measures (see NUR 034).

The discussion on countervailing measures completed the Group's examination of the elements contained in the negotiating framework. Participants agreed to consider, at the next meeting, a draft text to be drawn up by the Chairman, which would be the basis for further negotiations.

Non-Tariff Measures ... 1 May

Drafting work has started on new GATT agreements on preshipment inspection and on rules of origin. At this meeting, the Group established a drafting group - open to all participants - to work on a common text for rules of origin. It noted that the drafting group on preshipment inspection, established at the previous meeting, has started its work.

The Chairman reported that 25 participants (the European Community counting as one) had so far submitted request lists under

MORE

the negotiating procedures agreed in February. Canada urged participants to deploy high-level representatives in Geneva this June to conduct intensive negotiations on market-access.

Uruguay and Australia called for provisions to safeguard concessions in this area using as a model the schedules of tariff concessions. The objective would be to ensure that a negotiated reduction or elimination of non-tariff measures should not in the future be nullified by the introduction of another restriction.

Chile presented a list of trade measures found by dispute-settlement panels to be inconsistent with the GATT. It stressed that no concession should be given in exchange for the removal of a GATT-inconsistent non-tariff measure. The Group agreed that the Secretariat should prepare a paper indicating measures which have been found by the contracting parties to be inconsistent with the GATT in the last five years and are still in effect.

MTN Agreements and Arrangements ... 1 May

In the area of anti-dumping, the Group heard a report on informal discussions held to clarify positions. It had been possible to complete the discussions on how the existence of dumping should be determined. Material injury caused by dumped imports had also been addressed as had questions on the circumvention of anti-dumping measures. Discussion on these and all other outstanding questions would continue in informal meetings. The aim is to elaborate a comprehensive draft on the revision of the Anti-Dumping Code by the end of June.

On technical barriers to trade, the Group was informed that possible modifications to Articles 5 to 9 of the Code were discussed in order to clarify previous proposals made on these items. The participants also discussed extension of the coverage of the Agreement for processes and production methods, the settlement of disputes, and second level obligations. The aim is to produce a single text, by mid-July, which accommodates the interests of all participants. Canada presented orally a new proposal, in which it was stressed that governments and non-government bodies are being asked more and more frequently to develop technical measures for environmental protection, health and safety. Canada considers that there is an absence of criteria for determining whether such measures constitute unnecessary obstacles to trade.

On customs valuation, Kenya (on behalf of the member countries of the Preferential Trade Area, comprising Eastern and Southern African countries), and India presented draft amendments to the Protocol of the Code. These amendments are intended to combat the problems encountered as a result of the undervaluation of goods by shifting the burden of proof in certain specified circumstances from the customs administrations to importers. Preliminary comments were presented, and in general developed countries feared that some of the changes alter the spirit of the Code itself.

MORE

Work is also continuing on an informal basis on the Import Licensing and Government Procurement Codes.

GATT Articles ... 2-4 May

The Negotiating Group made further progress in informal session on the drafting of decisions on Articles XVII and XVIII. It also considered new draft decisions on Article XXV:5 and the Protocol of Provisional Application. In addition, the Chairman informed the Group that he had held intensive informal consultations on the proposals for negotiation on the balance-of-payments provisions, but that as yet there was little sign of a meeting of minds on the necessity for reform in this area.

An intensive discussion took place on Article XVII, largely on the basis of a proposal presented by Japan at the previous meeting which sought, inter alia, the establishment of a new mechanism for the surveillance of regional arrangements on third countries. Some participants expressed doubt as to the need for a new mechanism in addition to those existing already. However, a number of participants agreed that it was necessary to clarify certain provisions in the Article whose interpretation had been the subject of dispute in the past and which had therefore given rise to tensions between contracting parties. Examples of such provisions include the requirement that duties and other regulations of commerce shall not on the whole be higher or more restrictive, following the formation of a customs union or free-trade area than those previously applicable in its constituent territories, and the requirement that duties and other restrictive regulations should be eliminated on "substantially all the trade" between members of customs unions or free-trade areas. Proposals on some of these issues were made by Australia and Canada, in addition to Japan.

In discussion of a draft decision concerning Article XXV:5 (waivers from GATT obligations) there was general agreement on the need for firmer disciplines on the grant of new waivers but no consensus on the proposal that existing open-ended waivers should be terminated. There was also wide support for the proposal that "grandfather clauses" in the Protocol of Provision Application and the accession protocols should be terminated. However, it was suggested that other derogations contained in accession proposals should also be eliminated, in line with the generally agreed objective of removing all derogations and exceptions so far as possible. In response to this suggestion the point was made that specific derogations in accession protocols, having been negotiated as part of the conditions for entry into the GATT, could not be assimilated with waivers, which were granted and could be revoked by the Contracting Parties, and could not be subject to negotiation without the consent of the contracting party concerned.

MORE

Tariffs ... 4 May

The Group took stock of tariff proposals (indicative offer lists) submitted so far under the negotiating procedures agreed in January. The Chairman reported that 34 such submissions had been made. He noted that proponents have met twice in a series of periodic meetings to assess proposals in the light of the Montreal decision. This decision set as a minimum target of the negotiations that achieved in the previous Round, or about a one-third cut in average tariff levels.

Several delegations welcomed the proposals and the recent initiation of the process of exchanging request lists. However, they expressed deep concern about the lack of participation, so far, by many countries. These countries, according to one delegation, face the danger of not having their trade interests considered in the market-access negotiations. Some participants also urged raising the level of ambition in certain proposals on the table. A number of delegations reported that their proposals were at an advanced stage of preparation and would be submitted soon. The Chairman indicated that he would be reminding the countries concerned about the need to submit their respective proposals as soon as possible. Many delegations expressed support for the suggestion made at a recent informal meeting of GATT Ministers in Mexico to hold intensive negotiations on market access on 5-15 June in Geneva.

Natural Resource-Based Products ... 7 May

In a comprehensive proposal, the European Community called for substantive negotiations on double-pricing practices and on access to "surplus" fishing grounds. Double-pricing, according to the EC, referred to the situation when local producers could obtain raw materials at prices lower than those prevailing in the world market. It said that resource-rich countries, in order to promote domestic processing, have imposed taxes, restrictions or prohibitions on exports of raw materials. The Community proposed that negotiations on this issue start with a standstill on restrictions, followed by the removal of GATT-inconsistent measures.

The EC also proposed negotiations on discriminatory aspects of measures concerning access to fishery resources. Several participants stressed that the Group's mandate was limited to liberalizing trade in fishery products. Access to those products, they said, was the sole responsibility of the coastal state concerned.

The Chairman reported that eleven participants have so far submitted proposals or notifications under the negotiating procedures adopted in March. Australia said its proposal mainly addressed its concerns about trade distortions caused by coal subsidies.

Agriculture ... 7 and 8 May

The Group was informed of the outcome of the clarification exercise with regard to the negotiating proposals of participants.

Aspect of the proposals of the United States, European Community, Cairns Group and Japan dealing with internal support, border protection and export competition, of the net food-importing developing countries and the countries calling for due recognition of the importance of non-trade concerns (food security, environmental protection, etc.) were clarified with the aid of a number of questions from the Secretariat. The authors of these proposals explained the concepts they used, differentiating them from apparently similar concepts with a different content, and provided information on the possible implications of using them. For example, while many participants were in favour of tariffication (converting market-access measures into tariffs), the methodology used to carry out this conversion and the scope of the process vary and can therefore lead to different results. These discussions gave a clearer idea of the possibilities of bringing positions closer together, for example on the disciplines to which certain internal support measures should be subjected, or on recourse to tariffication; they also showed large areas of divergence persisting, in particular in the field of export subsidies. The way in which specific concerns expressed by some participants would be taken into account within a global agreement was also discussed. The Working Group on Sanitary and Phytosanitary Regulations and Barriers met on 10-11 May and examined a synoptic table of proposals relating to the fourteen possible elements of an agreement on sanitary and phytosanitary barriers, with a view to finding common ground. These elements cover the basic objectives of such an agreement, the sanitary and phytosanitary measures to be covered, the disciplines to be applied, harmonization of these measures and linkages with the competent international organizations; concepts such as the acceptable level of risk, principles of equivalency, national treatment and non-discrimination, transparency and the concept of disease-free or infected areas are also addressed. The document deals also with procedural and institutional matters (such as inspection procedures and mutual recognition of results of tests and inspections, processing and production methods), with technical assistance, special and differential treatment, consultations and dispute settlement, and the form an agreement could take. An acceptable common formulation has already been found for some issues.

Trade-Related Aspects of Intellectual Property Rights ... 14-16 May

Four new draft agreements were presented during the meeting, of which three were comprehensive - issued by the United States, Switzerland, and a joint paper supported by 14 developing countries. Japan's text covered certain items only and was expected to be supplemented later. With the EC draft agreement submitted at the previous meeting, the Group has now before it a wide range of

positions on the form and the content of a legal text to address trade related aspects of intellectual property. In addition, a joint paper by Australia, Hong Kong, the Nordics and New Zealand on transitional arrangements and a paper by Chile on international institutional arrangements were presented.

The US, the Swiss and the Japanese draft agreements are similar to the EC paper in their overall approaches, although with some differences of structure and numerous differences on specifics. In presenting its proposal, the United States stressed that, if adopted, it would increase the level of protection for intellectual property rights and improve the effectiveness of enforcement of such rights, thereby leading to reduction of distortions and impediments to legitimate trade. It would require all participants, including the US, to make changes in their existing intellectual property regimes; however, their harmonization was not being sought, and only an agreed level of obligation would have to be provided. The draft agreement incorporated the economic rights provided under the two most widely accepted Conventions administered by WIPO, those of Berne and Paris, and extended their provisions in certain areas. The US, like the EC and Switzerland, have adopted an approach that would integrate the proposed provisions into the GATT. Commenting on various intellectual property rights, the US added that they had tried to reach a balance between their own concerns and those of their partners. While minimum standards of protection differed from those proposed by the EC in its draft agreement for some intellectual property rights (for instance geographic indications including appellations of origin), the US proposal on enforcement was largely based on the EC text as was that on institutional arrangements, including the settlement of disputes. For transitional arrangements, the US would favour individual country schedules.

In presenting its draft agreement, Switzerland indicated that an important difference from other proposals was that the legal framework for the protection of the intellectual property rights would be provided by amending the General Agreement on Tariffs and Trade in the form of adding a Part V to it. The Swiss draft contained a detailed mfn obligation, with provision for the phasing-out of action inconsistent with it and an exception for more favourable treatment granted to fellow-members of a regional trading area. The paper also contained detailed provisions on standards in eight areas of intellectual property. The proposal on means of enforcing intellectual property rights was based on the EC proposal.

The Japanese text covers the main elements of a legal agreement, providing for the principles of national treatment, most-favoured-nation/non discrimination, special arrangements and transparency. In an annex, it proposes standards for the protection of the intellectual property rights covered by the US, the EC and Switzerland, with the exception of trade secrets, which Japan indicated would be studied further in Tokyo. It leaves enforcement and other supplemental provisions to be elaborated later. In presenting

its paper, Japan drew attention to its proposal on most-favoured-nation treatment in particular in regard to the procedures for the extension of more favourable treatment accorded under bilateral agreements to other countries. With regard to neighbouring rights (the rights of producers of sound recordings and broadcasting organizations), Japan favoured an approach based on the Rome Convention.

The draft legal text presented by fourteen developing countries (Argentina, Brazil, Chile, China, Colombia, Cuba, Egypt, India, Nigeria, Pakistan, Peru, Tanzania and Uruguay and Zimbabwe) is in two parts. Part I, dealing with international trade and intellectual property, calls for the institution of adequate border measures to discourage international trade in counterfeit and pirated goods while ensuring that they do not become barriers to legitimate trade. This part also aims to ensure competition in international trade and to prevent arrangements which may restrict such competition. Part II addresses standards and principles concerning the availability, scope and use of intellectual property rights. The public-policy objectives underlying national systems for the protection of intellectual property, including those of development, transfer of technology and public interest, should be fully recognized, and a maximum of flexibility be allowed for least developed countries in the application of this Agreement. All states should have the sovereign right to ensure a proper balance between rights and obligations of intellectual property rights holders, and thus to determine the level and scope of protection of these rights, in particular in sectors of special public concern such as health, nutrition, agriculture and national security. The draft text provides for standards for the protection of patents, trademarks, industrial designs, geographical indications, copyright and neighbouring rights, and integrated circuit layout-designs. As for ways of enforcing the protection of intellectual property rights, parties to the agreement should ensure that simple, effective and adequate procedures are available under their national laws, the same treatment being granted in cases of infringement to their own nationals and those of other parties. For the settlement of disputes, consultation, good offices, conciliation, mediation and arbitration should be provided; parties should refrain from taking or threatening recourse to unilateral measures. Part II should be implemented in the relevant international organization, while taking into account the multidisciplinary and overall aspects of the issues involved. The paper presented by Chile called for the administration of Part II of the text in an organization other than the GATT, for example WIPO, because Chile considered that Part II contained matters that were not trade-related.

Australia, Hong Kong, New Zealand and the Nordic countries presented a joint discussion paper on transitional arrangements leading to the acceptance and the implementation of the full rights and obligations of an agreement on intellectual property rights. Such transitional arrangements are provided for in the Mid-Term Review Decision, and are aimed to ensure the fullest participation in the

results of the negotiations. The paper is based on the assumption that any TRIPS Agreement is likely to require most, if not all, countries to make certain changes in their legislation, enforcement regimes and administrative practices and that time will be needed to adjust to new requirements. It reviews the possible options, without expressing a preference. Different ways of providing flexibility are listed, for instance an agreed deferred application for all countries, different time-frames for countries in different stages of economic development, individual country schedules, provision of different time-frames for sub-sets of the Agreement and lower-level obligations, with the possibility of combining these options.

Textiles and Clothing ... 14-15 May

Pursuing a work programme aimed at establishing a draft framework by July, participants resumed discussion on six topics (see NUR 035), particularly those related to strengthened GATT rules and disciplines, and timespan. The discussion was based partly on new submissions from the European Community, United States and Japan.

On strengthened GATT rules and disciplines, the Community underlined the need to ensure not only that trade takes place under fair competitive conditions but that there is a possibility of recourse to an effective safeguard mechanism. It proposed that "graduality and progressivity" govern the integration process which should consist of distinct stages. The EC suggested the establishment of bodies, patterned along the lines of the current Textiles Committee and the Textiles Surveillance Body, to administer the integration process.

The United States provided further details on its proposal for converting restrictions under the Multifibre Arrangement to global quotas during a transition period. Canada elaborated a proposal for establishing a special transitional safeguard mechanism based, in general terms, on the GATT safeguard provision with certain derogations.

On timespan (time frame of integration), it was noted that periods of five, eight and ten years have been proposed. The United States confirmed that it envisaged a ten-year timespan for winding down global-quota restrictions. Canada said it could also accept a ten-year transition period.

Members of the International Textiles and Clothing Bureau, a group of developing country exporters, reiterated their opposition to the global quota system. They called on the Group to focus on the MFA and the dismantling of its restrictions during the phaseout period.

Japan explained in great detail its proposal for stringent disciplines to govern the imposition of restrictions during the phaseout period. It emphasized that any post-MFA restrictions must be justified by a set of clear and objective criteria.

Trade-Related Investment Measures ... 17 and 18 May 1990

In his opening remarks, the Chairman reminded the Group of the TNC decision in April that all negotiating groups should endeavour to arrive at a profile agreement by the end of July. In the absence of any new submissions since the last meeting the Group moved into informal session to discuss: new disciplines needed to avoid the adverse trade effects of investment measures and the scope and coverage of further provisions.

At the end of the informal session, the Chairman distributed a draft paper as a possible framework for further negotiations.

Trade in Services ... 7 - 11 May

After intensive consultations, the Chairman was able to announce the establishment of a series of sectoral working groups to consider the specificities of sectors, and elements which may need to be taken account of in the application of the general services framework. The sectors to be covered will be financial services, telecommunications services, transport services, construction and engineering services, professional services and tourism. It was also agreed that consultations would take place on issues relating to labour mobility. However, it was noted that the selection of these sectors had no bearing on the question of coverage for the framework. The Group of Negotiations on Services (GNS) will be kept informed of the sectoral discussions by the chairmen of the working groups.

A detailed, comprehensive legal draft framework was tabled by Cameroon, China, Egypt, India, Kenya, Nigeria and Tanzania. The agreement would be applied to all tradable services although trade in services would not be defined to include permanent establishment, foreign direct investment or international immigration. Mfn/non-discrimination and national treatment (once market access is available) would be applied generally. However, progressive liberalisation would initially concentrate on concessions by developed countries, with future liberalisation by developing countries dependent on the extent to which their services exports have benefitted from liberalization by developed countries and would be in conformity with their developmental and technological objectives. The draft outlined a number of measures to achieve the greater participation of developing countries in services trade and the expansion of their services sectors. It also proposed the establishment of an International Trade in Services Organization to facilitate the operation of the framework.

The formal GNS meeting also covered statistics, definition and scope of the framework, principles to be covered, and institutional matters.

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.