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Seminar on Main Issues and Prospects for the
Participation of the Latin American and Caribbean Countries
in the Uruguay Round of the General Agreement on
Tariffs and Trade (GATT), sponsored by the Economic
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(UNDP) */

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**MAIN ISSUES AND PROSPECTS FOR LATIN AMERICA AND THE CARIBBEAN
IN THE URUGUAY ROUND**

Addendum

REVIEW OF DEVELOPMENTS IN THE URUGUAY ROUND **/

(Situation as of 15 September 1988)

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Introduction

1. The United Nations Conference on Trade and Development, in the relevant part of the "Final Act of UNCTAD VII", agreed that:

The Uruguay Round of multilateral trade negotiations has a critical role in the international trading system. The programme of negotiations covers a range of important subjects, whose balanced outcome should in the end develop a more open, viable and durable multilateral trading system and thereby contribute to promoting growth and development. The success of the multilateral trade negotiations will be greatly facilitated by a supportive international economic environment which should ensure mutually reinforcing linkages between trade, money, finance and development. The commitments on "standstill" and "roll-back" made in the Uruguay Round should be fully respected and implemented.¹

Further, the Conference instructed the Trade and Development Board to

follow closely developments and issues in the Uruguay Round of particular concern to the developing countries,²

while the Secretary-General of UNCTAD was requested to:

provide technical assistance to developing countries, on request, in connection with the Uruguay Round of multilateral trade negotiations so as to facilitate their effective participation in these negotiations. UNCTAD should render technical support which might be required in the negotiations.³

2. In response to this mandate and with a view to providing background material for the Uruguay Round negotiations, the UNCTAD secretariat prepared, *inter alia*, a review of developments in the Uruguay Round (issued as UNCTAD/INT/CB/2) which reflected the situation as of 1 January 1988. The present document represents the latest update of the original note and supersedes the previous versions. It attempts to present an up-to-date account of the actual stage of the Uruguay Round negotiations as well as an analytical overview of both the issues involved and the "negotiating landscape" which has been emerging. Accordingly, the note has been structured in such a way so as to enable the reader to draw his conclusions with respect to either the whole of the negotiating process or some specific issues. It should also be pointed out that, by virtue of the relevant decisions by the TNC, UNCTAD has been granted observer status in a relatively small number of the negotiating bodies of the Uruguay Round which affects its ability to respond fully to the mandate given by the Conference.

3. With respect to each of the issues on the Uruguay Round agenda, the following paragraphs provide (a) background to the decision to negotiate on the issue, (b) summary of the proposals made to date, (c) commentary with respect to possible solutions that might be envisaged.

Background to the decisions by UNCTAD VII on the Uruguay Round

4. The decision to launch a new round of the GATT multilateral trade negotiations was taken in September 1986 when Ministers, meeting on the occasion of the Special Session of the Contracting Parties at Punta del Este, adopted the "Ministerial Declaration on the Uruguay Round".⁴ However, this initiative was preceded by long and difficult negotiations during the preparatory process. When the idea of embarking on a new round of MTNs emerged soon after the 1982 Ministerial Meeting of the GATT, it was not favoured by developing countries which saw the implementation of the commitments provided for in the 1982 Work Programme as a necessary prerequisite for initiating a new negotiating process. They also opposed the introduction of services and other "new" issues under the aegis of the General Agreement. It took the contracting parties several years of behind-the-scene consultations, followed by almost a year of tough bargaining in

¹ "Final Act of UNCTAD VII", Part II.C., paragraph 105 (7)

² *Ibid.*, paragraph 105 (8).

³ *Ibid.*, paragraph 105 (9).

⁴ GATT Press Release No. 1396 of 25 September 1986.

the Preparatory Committee, established in November 1985, in order to have their trade-policy priorities included in the agenda and reach a decision on the launching of the new round.⁵ In retrospect, while the developing countries regarded the 1982 Ministerial Declaration as a self-contained political undertaking aimed at concerted action on a broad range of trade-policy issues, developed countries perceived it rather as laying the basis for launching a new round of multilateral trade negotiations.

5. The negotiating structure for the Uruguay Round reflects the complexity and variety of the issues to be addressed. At the top of the pyramid is the Trade Negotiations Committee (TNC) which has been designated as the principal body for supervising the negotiations and provides guidelines for the activities of the Group of Negotiations on Goods (GNG) and the Group of Negotiations on Services (GNS). Actual negotiations on trade in goods are taking place in the fourteen individual Negotiating Groups which cover each of the subjects listed in Part I of the Uruguay Declaration. These groups report to the GNG and seek its advice. Negotiations on trade in services, under Part II of the Punta del Este mandate, are being conducted in the GNS. It was also agreed that the implementation of the standstill and rollback commitments would be monitored by a Surveillance Body established for that purpose.

6. In their deliberations, the negotiating groups (fourteen under the GNG and the GNS) are to be guided by the specific negotiating plans adopted by the GNG and the GNS, respectively.⁶ A unique feature of the Uruguay Round negotiations is that a number of the issues covered (e.g. subsidies, quantitative restrictions) are relevant to the activities of several groups. The Punta del Este Declaration, therefore, provides that "each negotiating group should as required take into account relevant aspects emerging in other groups".⁷

7. The Uruguay Round is thus unique in the 40-year history of GATT both in its coverage of issues and the related complexity of its negotiating structure. The negotiations have been launched against the background of commitments by all participants not to introduce new trade restrictive measures in breach of GATT provisions and to gradually phase out existing ones. The new round has inherited a number of deep-rooted problems which could not be effectively addressed at the Tokyo Round and in subsequent work programmes adopted by Contracting Parties. It is recognized that lack or inadequacy of multilateral disciplines in such areas as trade in agriculture, textiles, subsidies or safeguards have been bearing heavily on multilateral trade relations and have been one of the principal causes of the erosion of the multilateral trading system.⁸ Sectors of particular and priority concern to developing countries have been included in the agenda. Participants are also to conduct a comprehensive examination of the functioning of the GATT system (FOGs). The Ministerial declaration also provides for an examination of GATT Articles. Among the new issues listed for negotiation under trade in goods are trade related aspects of intellectual property rights and trade related investment measures. Finally, the Uruguay Round negotiations are unique in so far as for the first time they are addressing, under Part II, the question of trade in services whose growing importance for the world economy has, *inter alia*, been documented in UNCTAD studies.⁹

8. Bearing in mind the comprehensive nature of the round the decisions by many Governments to seek full or provisional membership in the General Agreement are not surprising. In less than a year (September 1986 - October 1987) ten countries applied for full-fledged or provisional accession to the GATT. Equally, the decisions taken somewhat earlier by the Governments of Mexico and China to respectively accede to GATT or resume status as a contracting party might also have been influenced by their intention to participate in the forthcoming negotiations.

9. It should be pointed out that, compared with the initial stage of the Tokyo Round, the current negotiations have been progressing at a remarkable pace. An impressive number of specific pro-

⁵ For details on the trade-policy environment in which consultations were being held and the decision to negotiate was taken, see TD B 948, TD B 1101 and TD 328 Add.4.

⁶ "The Uruguay Round - Decisions of 28 January 1987", GATT Press Release No. 1405 of 5 February 1987.

⁷ "Ministerial Declaration on the Uruguay Round", Paragraph G.(iii).

⁸ For the recent overview of the international trading system, see TD B 1101 and TD 328 Add.4.

⁹ See, for example, TD B 1008, "Services and the development process", Study by the UNCTAD secretariat; TD 328 Rev.1; Reports by the UNCTAD secretariat: TD B 1100, "Services and the development process: further studies pursuant to Conference resolution 159 (VI) and Board decision 309 (XXX); TD B 1012, "Technology in the context of services and the development process"; TD B 1013, "Shipping in the context of services and the development process"; TD B 1014, "Insurance in the context of services and the development process".

posals have been tabled in all negotiating groups. The TNC, will be holding a Ministerial-level meeting in Montreal in December 1988 with the purpose of conducting a mid-term review.

OVERVIEW OF THE NEGOTIATING ISSUES

Tariffs

10. Punta del Este mandate:

"Negotiations shall aim, by appropriate methods, to reduce or, as appropriate, eliminate tariffs including the reduction or elimination of high tariffs and tariff escalation. Emphasis shall be given to the expansion of the scope of tariff concessions among all participants".

Previous rounds of GATT negotiations were essentially concentrated on industrial tariffs and have thereby led to substantial reductions in the general level of tariff duty rates. By 1987, the tariff cuts agreed in the Tokyo Round had been implemented in most developed countries and some of them (mainly Japan and New Zealand) had unilaterally undertaken further tariff reductions. As a result, post-Tokyo weighted average MFN rates in the EEC, Japan and the United States have fallen to 5.6, 5.5 and 4.8 per cent, respectively.¹⁰ However, of concern to developing countries is the fact that in all the three major developed country markets developing countries' exports in non-fuel trade face higher average MFN duty rates than is the case for developed countries exports.¹¹ Furthermore, the average figures conceal the still existing substantial discrepancies in tariff rates. In the EEC, Japan and the United States tariffs above 10 per cent still account for 21.5, 17.1 and 16.0 per cent of all tariff lines, respectively.¹² These tariff lines cover items of primary export interest to developing countries such as food, textiles and clothing. The number of tariff lines bound in agricultural items is also small.

Current proposals

11. In substance, proposals and statements by both developed and developing countries aim at an increase in binding of duties and further reduction of tariff rates. While there is relative convergence of views on the overall purpose of the tariff negotiating exercise, the proposals presented so far differ considerably on modalities and scope. The following are the possible elements that have been suggested.

- That developed countries should bind their tariffs on all products at zero level. This would be implemented on a preferential basis for developing countries for a period of ten years. Thereafter, this proposal envisaged extension of this benefit to developed countries. In return, developing countries would bind their tariffs on a substantial number of products and reduce them, as appropriate.
- That there should be a generalized approach to tariffs on a wide range of products except in agriculture, natural resource based products and tropical products. According to this general harmonization formula high tariff peaks beyond a stipulated level would be addressed. At the same time, a request offer procedure could be used for tariff rates in the middle range and reduction or renewal of low tariffs would be on a case by case basis.
- That those countries which have already participated in previous negotiations on a formula

¹⁰ TD 328 Add.4, Table IV.2.B.

¹¹ *Ibid.* In the EEC market, these figures are 5.8 and 5.5 per cent, respectively; for Japan the respective rates are 6.3 and 5.0 per cent. In the United States market the respective difference is more than twice as high: 7.0 and 3.4 per cent. For a detailed study of the actual tariff situation, see: R. Erzan and G. Karsenty, "Products facing high tariffs in major developed market economy countries: an area of priority for developing countries in the Uruguay Round?", UNCTAD Discussion Paper No.22.

¹² See *Erzan and Karsenty*, Table 3. These markets have been taken as examples because of their importance for the trade of developing countries. It should be born in mind that in 1984 the EEC, Japan and USA accounted for, respectively, 31, 21 and 36 per cent of all DMEC imports from developing countries. However, for certain EFTA countries the incidence of the "above 10%" rates is even higher. In Finland, for example, this share represents 29.6 per cent of imports from developing countries are subjected to tariffs above 10%. In Austria the corresponding figure is 23.0 per cent.

basis¹³ and which have thus reduced and bound their tariffs, should proceed on a request-and-offer basis. Other countries should follow a tariff-cutting formula approach which would set targets for the coverage of bindings at a specific percentage of overall imports and the reduction of duty rates by a percentage level to be agreed.

- That all contracting parties should negotiate the binding of all tariff items on industrial products and substantially increase the level of bindings on others. All rates should be reduced to a maximum ceiling level to be agreed upon. In yet another proposal it is argued that the negotiations should aim at the complete elimination of duties in the industrial sector by developed countries with the exception of agricultural, fishery, mining and forestry products. Developing countries should increase the binding of their duties at existing or deeper levels, according to the level of the development of their economies.
- A comprehensive proposal presented by a group of seven countries¹⁴ addresses the major issues facing the Group: (i) base rates (MFN bound rates or applicable MFN rate as of 1 January 1988); (ii) negotiating approach (a tariff-cutting formula which would reduce or eliminate low duties and deal with tariff escalation); (iii) bindings (the objective of which is to bind all negotiated tariff reductions together with an increase in the level of developing-country bindings); (iv) participation (all developed and developing country participants with due account taken of the individual economic needs of the latter).

Consideration

12. As was pointed out above, post-Tokyo MFN tariff rates in the developed country markets are still relatively high on products of export interest to developing countries. On the other hand, the fact that most tariff rates on agricultural products in developed countries are not bound undermines security of access for exports of developing countries. The following approach might be considered:

- Application of a harmonization formula, for example, of the type of the Swiss formula which would cut higher tariff rates by a greater percentage. This exercise could cover all residual "above 10%" rates in the food, textiles and clothing and other areas in developed countries. The possibility should also be explored of complete elimination of duties in the industrial sectors in developed countries.
- GSP schemes should be broadened so as to include the areas protected by high tariff duties, as well as agricultural products. So far, the GSP rates have predominantly been concentrated in the product categories with relatively low tariff rates. In addition, many product categories in the industrial sector such as textile and apparel articles, watches, most footwear, steel, glass products, and certain kinds of consumer electronics are explicitly excluded from the GSP schemes.¹⁵
- Finally, additional bindings by developed countries should be sought which would improve security of access for developing country products, particularly of agricultural products.
- Contributions by developing countries would need to be worked out by them taking into account such as factors as pressures on their balance of payments situation, revenue requirements etc.

¹³ In the tariff negotiations of the Tokyo Round the main industrialized countries eventually accepted the formula proposed by Switzerland: $Z = AX / (A + X)$ with X representing the initial rate of duty applied, A a coefficient, and Z the resulting reduced rate of duty.

¹⁴ Australia, Canada, Hong Kong, Hungary, the Republic of Korea, New Zealand, and Switzerland.

¹⁵ For details, see TD B 1160.

Non-Tariff Measures

13. Punta del Este mandate.

"Negotiations shall aim to reduce or eliminate non-tariff measures, including quantitative restrictions, without prejudice to any action to be taken in fulfilment of the rollback commitments".

In parallel with the progressive reduction of the general level of tariff rates which occurred as a result of consecutive rounds of trade negotiations, a pronounced trend towards the proliferation of non-tariff measures has emerged. While a number of NTMs were addressed in two previous rounds of negotiations, the resulting arrangements have not restrained increasing use of various forms of discriminatory price-control or volume-restraining measures. According to UNCTAD estimates, in the period 1981- 1986 import coverage indices of non-tariff measures affecting non-fuel imports into developed countries increased by almost 16 per cent.¹⁶ As a result, the average import coverage ratio of NTMs applied by major developed countries in non-fuel trade rose in the same period from 19.6 to 22.7 per cent. Taken at the product category level, the picture is even less encouraging.¹⁷

14. The major complexities of negotiations in the NTMs group result from multiplicity of forms of non-tariff measures,¹⁸ their pervasiveness and the often unclear consistency *vis-a-vis* GATT. Accordingly, it will be helpful to have a comprehensive classification of non-tariff measures with a view to determining what negotiating techniques might apply in each particular case. Another problem is to avoid overlapping with many other groups, since a number of specific NTMs are being taken up in the groups on agriculture, safeguards, subsidies, MTN Agreements and Arrangements, textiles, etc. Hence, in order to fulfil its mandate, the group will have to arrive at a consensus on the questions of (a) what kinds of non-tariff measures should be taken up; (b) how to mutually complement its deliberations with the activities of other groups; and (c) what negotiating techniques should be employed.

Current proposals

15. Among the proposals tabled so far, the following would appear illustrative:

- A product-specific request-offer procedure liberalizing market access which would allow the participants to address as many measures, and as broad a range of products as possible. It is argued that such an approach would serve the purpose of fulfilling the mandate of the group without unnecessary delay because of the unresolved question of the GATT consistency of specific NTMs.
- The NTM information in the GATT Common Data Base should be re-arranged so as to allow a revised categorization according to the applicable negotiating method. Thus, "quantifiable" (either in value or in volume terms) measures might be addressed by way of an appropriate formula. This proposal envisaged that other measures, not susceptible to formula treatment, should be addressed either within the ambit of existing or newly-designed codes. Finally, the remaining measures which do not fit into the above categories might be dealt with through bilateral or plurilateral request-offer procedures.
- A group of 15 participants that includes both developed and developing countries has recently circulated a communication in which it outlined a general framework for the NTMs negotiations.¹⁹ It is proposed that (a) where administrative procedures relating to trade are involved,

¹⁶ TD 328 Add.4, Table IV.3 (1981 = 100)

¹⁷ For example, in 1986, 48.9 per cent of imports of food and live animals, 64.2 per cent of imports of iron and steel, 67.4 per cent of imports of clothing were affected by various NTMs. For more details, see TD B 1126 Add.1, Table 1.1.

¹⁸ In its work on the Data Base and the respective analyses, the UNCTAD secretariat employs so-called "broad" and "narrow" definitions of NTMs. The former includes para-tariff measures (e.g. tariff quotas, variable levies, valuation), CV AD duties, quantitative restrictions (e.g. quotas, non-automatic licensing, prohibitions, VERs), import surveillance (e.g. automatic licensing), and price control measures. The latter excludes para-tariff measures, CV AD actions, and import surveillance.

¹⁹ The group comprises Australia, Canada, Finland, Iceland, New Zealand, Norway, Sweden, Switzerland, Hungary, Colombia, Hong Kong, Pakistan, Republic of Korea, Singapore and Uruguay.

they may lend themselves to elaborating multilaterally applicable rules; (b) where generally applied measures of a volume- or price-restricting character are involved, a formula approach might be employed; and (c) where product specific or *ad hoc* measures are involved, these may be particularly amenable to request and offer procedures under conditions assuring transparency.

- In their proposals, United States, the EEC and Japan suggested that such measures as pre-shipment inspection should be taken up on a multilateral basis. In addition, such measures as rules of origin, customs and consular formalities, fees and other import charges, and import deposit systems and port taxes have also been outlined in some of these proposals as possible "candidates" for the multilateral approach. In their proposals, United States and the EEC have also indicated particular non-tariff measures on a country-specific basis that they would like to take up bilaterally.

Consideration

16. The mandate of the Group provides that its deliberations should be without prejudice to the fulfilment of the rollback commitments. Read in conjunction with the relevant paragraphs of the Uruguay Declaration,²⁰ this means that trade distorting measures which are inconsistent with the GATT provisions or instruments negotiated under its aegis should *erga omnes* be excluded from the negotiations and be dismantled unilaterally.

17. Examination of the various types of non-tariff measures in conjunction with the mandates of other negotiating groups reveals that quite a number of them fall, by definition, under the scope of specific groups.²¹ It would consequently appear that the NTMs Group could (a) concentrate on non-tariff measures not covered elsewhere; and (b) at request, provide its advice to other groups dealing with non-tariff measures. More specifically, this would imply the following:

- The Group may primarily deal with quantitative restrictions in particular with those of export interest to developing countries. Elimination/substantial reduction of sector-specific quotas in leather, textiles (not covered by the MFA), footwear, tablewear, and electronic products, i.e. in the sectors of export interest to developing countries, would be the way of providing them with special and differential treatment.
- The Group may also take up all other measures not covered by the Uruguay Round groups. Taking account of common interest in establishing a homogeneous framework for rules of origin, some commonly agreed principles could evolve. In respect of some measures, a request-offer procedure at the bilateral or plurilateral level might be applied with multilateral monitoring of progress of negotiations.
- NTMs which are GATT inconsistent should be dismantled unilaterally. The question of determining the consistency of some non-tariff measures with the GATT should, however, not block the liberalization process.

Tropical products

18. Punta del Este mandate:

"Negotiations shall aim at the fullest liberalization of trade in tropical products, including in their processed and semi-processed forms and shall cover both tariff and all non-tariff measures affecting

²⁰ *Ibid.*, Part C., Sub-title "Rollback", indents (i) and (iii).

²¹ For example, various forms of government aids (subsidies, price and income support measures, etc.) and countervailing measures are being examined in the Group on Subsidies and Countervailing Measures. Restrictive practices related to anti-dumping duties, import licensing procedures, standards-related regulations, customs valuation and government procurement practices are being taken up in the Group on MTN Agreements and Arrangements. Equally, "grey-area" measures are the subject of the Safeguards Group, and the Group on GATT Articles is examining various distortions resulting from the different interpretation of the GATT provisions. Finally, the mandate of the Group on Agriculture provides for the examination of the whole range of trade-distorting practices in the area.

trade in these products. Contracting parties recognize the importance of trade in tropical products to a large number of less-developed contracting parties and agree that negotiations in this area shall receive special attention, including the timing of the negotiations and the implementation of the results as provided for in B (ii).²²

Tropical products have for long been regarded a priority sector of interest for developing countries. In most products, they are by far leading suppliers to the world market.²³ The total liberalization of imports of tropical products was accepted by most developed countries at the 1963 GATT Ministerial Meeting. This issue was later put on the agenda for the two previous rounds of MTNs where tropical products were supposed to be treated as a "special and priority sector". Very limited results were, however, achieved, and many tariff and non-tariff restrictions against developing country exports to the markets of developed countries still remain in place. In the tariffs area, this relates to a high tariff rates with respect to semi-processed and processed products (tariff escalation) which has a negative bearing on the ability of developing countries to achieve value added for these products. In the area of NTMs, of concern to developing countries are residual QRs and various forms of internal taxation (e.g. consumption taxes).

Current proposals

19. In line with the negotiating plan, a total of 34 countries, mainly developing, have submitted indicative lists containing either export products, offers or negotiating approaches. The lists of specific tropical products of export interest to developing countries in sum amount to many hundred items. However, deliberations in the Group have stumbled upon the issue of the so-called "extended coverage". This term put forward by developed countries implies that negotiations should cover not only tropical products of export interest to developing countries but also include other tropical products cultivated in the temperate-zone countries. If accepted, this notion would lead to counter-requests from developed to developing countries for the liberalization of their markets for the products from developed countries.

20. Apart from the "extended coverage" issue, modalities for negotiations suggested respectively by developing and developed countries vary considerably:

- Developing countries have requested that developed countries should bind their tariffs on tropical products at zero level or, else, align them to the lowest prevailing tariffs among the developed contracting parties. There should also be adopted specific measures aimed at improving market access for tropical products. To that end, developed countries should undertake the following: (a) abolish all forms of quantitative restrictions; (b) discontinue internal selective taxes, in particular with respect to coffee, cocoa, tea and bananas; (c) not establish new internal selective taxes with respect to other tropical products; (d) lift prohibitions on imports of tropical products competing with the national produce; and (e) relax and harmonize sanitary and technical regulations applied to tropical products. Substantial improvements in the GSP schemes have also been sought.
- In their proposals, developed countries seek concerted action by all contracting parties. One such approach puts emphasis on the application by all participants of a formula for reducing all tariffs on processed and unprocessed tropical products to a maximum agreed level. Afterwards, all tariffs on tropical products would be bound at the level thus achieved. All tariff rates currently below this level would be subject to request-offer negotiations. The proposal put forward by the European Community²⁴ aims at (a) elimination/substantial reduction of tariff duties for both tropical industrial products and tropical agricultural products;²⁵ and (b) reduction up to 50 per cent of existing duties for finished tropical industrial products. In the NTMs area it is proposed that progressive elimination of national QRs (with the exception

²² A provision for "early agreements" which allows participants to implement, on a provisional or a definitive basis, agreements reached at an early stage of the negotiations.

²³ For instance, in 1983 they accounted for 90.3 per cent of world supplies of coffee and 76.2 per cent of cocoa, for 96.2 per cent of deliveries of jute, for 83.6 per cent of exports of tea and spices. (*Handbook of international trade and development statistics*, 1986 Supplement, Table 4.3).

²⁴ The substance of the proposal can be found in "Dialogue", no.3 87 of 5 November 1987.

²⁵ The notion "tropical industrial products" includes cocoa, tea, coffee, manufactured tobacco, tropical woods and natural rubber, and jute and hard fibres. The term "tropical agricultural products" covers spices and essential oils, vegetable materials, tropical fruits and nuts.

of fresh bananas) and progressive elimination or reduction of consumption taxes should be undertaken. However, this proposal has been made subject to three conditions: (1) there should be a fair degree of burden sharing by all participants; (2) there should be a satisfactory level of reciprocity by the main beneficiary countries, including more advanced among developing countries; and (3) where developing countries maintain a "dominant supply position" for raw materials to the world market, there should be an appropriate reduction of measures restricting exports of such products. The latter reduction would correspond to the extent of reduction of tariff escalation in importing countries.

- At the September meeting of the Group on Tropical, the US, Japan and the Nordic Countries submitted offers which will be, along with the indicative lists presented by developing countries, will be the basis for two more rounds of tropical products consultations in October and November. Developing countries will need to evaluate not only the scope and extent of the offers but also the conditions attached there to.
- With a view to working out a common negotiating basis, in May - June the participants held two rounds of informal consultations in which the indicative lists submitted (export products, negotiating approaches and offers) were examined.

Consideration

21. It would appear that the aforementioned proposals by developed countries pose several problems. First, they imply that in contravention of the previous consensus for more than two decades to deal in GATT with tropical products on a "special and priority" basis, developed countries are now no longer inclined to make unilateral concessions in favour of developing countries. Furthermore, it is difficult to reconcile the above proposals with the provisions of the Punta del Este Declaration relating to developing countries.²⁶ Second, the concepts newly introduced will cause difficulties in the negotiations. Such notions as tropical "industrial" and "agricultural" products, "fair degree of burden sharing", "satisfactory level of reciprocity", and "more advanced developing countries" are not defined under GATT and would therefore introduce complexities in the negotiating process. Finally, making the proposal conditional on the concessions in access to supplies of raw materials would seem to go far beyond the negotiating mandate for two reasons. One reason is that in Punta del Este it was agreed that "broad concessions should be sought within broad trading areas and subjects negotiated in order to avoid unwarranted cross-sectoral demands".²⁷ The tropical products area would seem broad enough to enable participants to come to mutually acceptable concessions without going beyond its confines. The second reason is that it has long been established that it is the sovereign right of each nation to administer its national resources the way it deems necessary.²⁸ If the question of sovereignty over national resources is opened, it would naturally, by analogy, lead to considerations such as access to technology, finance, professional training, employment, sector-specific markets and other factors of economic activities.

22. The Group is to launch actual negotiations with a view to achieving, if possible, concrete results by the time of the Montreal meeting of the TNC (the week of 5 December 1988). Many questions within its ambit, however, still remain unresolved, including the negotiating techniques and modalities. In this regard, the following approach could be considered:

- Tropical products have been identified for special treatment for over a quarter of a century with the objective of providing benefits to the developing countries in their development process. New attempts to introduce in this category products of interest to developed countries would appear out of place. Precise definition as to what is a tropical product has always been problematic; hence a pragmatic approach would be desirable. Consideration of liberalisation of trade in tropical products has been going on for some time, based on an il-

²⁶ See, for example, paragraph B.(v) of the Uruguay Declaration which contains specific indication to the effect that "Developed contracting parties shall...not seek, neither less-developed contracting parties be required to make, concessions that are inconsistent with the latter's development, financial and trade needs".

²⁷ "Ministerial Declaration on the Uruguay Round", paragraph B.(iii)

²⁸ For example, in the "Charter of Economic Rights and Duties of States" (GA Resolution 3281 (XXIX)) it is specifically recognized that: "Every State has and shall freely exercise full permanent sovereignty, including possession, use, and disposal, over all its wealth, natural resources and economic activities" (Article 2).

illustrative list. It may be desirable, in the beginning, to consider these products in negotiations. A possibility could be left open for consideration of other products at a subsequent stage.

- The issue of tariff escalation should receive particular attention. Some approach on the basis of the Swiss formula, might be employed with the rates of coefficients to be agreed upon by the Group.
- With a view to having consistency with the NTMs Group, this Group, while embarking on the QRs-related negotiations, might apply a similar reduction formula.
- Internal taxation on imported tropical products which exists in some EEC countries is claimed by many developing countries to be at variance with Article III of the General Agreement. Elimination or reduction of these taxes would need priority attention. It could be noted that these taxes do not protect local production as there is practically no local production of these products in the EEC countries.

Natural resource-based products

23. Punta del Este mandate:

"Negotiations shall aim to achieve the fullest liberalization of trade in natural resource-based products, including in their processed and semi-processed forms. The negotiations shall aim to reduce or eliminate tariff and non-tariff measures, including tariff escalation".

The Uruguay Declaration does not point to specific sectors to be addressed in this respect. In its deliberations on the product coverage, the Group might give priority to sectors which have already been addressed in GATT and where expertise and statistical data have been developed. More specifically, this would involve: (a) non-ferrous metals and minerals; (b) forestry products; and (c) fish and fisheries products.

24. Interest in liberalizing trade in this area is shared almost universally but for different reasons. On the one hand, the phenomenon of escalation in nominal tariffs, and the related effective rate of tariff protection of the aforementioned sectors is the single most important trade problem for developing countries.²⁹ Post-Tokyo Round duty rates vary considerably from country to country and from sector to sector. Generalization is not possible. Imports of resource-based products (expressed as a percentage of total imports for each sector) into three major markets provide evidence for the existence of such a phenomenon. In the case of the EEC, about 80 per cent of non-ferrous metals and minerals are imported in the form of raw materials or primary products, while only about 10 per cent each in semi-processed and fully processed forms. For Japan these figures are even more illustrative (96.2 and 2 per cent, respectively). In the United States market, 67 per cent of fish are imported in the raw form, while 22 and 10 per cent, respectively, in the semi-processed and fully-processed forms. Such disproportionate shares are particularly characteristic for imports by Japan in all three broad sectors. GSP schemes have tended either to contain quantitative limitations or exclude certain products. In addition, preferential tariff arrangements have been eroding the GSP preferential margins. At the same time, developed countries are concerned that administrative regulatory measures are practiced in many countries. In particular, this refers to dual pricing systems,³⁰ quantitative restrictions, discretionary licensing, government procurement practices, export restrictions, subsidies, etc. Deliberations in the GATT Working Groups established by the Council in 1984 made it possible to identify problems existing in these

²⁹ The following example might be illustrative in this respect. Suppose zinc concentrate is imported duty-free, and unwrought zinc is subject to a tariff of 3.5 per cent. However, since the value of concentrates represents about 62 per cent of the value of the unwrought zinc, and the 3.5 per cent duty is applied on the full value of the unwrought zinc (i.e. including the value of concentrates), the effective protection accorded to the smelting and refining industries in the importing market will rise to almost 10 per cent.

³⁰ This involves government programmes or actions to establish domestic prices for natural resources at some level either below or higher the value they would otherwise have in the absence of such intervention. In the first case, this gives an artificial advantage to producers of resource-intensive or derivative products who export their goods in competition with other suppliers that do not benefit from the lowered input cost. Under the second alternative, domestic refiners are claimed to get the possibility of offering higher prices for the imported raw materials and thus overbid their competitors and deprive them of their raw materials supplies.

areas, as perceived by various contracting parties. It was also recognized that, due to the multifarious nature of existing obstacles, trade liberalization in these areas would be feasible only through a process of multilateral negotiations.

Current proposals

25. The submissions to the Group reflect the respective preoccupations of participants. A number of submissions have simultaneously been circulated both in this Group and in other Groups.

- One approach by developing countries to the NRBP's area as far as modalities for negotiations are concerned seems to be similar to that in the tariffs area. In other words, it is suggested that developed countries should bind at zero level all their tariffs facing developing countries on all products. After a period of time the zero bound rate would be extended to all other developed countries. In return, developing countries could bind their tariffs on some products and consider gradual tariff reductions as bound concessions to developed countries.
- Submissions from developed countries contain a much broader range of issues which they would like to address. Along with both import and export duties, they point to access to supplies, subsidies, pricing policies, government ownership practices and other NTMs as priority issues for the negotiations. As far as product coverage is concerned, most submissions by developed countries refer to the foregoing areas. To this end, one developed country has specifically indicated tariff lines in the fish, mineral and metal, and forestry products which it would like to address. At the same time, one submission contains a much broader range of sectors and includes petrochemicals, uranium, construction materials, and oil and gas.

Consideration

26. From the brief outline above it would thus appear that convergence of positions in the Group is not yet within reach. Considered at different levels, the overall "market access" issue central to the deliberations in this Group reveals its different facets. The future debate would first have to address residual import tariff peaks and tariff escalation in the developed countries and generally high and unbound import tariffs in the developing countries. Next would be the whole range of NTMs impeding market access for exported products. Developed countries also want to include the various tariff and non-tariff export restrictions maintained by developing countries to protect national raw materials in order to create incentives for national producers to increase the degree of processing. Finally, a new problem identified only recently is that of artificially high domestic prices maintained for raw materials (in particular, copper) by Japan with a view to ensuring secure import supplies of primary products. Such practice is viewed by some other consumers as introducing uncertainty and depriving refiners in other countries of raw material supplies. Of course, the increased price of raw materials has an obvious advantage for the exporting countries. In its deliberations, the Group could be guided by the following considerations:

- Product coverage may be the first question where consensus should be reached. In order to be concrete and purpose-oriented, negotiations should be based on both the common understanding of the issues involved and comprehensive statistical data. Extensive preparatory work which was being carried out by the Working Parties on (a) non-ferrous metals and minerals; (b) forestry products; and (c) fish and fisheries products for nearly three years has laid a good basis for substantive discussions. Solutions which will hopefully be found to the problems existing in these broad sectors might be used as points of reference later when trade-policy problems existing in other natural resource products areas might be negotiated.
- With account taken of the complexity and the multifarious nature of the issue, it would seem that negotiating techniques would vary accordingly. For dealing with tariff peaks and tariff escalation, a harmonisation formula for tariff reduction would seem most appropriate. As in the Tariffs and Tropical products Groups, different participants might apply different coefficients. This exercise should be coupled with extension of the GSP coverage.
- In the negotiations on NTMs on imports, in particular quantitative restrictions, this Group might either apply a reduction formula or agree on their replacement by tariffs. In both cases

expertise of the Tariffs and Non-Tariff Measures Groups would provide valuable guidelines for this Group's deliberations. Exceptions for developing countries which need to maintain restrictions for balance of payments purposes would need to be considered.

- Other NTMs might be taken up at a later stage when progress in other related Groups (safeguards, subsidies, GATT Articles, etc.) becomes more pronounced. In this case, due regard of their deliberations should be taken in order to ensure consistency of approach. Specific provisions in favour of developing countries should in this case become an integral part of the agreements.
- Requests addressed to developing countries to relax export restrictions maintained by them with the aim of encouraging industrial development would cause problems. As has been pointed out above, the sovereign right of each nation to administer its national resources the way it deems necessary is recognized universally.³¹

Textiles and Clothing

27. Trade in textiles and clothing is of major export interest to the developing countries and trade liberalization in this sector constitutes a top priority subject for the Uruguay Round as far as the developing countries are concerned.

28. Punta del Este mandate:

"Negotiations in the area of textiles and clothing shall aim to formulate modalities that would permit the eventual integration of this sector into GATT on the basis of strengthened GATT rules and disciplines, thereby also contributing to the objective of further liberalization of trade".

While reductions in textiles and clothing tariffs have been negotiated in previous rounds, neither the Kennedy nor the Tokyo Rounds questioned the continued existence of the LTA or MFA.

29. The Multifibre Arrangement (MFA) is a special sectoral safeguard arrangement, which permits GATT contracting parties to escape certain GATT obligations and to negotiate quantitative restraint arrangements on a discriminatory basis, which would not otherwise be permissible under GATT provisions. In the textiles and clothing sector where developing countries possess substantial competitive advantage, the developed importing countries found the existing framework of Article XIX inadequate to shield their industries from international competition and sought a special arrangement which would permit them to impose import restraints on a selective basis. The introduction of the concept of "market disruption"³² is the beginning of the continuing erosion of the GATT system.

30. A growing proportion of international trade in textiles and clothing have been regulated under the LTA and the Multi-Fibre Arrangement for more than a quarter of a century. Even though signatory countries to the MFA account together for over 90 per cent of international trade in textiles and clothing products, only developing countries suppliers and Japan are restrained by quotas under the MFA. Therefore, one cannot talk about "trade liberalization" taking place as long as trade in major sectors such as textiles and clothing remains regulated by import quotas under the MFA, on a discriminatory basis, and subject, for many product categories, to high duty rates.

31. The introduction of the concept of "market disruption" paved the way for institutionalized

³¹ See footnote 25.

³² This definition of "market disruption" reads as follows: "(a) In a number of countries situations occur or threaten which have been described as 'market disruption'. (b) These situations generally contain the following elements in combination: (i) a sharp and substantial increase or potential increase of imports of particular products from particular sources; (ii) these products are offered at prices which are substantially lower than those prevailing for similar goods of comparable quality in the market of the importing country; (iii) there is serious damage to domestic producers or threat thereof; (iv) the price differentials referred to in paragraph (ii) above do not arise from government intervention in fixing or formation of prices or from dumping practices. In some situations other elements are also present and the enumeration above is not, therefore, intended as an exhaustive definition of market disruption". For details, see page 26 and page 105 of GATT "BISD 9S".

derogation from the basic principles and rules of the General Agreement, thus creating an imbalance of rights and obligations. Its perpetuation disrupts the autonomous process of structural adjustment which is essential to maintaining equilibrium of a healthy world economy. Past experience showed that certain important provisions of the MFA concerning structural adjustment and the need of avoiding proliferation of restraints have been disregarded in its implementation.³³ The use of voluntary export restraints inherent in the MFA has extended to some other areas such as steel, automobiles etc. Such proliferation is further eroding the GATT system. In this sense, developments in the textiles and clothing trade regime have a profound impact on the multilateral trading system.

Current proposals

32. In comparison with other Negotiating Groups, only two concrete proposals have been presented so far. Among the views expressed at the meetings of the Group were:

- The task of the group is to negotiate modalities for the return of textiles and clothing trade now covered by the MFA to the GATT, with tariffs and non-tariff measures outside the MFA being handled in other relevant Negotiating Groups.
- The negotiations in the areas of tariffs and tariff escalation should be dealt with in the appropriate Groups.
- The relevance of the work in other groups, particularly that on safeguards.
- The negotiations in this Group should not only focus on the MFA but also cover other types of restrictions affecting trade in this sector having regard to their conformity or otherwise with GATT.
- The Group should take into account all tariff and non-tariff measures affecting this sector, regardless of their conformity with the GATT.

33. The proposal by Pakistan contains a number of steps to be undertaken with a view to achieving the negotiating objectives in the area.³⁴ It envisages the following phases:

- Elimination of discrimination in the application of MFA restrictions by removing the criteria of "low prices" for invocation of "market disruption";
- Elimination of MFA import restrictions on non-apparel textile products;
- Restrictions on apparel products may be applied only in terms of criteria for actual market disruption in accordance with the provisions of Article 3 of MFA;
- Restrictions on apparel products may be applied only with the approval of the TSB if existence of actual market disruption is established;
- Finally, restrictions on apparel products should be eliminated.

It is also argued in the proposal that the above steps should be supported by substantial reductions of high tariffs on textiles and clothing to be negotiated in the ambit of the Tariffs Group.

34. A submission by Indonesia on behalf of the 19 members of the International Textiles and Clothing Bureau calls for a multiple process which would lead to the elimination of the MFA. The following steps are envisaged: (i) the elimination of concepts and practices under the MFA which

³³ Article 1:4 of the MFA provides: "Actions taken under this arrangement shall not interrupt or discourage the autonomous industrial adjustment process of participating countries. Furthermore, actions taken under this Arrangement should be accompanied by the pursuit of appropriate economic and social policies, in a manner consistent with national laws and systems, required by changes in the pattern of trade in textiles and in the comparative advantage of participating countries, which policies would encourage businesses which are less competitive internationally to move progressively into more viable lines of production or into other sectors of the economy and provide increased access to their markets for textile products from developing countries." For its part, Article 1:7 states the following: "The participating countries recognize that, since measures taken under this Arrangement are intended to deal with the special problems of textiles products, such measures should be considered as exceptional, and not lending themselves to application in other fields".

³⁴ The substance of the proposal by Pakistan is contained in "SUNS", no.1875 of 12 February 1988.

are incompatible with the GATT; and (ii) the effective application of the GATT principles relating to developing countries to trade in textiles and clothing and the termination of the MFA and all associated bilateral agreements.

35. For their part, the papers presented by the European Communities and by the Nordic countries call for further examination of the problems affecting the textiles and clothing sector with a view to reaching a common diagnosis. It is also suggested that the GATT secretariat should prepare a factual study on the possible global economic and trade consequences of dismantling the MFA and other trade restrictions in this field.

Consideration

36. The eventual integration of the textile and clothing sector into GATT should be viewed in the context of its importance for the general interests of the world economy and the restoration of the integrity of the multilateral trading system. UNCTAD studies indicate that over one-tenth of world industrial output consists of textiles and clothing. World trade in these products is now worth well over \$100 billion, accounting for around 12 per cent of world trade in manufactured goods.³⁵ The industrial structure of many developing countries is inextricably linked to the expansion of their domestic production and export of textiles and clothing.

37. This sector accounts for one third of manufactured exports from developing countries. Continued discriminatory quota restrictions against developing countries could in no way be justified. The negotiations should keep close to its mandate of integrating the textiles and clothing sector into the General Agreement on the basis of strengthened GATT rules and disciplines. Without removing discriminatory quota restrictions against developing countries, the reduction of tariffs only provides additional advantages for exporters from developed countries which are not under restraints.

38. If the negotiation is to achieve the objective of formulating modalities that would permit eventual integration of this sector into GATT on the basis of strengthened GATT rules and disciplines, serious attempts should be made to work out such modalities sufficiently early. At present, the textile industries of the United States and the EEC are at a stage of increasing domestic production and consumption, high utilization of capacity, rising profits, etc. The importing countries have a very weak case in their demand for continued protection. If this opportunity for a return to GATT rules is let pass, the discriminatory trade regime against developing countries might continue indefinitely.

39. Bringing the textiles trade into normal GATT rules will be effective only if there is a strengthened safeguards system. Hence proper attention may have to be paid to progress in the negotiations on safeguards.

Agriculture

40. Punta del Este Mandate

"CONTRACTING PARTIES agree that there is an urgent need to bring more discipline and predictability to world agricultural trade by correcting and preventing restrictions and distortions including those related to structural surpluses so as to reduce the uncertainty, imbalances and instability in world agricultural markets.

Negotiations shall aim 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, taking into account the general principles governing the negotiations, by:

- (i) improving market access through, inter alia, the reduction of import barriers;
- (ii) improving the competitive environment by increasing discipline on the use of all direct and

³⁵ TD/328 Rev.1, page 137.

indirect subsidies and other measures affecting directly or indirectly agricultural trade, including the phased reduction of their negative effects and dealing with their causes;

- (iii) minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture, taking into account the relevant international agreements".

Trade in agricultural products has been an important subject for some time, but there have been no tangible results in negotiations in this area. There has been a long term problem of structural surplus and distorted competition environment resulting in tensions. As a consequence of these tensions, major trading countries have been balancing on the brink of trade wars. Efficient agricultural producing countries, both developed and developing, have been obliged to incur substantial export revenue losses. At the same time, competition for export markets has been intensifying against the background of total world production which is far from adequate to meet total world demand when one takes into account that the problem of hunger and malnutrition in certain parts of the world has not ceased to exist and has even been increasing. This has been due to the inadequate purchasing power of developing countries which has in turn resulted in a shortfall in effective demand.

41. Resort to protective and trade-distorting measures in the agricultural sector can be attributed to two major factors. On the one hand, the GATT provides relatively more flexibility to trade in agriculture with respect to two subjects. First, unlike for trade in industrial goods, it allows countries to introduce, subject to a number of conditions, quantitative restrictions against imports of agricultural products (Article XI). Second, the prohibition on export subsidies does not apply to agricultural products, except to the extent that such export subsidies lead to the subsidizing country obtaining "more than an equitable share of world export trade" (Article XVI:3). The latter provision is also confirmed in the Tokyo Round Code on Subsidies and Countervailing Duties. On the other hand, much of the imbalance is due to agriculture being "taken out of GATT", as countries have modified or escaped from their GATT obligations on agriculture in order to implement priority domestic objectives.³⁶ Uncertainty in the agricultural trade has further been aggravated by highly differing national norms and regulations related to animal, plant and human health and safety, which have the effect of protectionist barriers. In addition, agriculture remains subject to high tariffs and is frequently the subject of safeguard actions.

42. This environment in agricultural trade has both been the result of the adoption by many countries of extensive domestic support programmes which have been justified by, *inter alia*, national security considerations, social goals, and the need to counter market instability.³⁷ Moreover, in order to counter perspectives of loosing agricultural markets to heavily subsidized exports of major countries, efficient agricultural producing countries had also to resort to similar practices. The drains on national treasuries have reached enormous scales.³⁸ The Uruguay Round

³⁶ The main steps in this process have included: (a) the passage of Section 22 of the United States Agricultural Adjustment Act and the subsequent waiver in GATT (1955), which continues to provide legal cover for import restrictions on a variety of agricultural products; (b) the "unbinding" of tariffs on agricultural products by certain EC Member States at the time of the establishment of the Community and in the context of subsequent accessions, this has enabled the Community to freely apply variable levies under its Common Agricultural Policy (CAP); (c) the passage of the United States Meat Act of 1964, has given rise to a system of voluntary export restraints; (d) the continued maintenance by Japan of 'residual' restrictions on agricultural products, after 30 years as a GATT contracting party; (e) the inclusion in the Protocol of Accession of Switzerland of special provisions permitting that country to maintain restrictions on agricultural products.

³⁷ Domestic agricultural policies, in most Northern Hemisphere developed countries, have tended to insulate domestic markets from international competition. The EEC's Common Agricultural Policy (CAP) provides for the maintenance of a determined level of farm income through individual price support systems. Usually, these fix an "intervention price" at which the Community guarantees to buy the commodity from producers, and a "threshold price" below which imports should not be permitted. In order to protect domestic producers from foreign competition, a "variable levy" - assessed as the margin between the "threshold price" and the lowest representative offer price on the world market - is imposed on imports, and an "export restitution" - assessed as the difference between the average world price and the Community price - is paid on the exported Community product. In other words, the subsidy is achieved through the farmers' benefiting from artificially high prices on agricultural products, thus encouraging over-production. In the United States, a measure of price stabilization is achieved through a combination of various devices, e.g. loans, which may be discharged by the farmer by delivering the commodity to the Commodity Credit Corporation (CCC) if he cannot obtain the target price that has been fixed for his produce; for some commodities, guarantees to purchase at the target price, or deficiency payments to compensate for the difference between the actual price and the agreed target price; and finally control of crop acreage and of the amount of produce marketed, as well as the application of import quotas. Import quotas serve to keep prices for some products, notably sugar at levels well exceeding world prices. However, for many products the system involves direct payments to farmers which do not result in higher prices but on the contrary permit the farmer to sell domestically and for export at lower prices than would otherwise be the case.

³⁸ An attempt to assess the magnitude of agricultural production and export subsidies has been undertaken by FAO.

thus provides a unique opportunity to address the accumulated problems both separately and in package with a view to eventually putting an end to the frictions and uncertainties in this area.

Current proposals

43. At the outset efforts have been made to focus on the identification of major problems bearing upon trade in agriculture and their underlying causes. While there seems to be some understanding on the scope of the problems, the recipes suggested for bringing about a more sound agricultural trading environment often depart from different premises.

- At one extreme is the proposal by the United States.³⁹ Its global viewpoint is that government policies affecting the production, consumption, import and export of agricultural products should allow the market to determine the flow of international agricultural trade. Subsequently, governments should eliminate the adverse effects of domestic agricultural policies on international trade, namely those with respect to market access, export assistance, and sanitary and health regulations. Accordingly, it is proposed that all contracting parties should: (a) completely phase out, within 10 years, all agricultural subsidies which directly or indirectly affect trade; the quantities exported with the aid of export subsidies should be frozen and phased-out within the same period; (b) phase out import barriers over 10 years; and (c) harmonize health and sanitary regulations insofar as animal, plant and human health and safety are not affected; domestic regulations in this area should be based on internationally agreed standards and processing and production methods. With respect to policy coverage, it is proposed that the negotiations be focused on those policies that directly or indirectly subsidize agriculture, e.g. market price and income support as well as some other distorting policies. However, direct income or other payments decoupled from production and marketing, as well as *bona fide* foreign and domestic aid programmes would be excluded from consideration.
- The two-stage approach by the EEC should be placed at the other extreme.⁴⁰ The first stage would comprise two parallel and complementary types of short-term actions, one in the form of emergency measures to bring about an easing of the strains in certain markets, and the other in the form of other measures designed to bring about a concerted improvement in the balance between supply and demand. These types of measures would involve a series of individual undertakings with respect to: (a) price disciplines and managed trade for cereals and cereal substitutes; (b) disciplines aimed at reducing the quantities of sugar put on the world market and improved access to markets; (c) compliance with the disciplines of the International Dairy Arrangements by non-member contracting parties who are significant exporters of the products concerned; and (d) reduction of support resulting from internal or external measures. Carrying out of a significant and concerted reduction in support is envisaged in a second stage of the negotiations. However, the emphasis in the proposal is put on the first phase of short term measures to control supply and demand through a series of undertakings. Unlike the U.S. proposal, it is specifically provided in the EEC position that involvement by CPs in efforts to improve agricultural trade conditions should match their level of development and development requirements.
- The Cairns group⁴¹ proposal is yet another alternative. It contains a three-pronged approach: (i) the long-term framework; (ii) a reform programme to be implemented within 10 years or less; and (iii) a series of early relief measures. The long-term framework would aim at achieving the objectives of full liberalization in, and elimination of existing exceptions for, agriculture. As essential elements, it would include (a) complete liberalization of market access in the tariff and non-tariff areas; (b) prohibition on all subsidies having an effect on agricultural trade; (c) establishment of an international framework for sanitary and phytosanitary measures; and (d) integration of trade in agriculture into a strengthened dispute settlement mechanism. Normalization of agricultural trade would be achieved through the application of a

These results expressed in terms of producer subsidy equivalents are reproduced in: TD B/1086, 'Problems of agro-industrial production and trade', Report by the UNCTAD secretariat, Table 9. It is estimated that the sum of farm production subsidies granted by seven major DMECs amounts to \$ 65 billion a year.

³⁹ 'Daily Bulletin of the United States Mission', 7 July 1987.

⁴⁰ 'SUNS', no. 1810, 28 October 1987.

⁴¹ Argentina, Australia, Brazil, Canada, Chile, Colombia, Hungary, Indonesia, Malaysia, New Zealand, Philippines, Thailand and Uruguay. The substance of the proposal is contained in 'SUNS', no.1808, 24 October 1987.

reform programme whose principal goal would be to phase down actual aggregate support. Exceptions would be allowed for measures either having negligible effect on output and trade or having humanitarian objectives. Finally, through early relief measures, as distinct from the overall standstill and rollback commitments, it is proposed to urgently deal with the distortions accumulated in the area. This would involve the following immediate commitments to be undertaken either subject to the conclusion of the long-term framework or by the end of 1988 (whichever is the sooner): (a) not to reduce existing levels of access; (b) freeze all export and production subsidies affecting world agricultural trade; (c) not to introduce new sanitary or phytosanitary regulations with protectionist purposes; and (d) to release in a non-disruptive way stocks built up as a consequence of government support policies. Implementation of the "freeze" programme would thus lead to the possibility of gradually rolling back existing distortions. Special and differential treatment for developing countries would be provided through, *inter alia*, longer timeframes for the implementation of the measures proposed and certain support measures essential for economic and social development, which are not explicitly linked to export purposes.

- Some agricultural importer developing countries have also presented either their specific proposals or views on the possible contents of the negotiations. These proposals outline concerns of importing countries. It is recognized in the proposal that agricultural trade should be guided by such principles as, *inter alia*, comparative advantage, competition and the equitable sharing of global economic welfare from expanded trade. There should also be respect for GATT rules and observance of its disciplines. However, there should be an unequivocal recognition that in order to meet various policy objectives (national security, health standards, social, regional or political), governments may adopt support measures which would however not lead to distortions on international markets. In particular, this pertains to the specific measures for special and differential treatment for developing countries which should be incorporated, as integral elements, in a future set of rules and disciplines. The substantive elements of the special and differential regime should be: (a) recognition of the right of developing countries to maintain incentive systems which would provide adequate protection to their agricultural sectors without distorting international markets and would be compatible with their GATT obligations; and (b) assurances on the part of developed countries that their domestic policies do not result in raising international prices of their exports above those prevailing in national markets and that the flow of food aid to developing countries facing food shortages would be maintained at adequate levels. Support for international commodity price stabilization agreements should also constitute part of the future framework.
- Some developing countries have drawn attention to the development aspects of agriculture and the close linkages between the development process and agriculture in many developing countries. According to them, the considerations in the negotiations should go much beyond the concerns against trade restrictions and trade distortions. They have emphasized the fact that a very large proportion of their populations is dependent on agriculture and what is of utmost importance to them is increasing production and productivity. According to them, some domestic measures are essential for this purpose e.g. provision of imports at reasonable cost, financing of research by the State, availability of easy credits, ensuring remunerative support prices etc. They feel that such essential measures for development should not be labelled as producers' subsidies.
- Along with the foregoing overall proposals, a number of submissions focus on the specific elements of the global issue, such as production policies and subsidization. In one proposal by a group of developed countries it is argued that the "supply side" can in principle be controlled through either the administrative supply-management measures or the price policy. The first alternative implies that certain supply-management policies might be conducive to lower production, lower exports and increasing prices in the world market. The second alternative envisages making production less profitable by reducing prices paid to farmers. This would lead to decreasing production and exports and thereby to an increasing international price level. However, it is maintained that a combination of the two alternatives would be an optimum solution. Yet another view is that all subsidies which distort trade and all access barriers should be eliminated. To that end, it has been suggested that a single aggregate "trade distortion equivalent" should be developed which would bring all access barriers, administered price systems and trade distorting subsidies to a common denominator. This would subsequently entail negotiations on the reduction of this aggregate indicator.
- Important developments took place in the July and September meetings of the Group of ne-

gotiations on Agriculture. In July, the CAIRNS Group presented a "Proposal for a framework approach for Agriculture" in which it recognizes the need to proceed step by step and identifies the basic elements of what would have to be done by the Ministers at the Mid-Term Review of the Uruguay Round, details the long-term elements to be negotiated in 1989, sets out elements of what is called transition to the long-term, including what is described as complementary transitional rules and the first steps to long-term reform, and covers differential and more favourable treatment to developing countries. This proposal was well received by many participants in the negotiations, and was commented upon positively both in the Group of Negotiations on Goods and the Trade Negotiations Committee meetings at the end of July. In the September meeting, a statement by Japan appears, in its content, to be the first indication by that country, from the point of view of some participants, of a political will to negotiate and move forward on Agriculture. On their part, a group of some developing countries⁴² presented a proposal to the negotiating Group.

Consideration

44. As pointed out above, accumulated problems of an economic, social and legal nature have led to strains on world agricultural trade. The comprehensive nature of the negotiations provides an opportunity for contracting parties to address all facets of this complex issue. It is only natural that mutually acceptable solutions may seem difficult to find. The proposals by the United States and the EEC referred to above are self-explanatory examples of the polar positions on which these two leading agricultural traders stand. For their part, developing countries are hardly satisfied with either of these submissions.

45. It would seem that the lasting solution to this problem could only be achieved if the whole of agricultural trade were brought under an enlarged and strengthened discipline. However, judging by the foregoing overview, the search for a comprehensive solution which would embrace the interests of all participants does not promise to be an easy task.

46. Most of the proposals have focussed on the liberalisation of trade and restraining the use of subsidies. The proposal by the EEC mentions early relief measures and that of the USA eventual liberalization of trade. The Cairns Group proposal addresses both these concerns and takes account of the concerns of efficient producers. However, these proposals fall short of responding to the specific problems of importing developing countries, particularly with regard to increases in the cost of import. These also do not address the role of agriculture in the overall development context in a large number of developing countries.

47. Liberalization of agricultural trade has rightly been seen by many as a very important issue. A high level of unbound tariffs, varieties of non-tariff measures and unrestrained use of export subsidies have together contributed to distortions of market conditions in agriculture. There is also a large disparity in the level of tariff bindings. More extensive tariff bindings, a move towards harmonization of tariff rates and substantial reduction in tariffs could appear relevant objectives in this area providing, of course, for differential and more favourable treatment for developing countries.

48. A move towards the elimination of non-tariff barriers would appear equally important, again providing for differential and more favourable treatment for developing countries.

49. Unrestrained use of subsidies as a trade policy instrument has been one of the main causes for the depressed world market conditions giving rise to trade disputes among the major trading countries. Two options are envisaged. One is to discipline subsidies affecting trade in agriculture through improvement of existing rules and disciplines by interpreting GATT Article XVI:3 concerning the term "more than an equitable share of world export trade" to prevent undue prejudice to the interests of trading partners in third country markets. Firstly, the lack of a precise definition of "equitable share" does not provide operationally effective rules and disciplines. Secondly, certain contracting parties have obtained a large share of the world market through export subsidies. The established share during a previous representative period does not provide equity for other exporting countries. This option would therefore basically aim at perpetuating market shares among the established suppliers, thus denying the competitive producers their legitimate shares in

⁴² Jamaica, Mexico, Egypt and Peru supported at the meeting by Morocco and Nigeria.

international markets. Another option might provide for a general prohibition of export subsidies with certain exceptions under particular conditions. A general prohibition formula may take various forms such as a provision to cover all subsidies granted on the occasion of, or in connection with, the export of an agricultural primary product, or on the basis of an illustrative list of export subsidies practices (as in the Subsidy Code) or simply extend the Article XVI:4 prohibition to agricultural primary products. Exceptions for developing countries will be necessary through provisions of differential and more favourable treatment to them. It has been well recognized that subsidies are important instruments for social and development objectives of developing countries.

50. While considering liberalization of agricultural trade and the elimination of subsidies, it will be important to take into account the resulting burden on the importing developing countries as a consequence of possible price rises. These countries may have to find enhanced financial resources to buy essential agricultural items. Some ways will have to be found to make available to them adequate resources for this purpose. It is very likely that, in the long term, their agricultural production may improve as a result of higher prices and the consequent higher returns to farmers.

51. Agricultural products, particularly food articles, are essential import for many developing countries. Increasing pressures on their foreign exchange earnings would result in more heavy burdens on them on this account. Whereas, in the case of industrial goods, they may have an option in reducing imports if they have lower availability of foreign exchange, they may not have such flexibility in food items since the population must be provided with food. Hence to reduce pressures on their foreign exchange it may be necessary for them to produce food articles depending on the availability of physical resources. This "need to produce" aspect for developing countries may have to be kept in mind while evolving regulations covering agricultural trade.

52. What is of particular importance is the development dimension of agriculture in a large number of developing countries. In these countries agriculture is very intimately linked to the development process and the commercial nature of agricultural production and trade may not be fully relevant. Supply of credits and other inputs at cheaper rates, assurance of remunerative prices to producers and development of infrastructure, including research and extension, are some of the important policy instruments followed by developing countries in this development process. It will be necessary to align the emerging disciplines to such development needs of the developing countries.

GATT Articles

53. Punta del Este mandate:

"Participants shall review existing GATT Articles, provisions and disciplines as requested by interested contracting parties, and, as appropriate, undertake negotiations".

Current proposals

54. In the context of the present exercise, Articles II, XI, XII, XIII, XV, XVIII, XV, XXI, XXIV, XXV, XXVIII and the Protocol of Provisional Application of the General Agreement have been proposed for review. There were also requests for review of Articles which are being taken up in other negotiating groups, i.e. Articles VI (in MTN Agreements and Arrangements and under Subsidies and Countervailing duties), XVI (Subsidies and Countervailing duties and Agriculture), XIX (Safeguards) and XXIII (Dispute Settlement).

55. Among the proposals which are of importance for developing countries or which have serious implications for them are:

- **Review of Articles XII, XIV, XV and XVIII related both to the balance of payments provisions in these Articles and to the infant industry provisions of Article XVIII. Some developed contracting parties feel that the application of Article XVIII:B by developing countries has led to permanent trade restrictive measures, in part because Article XVIII:B provisions were cast in structural rather than cyclical terms. Some developed contracting parties also feel that Article XVIII:B was being used instead of the infant industry provisions of Article XVIII in order to avoid the issue of compensation and retaliation. They feel that the procedural aspects of the notification obligations has not been respected and the Balance-of-Payments Committee has not used the limited authority available to it in order to bring pressure to bear on consulting countries to remove their balance of payments restrictions.**
- **The proposals for the review of Article XXIV contend that the drafters of Article XXIV had not foreseen the widespread growth of preferential regional arrangements that would occur since the GATT's inception. This Article has failed to provide adequately for surveillance of regional arrangements, and lacks a commitment to comply with its provisions. There are differences in the interpretation of certain provisions of this Article. The importance of the review is to ensure that regional arrangements did not undermine the MFN principle nor create barriers to the trade of third parties.**
- **The proposal for review of Article XXV:5 suggests that in line with the 1956 Decision, and in the light of a review of the various waivers granted, a set of principles and modalities be drawn up together with criteria of economic justification for the grant of waivers under Article XXV:5. Where appropriate, waivers already granted should be aligned with such new general principles and modalities as the CONTRACTING PARTIES might adopt. The aim of such an exercise is not to remove the flexibility now existing in this area, but rather to prevent the perpetuation of, or to forestall, virtually permanent privileged situations.**
- **With regard to Article XXVIII, it is proposed that the concept of "principal supplying interest" requires redefinition in order to take account of smaller suppliers for whom a product on which the tariff binding was being renegotiated represented a significant source of export earnings. In determination of suppliers' rights, provision should be made for potential trade growth, both in terms of new products entering trade and new entrants in a market. In this context three methods have been suggested. One proposal is that a criterion for granting an additional principal supplying right should be the importance of exports of the product concerned to the market in question per head of population of the exporting country. Another proposal is to relate the value of exports to the GNP of the exporting contracting party. Yet another suggestion is that the ratio of export value of the the item concerned to the country in question to its total export value of all products be taken into consideration.**
- **With regard to the Protocol of provisional Application, the central question was whether the "grandfather clause" under paragraph 1 (b) of the Protocol should still be available to contracting parties.**

Consideration

56. As far as the developing countries are concerned, the most serious implications flow from the proposal by developed countries for review of the GATT Articles dealing with the balance of payments provisions. Developed countries would like developing countries to gradually assume more responsibilities, higher obligations in the multilateral trading system.

57. Ever since the original drafting of the GATT and the Havana Charter, developing countries have consistently sought to have recognition of their special trade problems incorporated into the contractual framework of the interantional trading system. The provisions of the GATT which give a degree of special consideration to the position of developing countries are Article XVIII and Part IV. The GSP, conceived and negotiated in the UNCTAD, was accepted in the GATT only under the status of an agreed temporary derogation (under Article XXV) from the basic GATT principle of unconditional MFN, and only incorporated into GATT in the Tokyo Round "Enabling Clause".⁴³

58. It is now increasingly recognized that the provisions for "special and differential treatment" of developing countries have not produced the expected benefits for them. Part IV is a best endeavours provision which does not have a contractual and binding nature. Article XVIII, particularly section (B), is the only provision which gives developing countries certain degree of flexibility. The main provisions in the GATT relating to the use of trade restrictions for BOP reasons are contained in Article XII and XVIII(B). Until 1955 the provision of Article XII applied to all countries, both developed and developing. During the 1955 Review Session, however, section B was added to Article XVIII to provide a greater degree of flexibility to developing countries.⁴⁴ These provisions of Article XVIII should not be viewed as part of the "special and differential treatment" as they related to the existence of an objectively determined financial situation.

59. One relevant point to be kept in view is that import control under Article XVIII:B is used by developing countries not so much for restraining total imports as for influencing the composition of imports. The total import is, in any case, limited by the inadequate foreign exchange available to them. Developing countries are endeavouring to use Article XVIII:B for optimum utilisation of their foreign exchange consistent with their developmental and social needs. Restrictions on their use of Article XVIII:B may hamper their development process and may retard their future potential for being bigger purchasers.

60. One Article that attracted priority attention in the context of this group is Article XXVIII which permits the upward renegotiation of tariff rates. Some of the problems that have been addressed are demonstrated by the recent dispute between Japan and the EC due to actions by the latter to raise tariff rates on a product where imports had not yet taken place. As no principal supplier existed no compensation was required although the action was clearly directed toward Japan which was the only country with the capacity to export this product. Although obvious dangers are presented by this "preemptive" use of the renegotiation clause, an appropriate multilateral understanding on the use of Article XXVIII could have the positive effect of encouraging countries to resort to this legitimate, non-discriminatory, transparent instrument rather than to "grey area" measures directed primarily against the exports of developing countries. Such an understanding would be designed to reduce the risk that greater resort to Article XXVIII could

⁴³ "Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries", Decision of 28 November 1979, GATT BISD, 26 Supplement, 203.

⁴⁴ There are three main differences between Article XII and Article XVIII(B):

- (1) While Article XII assumes that the BOP problems of developing countries would be of a temporary and cyclical nature, Article XVIII(B) recognises that developing countries encounter balance-of-payments problems which are of a persistent and structural nature, mainly because, on the one hand, their demand for imports continues to rise as a result of the implementation of their programmes of development and, on the other, their export receipts do not rise because of the instability of their terms of trade.
- (2) Article XVIII(B) lays down less stringent criteria than Article XII for the invocation of balance-of-payments provisions by, inter alia, stating that developing countries could impose trade restrictions on imports when the reserves are considered to be "inadequate", while provisions of Article XII can be invoked only in cases where monetary reserves are considered to be "very low".
- (3) The developing countries invoking the provisions are expected to consult every second year in the BOP Committee, while the countries which invoke the provisions of Article XII are required to consult in the BOP Committee every year.

initiate a process of unravelling previous tariff concessions. This more frequent use of Article XXVIII might be the price to pay for reversing the tendency of managed trade and discrimination. During the review of this Article, a number of countries, including developing, also expressed their interest in the negotiations regarding the question of supplier's rights. These countries are interested in redefining the concept of "principal supplying interest" so that negotiating rights under an Article XXVIII negotiation would be more equitably distributed.

Safeguards

61. Punta del Este mandate:

(i) A comprehensive agreement on safeguards is of particular importance to the strengthening of the GATT system and to progress in the MTNs.

(ii) The agreement on safeguards:

- (1) shall be based on the basic principles of the General Agreement;
- (2) shall contain, *inter alia*, the following elements: transparency, coverage, objective criteria for action including the concept of serious injury or threat thereof, temporary nature, degressivity and structural adjustment, compensation and retaliation, notification, consultation, multilateral surveillance and dispute settlement; and
- (3) shall clarify and reinforce the disciplines of the General Agreement and should apply to all contracting parties".

62. The lack of discipline on safeguards has been one of the major causes undermining the credibility of the multilateral trading system. A comprehensive agreement on safeguards is a prerequisite for strengthening the international trading system and the success of the Uruguay Round. In taking safeguard measures, the major trading countries tend to circumvent the disciplines of Article XIX and resort to unilateral actions or bilateral arrangements. Furthermore, the temporary nature of escape clause action provided for under Article XIX to redress emergency problems arising from unexpected developments has been ignored and safeguard actions are in most cases taken to tackle with long-term structural problems. In the absence of an improved and more efficient safeguard system, long-term protection in contravention of GATT rules is proliferating in other industrial sectors such as steel, footwear, or electronic products. Such a tendency freezes the pattern of production and trade, suffocates the dynamism of the world economy and prolongs its stagnation. The central issue in all these developments is the attempt by the major trading countries, to escape from the obligation under Article I on mfn treatment, to permit "selective" application of safeguard measures against particular countries, especially new competitive entrants to the world market.

Current proposals

63. The proposals submitted so far in the Group fairly reflect differing approaches to the issue.

- In most proposals it is maintained that safeguard measures should only be applied in accordance with the objective criteria set out in Article XIX:1, which would entail working out agreed guidelines with respect to the application of such notions as "injury", "threat of injury" or "serious injury", as well as a multilateral understanding on a non-discriminatory application of measures (either through tariffs or global QRs), clear causal link between "unforeseen, sudden and substantial increase in imports" and "serious injury", transparency of safeguard measures, their temporary nature, degressivity, etc. Introduction of a safeguard measure should be accompanied by a structural adjustment programme notified to the CONTRACTING PARTIES. However, while some proposals speak out in favour of a comprehensive understanding on safeguards which would take the form of an amendment to Article XIX, in other proposals preference is given to a code approach (e.g. conclusion of an Agreement on Implementation of Article XIX).
- Another view expressed in the Group is that the scope of safeguard measures should not

necessarily be confined to tariff-related measures, and that "other" measures should also be allowed. While in a number of major elements this proposal goes along with the foregoing submissions (i.e. objective criteria for application, temporary nature, degressivity, multilateral surveillance), it is argued that the implementation of structural adjustment should not be a prerequisite for the application of safeguard measures. This process should be taking place through the market forces mechanism.

Consideration

64. Meeting in Punta del Este, GATT Ministers were fully aware of the primary importance of an equitable solution to the safeguards issue for the success of both the new round and the multilateral trading system as such. This is witnessed by the fact that a commitment to stick, when resorting to safeguard actions, to the non-discriminatory philosophy of the General Agreement is emphasized twice within the mandate of the Group. However, this "declaration of intention" will not be translated into practical deeds unless the roots of the "mfn versus selective approach" dispute are specifically addressed in the Group's deliberations.

65. The major reason behind the introduction of the selective trade-restricting measures has been to avoid the possibility of retaliatory action from larger trading powers. Selectivity makes safeguard actions easier to apply and thus lends itself to pressure on the part of protectionist lobbies acting together with or on behalf of the allegedly injured national producers or electorate constituencies. The basic problem of introducing or not introducing the relief measure being sought often thus gets intertwined with the domestic political considerations. It would subsequently follow that in order to resolve the basic conflict between vested political interests and economic reasoning, it may be prudent to involve in the decision-making process independent national mechanisms which will be above sectoral considerations and will also be immune to the pressures of vested interests. This would also have another positive side, since such independent institutions would be able to assess not only the grounds for the industry's complaint, but also implications of safeguard measures for the national economy as a whole.

66. However, consensus on the fundamentally important mfn approach to safeguard actions would also entail the need for an agreement on quite a number of other relevant issues: (1) transparency; (2) nature of a safeguard action; (3) product coverage; (4) geographic coverage; (5) objective criteria for action; (6) temporary nature; (7) degressivity; (8) obligation to structurally adjust; (9) compensation and retaliation; (10) procedures for consultations; and (11) multilateral surveillance and dispute settlement.

- Maximum transparency of safeguard actions and measures is a necessary prerequisite for effective multilateral surveillance in any multilateral safeguard system. Transparency might be achieved through three channels namely (i) a requirement to notify all safeguard actions by the contracting party which takes such action; (ii) counter notification by the affected countries; and (iii) an authorization for the GATT Secretariat to collect factual information on its own initiative. Notification of domestic procedures in the form of public notice and hearings on investigations with respect to proposals to take safeguard actions would enhance transparency.
- Article XIX permits contracting parties to suspend an obligation in whole or in part or to withdraw or modify a concession in the event of serious injury being caused or threatened a particular product as a result of unforeseen developments. A contracting party intending to take a safeguard action could resort to two courses of action: (i) to impose global quantitative restrictions; or (ii) to increase the tariff rate for the product in question. However, the tariff approach would seem more preferable, since it is certainly easier to ensure non-discriminatory application of a tariff than a quantitative restriction. Furthermore, in the case of a tariff increase, the compensation for the affected parties would be easier to measure.
- In principle, any agreement on safeguards should relate to all products. Progress in the deliberations on this issue will depend on work being undertaken in the relevant Negotiating Groups.
- As has been pointed out above, geographic coverage is the major stumbling block which has always been a controversial issue in negotiations on safeguards. It involves the question of

whether Article XIX measures should be applied in strict observance of the mfn principle contained in Article I, or they could also be applied on a selective basis under particular circumstance. The argument for selective safeguards is that this will allow countries to deal with problems created by one or a few exporting countries without, at the same time, penalizing countries whose exports do not cause injury to the domestic industry of the importing countries. For developing and a number of smaller developed countries with limited retaliatory power the mfn principle will be vastly preferable as a basis for safeguard action in the context of the General Agreement, since restrictions applied selectively would inevitably end up being applied against them (e.g. witness MFA). In addition, selectivity would not have much economic effect as the selective restrictions generally lead to the expected imports being replaced by products coming from unrestricted sources.

- In order to ensure uniform application and prevent abusive use of Article XIX for safeguard action, objective criteria for the determination of serious injury or threat thereof should be clarified. This would first involve the establishment of a direct causal link between increased imports and an overall decline of the economic performance of domestic producers. The factors for the determination of "serious injury" should include: output, sales, exports, inventories, profits, productivity, return on investment, utilization of capacity, employment and wages. On the other hand, decline of economic performance due to increased competition among domestic producers, contraction in demand due to substitution by other products, or to change in consumer tastes, deficient business strategies, shifts in technology, structural rigidities or loss of competitive advantage should not be considered as factors causing serious injury.
- It is generally agreed that emergency action under Article XIX should be temporary by definition and should be progressively liberalized during the period of application. A limitation of period would appear reasonable for the purposes of a safeguard action.
- Any safeguard measures intended to be in force for more than a specified period should be degressive and be progressively liberalized by a staged reduction of tariffs eventually leading to the pre-action level or by a periodic increase of quotas by a certain percentage in the case of quantitative restrictions.
- When, in accordance with established criteria and procedures, a government decides to protect an industry, the initial step could be to provide the industry with domestic assistance. If domestic assistance measures are not able to provide adequate relief, border measures could be taken.
- An issue of importance is the relevance of retaliatory action for weaker trading partners, like developing countries. Developing countries do not have enough economic strength to launch retaliatory action. A more effective way would be to provide for compensation in the event of safeguard action being taken.
- Procedures for notification and consultation provided for in Article XIX should be specified. They might, *inter alia*, involve improved procedures for ensuring uniformity and clearer specification of time elements for consultation. It should be established that a safeguard action may be introduced provided it has been notified both to the GATT secretariat and a safeguards surveillance body, and consultations with the party or parties concerned on possible compensation have been held.
- For the purposes of monitoring the implementation of safeguard actions, a Surveillance Body on Safeguards should be established. More specifically, its mandate should include the supervision of the operation of an agreement on safeguards, to conduct periodic review of all safeguard measures, make recommendations and findings to the CONTRACTING PARTIES, monitor the phase-out of protective measures not based on GATT, but having safeguard effects, assess injury, conduct consultations, examine adjustment measures, assess compensation and balance of obligations and dispute settlement. Establishment of such a Surveillance Body would be necessary for the purposes of monitoring compliance with safeguard disciplines.
- A comprehensive agreement on safeguards should take whatever legal format feasible to ensure the compliance and implementation by all contracting parties.

MTN Agreements and Arrangements

67. Punta del Este mandate:

"Negotiations shall aim to improve, clarify, or expand, as appropriate, agreements and arrangements negotiated in the Tokyo Round of Multilateral Negotiations".

The years which have elapsed since the enactment of the six agreements on non-tariff measures and the three dealing with special product categories⁴⁵ demonstrated a number of shortcomings and revealed persistent problems in their implementation. While efforts by some Committees to introduce changes in the scope of the relevant Codes had yielded some results,⁴⁶ for most Codes these changes were of a technical nature.

Current proposals

68. Some suggestions have been made by participants indicating the issues that they wished to raise with respect to individual MTN Agreements and Arrangements. The "candidate" Codes suggested so far by different participants are more or less the same: Agreement on Technical Barriers to Trade (Standards Code), Anti-Dumping Code, Agreement on Government Procurement, Customs Valuation Code, and Agreement on Import Licensing Procedures. In addition, one communication dealing with a request to clarify the operation of Article 14:5 of the Subsidies Code was circulated both in this Group and in the Negotiating Group on Subsidies and Countervailing Measures.

- In relation to the Anti-Dumping Code, many participants have raised the need of addressing both substantive and procedural issues. In particular, concepts as "like product", "sufficient evidence", "constructed value", "domestic industry" or "export price to a third country", as well as procedures for determination of injury or those for price undertakings and other elements of the Agreement appear to account for particular difficulties in the Code's implementation. Views have also been expressed to the effect that it might be improved if certain recommendations made by the Anti-Dumping Committee, including those on transparency, on-the-spot investigations, time-limits for responding to anti-dumping questionnaires and threat of material injury are accepted by signatories.
- In the context of the Agreement on Technical Barriers to Trade several contracting parties would like to deal with such issues as (a) testing, inspection and type approval; (b) increased transparency in both bilateral standards agreements and regional standards activities; (c) processes and production methods; (d) enhanced compatibility between standards issued by recognized national bodies and other standardizing bodies within the party; (e) voluntary draft standards and their status, and some others.
- It has been suggested that in the framework of the Government Procurement Code such issues as special and differential treatment and the accession procedure need to be addressed.
- In the ambit of the Agreement on Implementation of Article VII (Customs Valuation Code), one party would like to take up the issue of burden of proof regarding transaction value.
- Finally, there has been a suggestion that with respect to the Agreement on Import Licensing Procedures more operational criteria for the use of Non-Automatic Import Licensing should be worked out.

⁴⁵ Technical Barriers to Trade, Government Procurement, Subsidies Code, Customs Valuation, Import Licensing Procedures, revised Anti-Dumping Code, Bovine Meat Arrangement, Dairy Arrangement, and Civil Aircraft Code; most of them have been in force since 1 January 1980.

⁴⁶ In particular, this refers to the Civil Aircraft Agreement for which the Committee a agreement to extend the coverage of the Annex to the Agreement containing the list of the civil aircraft parts and units to be imported on a duty-free basis. Further, the Government Procurement Committee agreed on certain textual changes and modifications in the scope of the Agreement, including the reduction of the threshold level for bidding, tightening conditions for recurring contracts, the extension of the Agreement to include leasing and renting, etc. A number of specifications have been agreed to in the Standards Code, Anti-Dumping Agreement, Customs Valuation Code and some others.

Consideration

69. The conclusion and enactment of the Tokyo Round Codes raised a number of important legal issues. Although formally negotiated under GATT auspices (sometimes they are referred to as "interpretation" or "implementation" of particular Articles), the Agreements constitute in fact separate, independent mechanisms whose relationship to the General Agreement remains vague, defined only in the Decision adopted by the Contracting Parties at their thirty-fifth session in which the intention to ensure the unity and consistency of the GATT system was reaffirmed.⁴⁷ Furthermore, it was noted in the Decision that existing rights and benefits under the GATT, including those derived from Article I, would not be affected by the new Agreements.

70. After the completion of the Tokyo Round negotiations, the GATT trading system has thus undergone profound modifications due, *inter alia*, to the emergence of a complementary sub-set of rules applicable, in fact, only to the subscribing signatories to the Codes. The achievement of the immediate goal of liberalizing certain non-tariff measures entailed the emergence of a number of new issues of both legal and economic nature. In brief, they are viewed as follows. First, the coming into being of several "stand-alone" treaties, which have often no direct links with the GATT has diluted the homogeneous nature of the General Agreement. This, in turn, has brought about a pronounced trend towards "plurilateral" discrimination on the part of those bound by additional disciplines of the new agreements against other GATT members.⁴⁸ Second, with account taken of the special situation of developing countries, the drafters of the Codes did include provisions pertaining to special and differential treatment in most of the substantive agreements.⁴⁹ However, the wording of these provisions is generally vague and more in the nature of declarations of intentions and best-efforts which lend themselves to unilateral interpretations. Even when the language is relatively specific, the history of some Codes' implementation reveals that developing countries have however had difficulty in exercising their preferential rights under the Agreements.⁵⁰ As a result, without a clear indication of the additional benefits which they would obtain most developing countries are reluctant and find it difficult to accede to these instruments. Finally, while the conclusion of the Agreements did result in narrowing the scope of the application of certain non-tariff measures, certain past practices are still operative. The years that have elapsed since the adoption of the Codes provide evidence of a number of cases of loose interpretation or direct deviations from various provisions of the Codes by signatories. To some extent these stem from an inadequate overall solution to the problem of subsidies in that Code. However, most of them are attributed to the existence of "grey areas" in the framework of the Agreements either not presently covered by or insufficiently elaborated in their provisions.⁵¹ Thus, the issue of enhancing the disciplines under the Codes through rectifying deficiencies in their scope should also be addressed. From the aforementioned submissions in the Group, it is clear that most of them focus on the inadequacy of several Codes when compared with the underlying intentions of the drafters. To sum up, the specific problems which exist within the general issue of the MTN Agreements and Arrangements and which could be taken up by the Group are:

- Conditional⁵² application of the provisions of certain Codes with its trade adverse effects for the exports of non-participating countries and its implications for the heterogeneous structure

⁴⁷ 'Action by the Contracting Parties on the Multilateral Trade Negotiations', Decision of 28 November 1979, (BISD, 26S/201).

⁴⁸ Compared with the General Agreement itself, the MTN Agreements and Arrangements impose a relatively higher level of obligations, since their signatories must, first, stick to specific trade policies in the areas defined, and, second, bring their legislation and administrative procedures into conformity with the provisions of the relevant Codes. By contrast, the "Protocol of Provisional Application of the General Agreement on Tariffs and Trade" provides that Part II of the GATT (i.e. the chapters which relate to NTMs) should be applied by the adhering countries merely "to the fullest extent not inconsistent with existing legislation" (BISD, Volume IV, "Text of the General Agreement", p.77).

⁴⁹ With the exception of the Agreement on Import Licensing Procedures and the Agreement on Trade in Civil Aircraft.

⁵⁰ For example, such cases were observed in the Customs Valuation Committee and in the framework of the Standards Code. However, most pertinent example is the Subsidies Code where developing countries were expected to undertake obligations before they joined the codes.

⁵¹ Such cases have been observed in the Government Procurement Code, Civil Aircraft Agreement, Standards Code, Anti-Dumping Code, Subsidies Code, IDA.

⁵² The League of Nations condemned the "conditional clause" in unequivocal terms:

"It cannot be too often repeated that a conditional clause has nothing whatever in common with the sort of clause which the (1927) International Economic Conference and the Economic Consultative Committee recommended for the widest possible adoption. It is in fact the negation of such a clause, for the very essence of the most-favoured-nation clause lies in its exclusion of every sort of discrimination, whereas the conditional clause constitutes, by its very nature,

of the GATT. The conditional approach is justified by its proponents on the basis that if certain countries are prepared to accept higher levels of obligations, they need not be obliged to extend the benefits to countries which are not so prepared. Despite this logic, the "conditional" approach conflicts with the "cornerstone" principle of GATT and, in practical terms, means that small and weaker (i.e. less "interesting") countries' views do not have to be taken into account when new agreements are negotiated. The solution to the problem of unity and consistency of the GATT system might be envisaged in the following direction. The task facing several Negotiating Groups is to make the GATT framework more flexible so as to enable it to react appropriately and timely to the ongoing changes in the world economy and embody on its agenda new issues affecting *trade in goods* as soon as they emerge and ensure that they acquire a certain degree of recognition by the Contracting Parties. Otherwise, the General Agreement would increasingly be vulnerable to bilateralism, mistrust and reciprocal complaints. However, a greater involvement of developing countries can only be ensured if two major prerequisites become inalienable features of the GATT system: (a) maximum transparency at all stages of the negotiating process; (b) a clear-cut and binding nature of the commitments relating to special and differential treatment in favour of developing countries, especially recognition of the development dimension. This imposes greater responsibility on the major countries for the proper functioning of the trading system.

- Inadequate and sometimes arbitrary implementation of the Codes' provisions related to developing countries. This should entail deliberations in the Group on the need for effective preferential treatment within the scope of either existing or new NTM-related agreements.
- The need for strengthened disciplines in the Codes' purview. There would also seem to be a need for strengthened disciplines within the Codes' purview particularly in light of the general failure of the relevant Codes to prevent anti-dumping and countervailing duty actions and investigations outside prescribed norms and procedures. These and other Codes might be re-examined so as to identify possible modifications which would serve to reduce the scope for trade harassment.⁵³

Subsidies and Countervailing Measures

71. The problem of subsidies and countervailing measures is one of the most acute trade policy issues. This matter was discussed in the Tokyo Round negotiations, and subsequently the Code on Subsidies and Countervailing Duties was concluded which was intended to implement Articles VI and XVI in a more effective manner. However, imprecision of many criteria relevant to the functioning of the Agreement on both the subsidy and the countervailing duty side and deliberate omission of export subsidies on primary products have substantially undermined its operational value.

72. Punta del Este mandate:

"Negotiations on subsidies and countervailing measures shall be based on a review of Articles VI and XVI and the MTN agreement on subsidies and countervailing measures with the objective of improving GATT disciplines relating to all subsidies and countervailing measures that affect international trade. A negotiating group will be established to deal with these issues".

The inherent complexity of the issue of subsidies, their extensive use worldwide as well as large controversy of views on the ways to tackle the matter make its solution a real challenge to the multilateral trading system.

73. The preoccupation of both developed and developing countries about the overall issue of subsidies and countervailing measures can be attributed to three major factors: (a) distortions of world trade flows caused by government-sponsored measures designed to financially support non-competitive domestic industries; (b) related to this fact, an ever increasing cost of subsidies to na-

a method of discrimination, it does not offer any of the advantages of the most-favoured-nation clause proper, which seeks to establish it on firmer foundations". (Quoted in TD B,918, paragraph 45).

⁵³ The recently negotiated Canada-United States Free Trade Agreement provided for recourse to independent panels to determine the consistency of anti-dumping and countervailing duty actions with multilateral obligations.

tional budgets; and (c) the arbitrary and abusive manner in which remedial measures to counter foreign subsidies (countervailing duties) have tended to be applied. At the same time, it is generally recognized that subsidies may be and are used for the purposes of promoting important objectives of social and economic policies (employment-creating programmes, structural adjustment, research and development grants, regional development programmes), in particular in developing countries.⁵⁴

Current proposals

74. Most proposals submitted so far in the Group highlight both the "subsidy side" and the "countervailing duty" side of the mandate.

- With regard to the issue of subsidies there seems to exist a broad recognition that virtually all substantive provisions of the Code should be either specified or redrafted. This would involve deliberations by the Group on such issues as, *inter alia*, (a) existence of a subsidy; (b) actionable and non-actionable subsidies (i.e. specific as distinct from generally available subsidies); (c) domestic subsidies having the effect of export subsidies; (d) export subsidies on primary products; (e) export subsidies on non-primary products; and (f) notifiable subsidies.
- Switzerland has come up with a specific proposal to redefine existing categories and to introduce three different classes of subsidies on the basis of the legal effects attached to each, rather than relying upon the basis of the purpose (motivation) and the objective of a subsidy as is actually the case. The three classes of subsidies would hence include prohibited subsidies, actionable subsidies subject to requirement of material injury and non-actionable subsidies. The allocation of different types of national subsidies to the three classes or baskets would in this case be a matter of subsequent negotiations based on the legal framework developed to that end.
- On the "countervailing measure" side of concern to most participants are the provisions of the Code on which the initiation and the conduct of investigations and the imposition of duties is based. It has been suggested that the Group should, *inter alia*, take up the following issues: (a) clarification of the terms "domestic industry" and "like product"; (b) determination of injury; (c) elaboration of the cumulative injury assessment concept; (d) definition of sale and the related terms; (e) calculation of amount of subsidy; (f) tightening of the procedures for the initiation and conduct of countervailing duty investigations; (g) conditions for the imposition of countervailing measures, their duration, review and revocation; and (k) undertakings.

Consideration

75. As pointed out above, for the first time in GATT history the comprehensive nature of the current trade negotiations provides its participants with an opportunity to address all facets of the subsidies issue, in particular its implications for world trade in agriculture. It is generally recognized that lack of disciplines in the agricultural trade area has largely been due to failure of the drafters of the Subsidies Code to include export subsidies on primary products in its ambit. Determination of participants to deal effectively with the issues of contention would therefore be of primary importance for the success of the negotiations. However, importance of clarification of the whole range of ambiguous provisions of the Code should not be underestimated.

76. It appears that developing countries' concerns about observed dilution of the special and more favourable treatment provisions of the Code should be put high on the agenda for the Group. Apart from the overall negative effects on world trade flows, subsidies have particularly been affecting the interests of developing countries by way of nullifying their comparative advantage either in cost or geographical location. Their exports, in particular those in agriculture, have tended to be displaced or squeezed in the face of the huge amounts of financial resources spent by indus-

⁵⁴ This fact is specifically emphasized in a number of provisions of the Subsidies Code: Article 8 ("Subsidies - General provisions"), Article 11 ("Subsidies other than export subsidies"). As far as developing countries are concerned, signatories to the Code recognized that "subsidies are an integral part of economic development programmes of developing countries" (Article 14).

alized countries for the purposes of export subsidization. On the other hand, the enabling provisions of Article 14:5 have tended to be ignored. It may be recalled that one major signatory has linked the application of the "injury criteria" to commitments by developing country signatories to eliminate export subsidies.

77. It appears that deliberations in the Group might proceed along the following lines:

- (i) Both in respect of export subsidies on primary products and export subsidies on non-primary products, the fact that subsidies are an integral part of economic development programmes of developing countries should be reaffirmed.
- (ii) Notifications under Article XVI:1

Increased transparency would seem indispensable for reducing misunderstandings regarding the conformity of practices in the area with GATT obligations. To that end, the notification procedure should be strengthened.

In deciding whether the subsidy in question should be notified, a contracting party should be guided by a strengthened and clarified criterion of "specificity". It would seem that such a criterion would lead to a better convergence of views.

The notification procedure will become more effective if a contracting party notifies all its subsidy programmes which are more or less specific. Thereupon, each contracting party is enabled to decide whether the programme in question causes serious injury to its interests. This claim must be substantiated. The existing Article XVI:1 obligation to discuss the possibility of limiting subsidization should be converted into an obligation to take appropriate remedial measures. However, it would appear difficult to obtain a universal adherence to the notification provision without universal adherence to the injury criterion and the application of countervailing duties.

There should be established a procedure of multilateral surveillance in the Subsidies Committee for the purpose of monitoring the implementation of the notification requirement.

- (iii) Special treatment for developing countries under Article 14 of the Agreement.

It is recognized that export subsidies are an integral part of economic development programmes of developing countries (Article 14:1). At the same time, it is provided that "a developing country signatory should endeavour to enter into a commitment to reduce or eliminate export subsidies when the use of such export subsidies is inconsistent with its competitive and development needs" (Article 14:5). The autonomous nature of this condition should be fully and unambiguously recognized in order that benefits to developing countries are not made conditional on their undertaking commitments. On the other hand, developing countries could remain ready to consult with the signatories regarding their subsidy programmes.

It should be recognized that government measures by developing countries to encourage a general improvement in indigenous technological capacity should not be considered as subsidies.

- (iv) Definition and measurement of the amount of a subsidy for the purpose of the imposition of countervailing measures.

Countervailing measures have sometimes been taken with respect to practices which in the view of the exporting country concerned did not constitute countervailable subsidies (domestic programmes). It would seem that three necessary conditions for a subsidy becoming countervailable are as follows: (a) financial contribution by a government or administrative authority; (b) specificity in granting the subsidy in question; and (c) net benefit to the recipient.

The question of the methodology of calculating the amount of a subsidy should be addressed. The major issue has been the lack of consensus on whether the measure of the amount of a subsidy is the cost to the government providing that subsidy or the benefit of the recipient of that subsidy.

- (v) Issues concerning determination of material injury

There should be a careful examination of "cumulative injury assessment". It often harms small exporters. Exporting countries accounting for less than a certain share of the market should in any case be excluded from such calculation. At the same time, a so called "contributing cause principle" should be adhered to which implies that for each exporting country an individual examination should be made as to whether the investigated subsidized sale has significantly contributed to the material injury.

The level below which a subsidy is considered not worth initiating a countervailing duty case ("de minimis" subsidy) could be negotiated.

- (vi) Trade harassment effect

It should be established that petitioners presenting complaints which later on turn out to be spurious or frivolous should be penalised. Exporters affected by a superfluous investigation should be compensated for the lost trade opportunities.

The issue of price undertakings should be clarified. To that end a form of multilateral control should be found so as to preclude the investigating authority from extracting concessions from the exporter concerned.

- (vii) Concept of domestic industry

There could be a common understanding that, while filing a petition, the competent authorities should require the petitioner to prove the support of the majority of the producers constituting the domestic industry.

Dispute settlement

78. Punta del Este mandate:

"In order to ensure prompt and effective resolution of disputes to the benefit of all contracting parties, negotiations shall aim to improve and strengthen the rules and the procedures of the dispute settlement process, while recognizing the contribution that would be made by more effective and enforceable GATT rules and disciplines. Negotiations shall include the development of adequate arrangements for overseeing and monitoring of the procedures that would facilitate compliance with adopted recommendations".

The Uruguay Round negotiations are not the first attempt to improve the dispute settlement procedures. It may be recalled that during the Tokyo Round the "Understanding regarding notification, consultation, dispute settlement and surveillance" was adopted.⁵⁵ However, this initiative did not remove the issue from the agenda, since two major questions which constitute the focal points of the dispute settlement process, - acceptance and compliance, - were not properly addressed. More recent steps have been taken by the CONTRACTING PARTIES to strengthen the procedure by way of introducing technical and procedural modifications.⁵⁶

79. Two interesting observations follow from the examination of past and more recent dispute cases (since 1979). First, the USA and the EEC alone have been involved in about 65 per cent of all considered cases. If Japan is taken into account, the share of dispute settlement procedures accounted for by those three major parties will amount to about 80 per cent. Second, non-observance of GATT Articles I, III, VI, XI, XIII and XVI constituted the essence of most complaints. It is obvious from the above that unless and until a broad international consensus is achieved on these and other relevant issues, any attempt to make contracting parties abide by GATT rules will fail. By the same token, unless and until all contracting parties have an *economic*

⁵⁵ 'BISD', 26S 20.

⁵⁶ See the 1982 GATT Work Programme (BISD, 29S.13) and the decisions taken at the 40th Session of the CONTRACTING PARTIES (November 1984).

interest in abiding by the strengthened and clarified rules of the General Agreement, determination will be lacking, and legalistic "cosmetic operations" would not solve the real problem. The comprehensive nature of the Uruguay Round negotiations thus provides contracting parties with an opportunity to look at the issues as a whole and to examine deficiencies of the dispute settlement mechanism in the context of the overall improvement of trade-policy disciplines.

Current proposals

80. A large number of both individual and collective submissions in the Group reveals the pre-occupation of contracting parties in this field.

- The view is widely shared in the Group that the efficiency of the dispute settlement mechanism would be enhanced through: (a) increased mediation role for the GATT Director-General or his designee; (b) possibility of recourse, with prior agreement of the disputing parties, to binding arbitration; (c) application of standard terms of reference for all panels; and (d) compensation to (rather than retaliatory actions by) the party/parties affected. It is argued that these modifications should be introduced along with imposing stricter time-limits for various phases of the dispute settlement procedure.
- At the same time, quite a number of submissions contain specific proposals on further strengthening and clarification of the already existing provisions. This refers, *inter alia*, to: (a) views on the composition of panels (further reliance on rosters of panelists, both governmental and non-governmental); (b) improvement in the position of "third interested parties", not parties to the dispute, vis-a-vis panels; (c) the need for recognition of an automatic right to a panel; (d) increased emphasis on the conciliation phase; (e) adoption of panels' reports (with or without exclusion of disputants). It is stressed in most proposals that surveillance functions either by the Council or by the CONTRACTING PARTIES over the implementation of the panels reports should be strengthened. In this regard, a group of countries proposed the establishment of a "Dispute Settlement Mode" for the Council. It is maintained that the advantage of having the Council meeting in "Dispute Settlement Mode" would be that greater and more systematic attention could be given to the dispute settlement process. In this case the main emphasis in carrying out the relevant functions would be put on the Dispute Settlement Council which would have both its own pace and agenda and its Chairman (as distinct from the Chairman of the normal Council).
- Developing countries are particularly interested in the smooth functioning of the dispute settlement system. In a number of their proposals emphasis is placed on the following considerations: (a) automatic establishment of a panel when this has been requested under Article XXIII:2; (b) the contracting parties involved in the dispute must be explicitly excluded from decision-making by the CONTRACTING PARTIES or the Council; (c) any panel must reach a clear conclusion regarding nullification and impairment of benefits; (d) the panel should also pass its judgement on the amount of possible compensation to the party affected; and (e) the "retroactive prejudice" concept should be introduced, that is, prejudice should be evaluated from the time when the measure in question entered into force.
- An important issue being discussed in the Negotiating Group is the question of differential and more favourable treatment for developing countries. In this connexion, while developed countries argue that the objective of the dispute settlement mechanism being that of restoring the balance of rights and obligations, there is no scope here for special and differential treatment, Developing countries, for their part, seek to restore symmetry to a situation where their position in a dispute is one of the weaker partner. One interesting proposal is the one that would provide for a multilateral review of solutions arrived at in disputes involving countries, in the light of their development and economic needs. Another important element is the related to technical assistance.

Consideration

81. The principal consideration which inspired the drafters of the GATT to set up a dispute settlement mechanism was to have an instrument which would help re-establish the balance of rights and obligations existing within the multilateral trade contract in case it had been impaired

by some contracting party's arbitrary action. However, the cases of actual retaliation have been extremely limited and the tendency has been to strengthen the authority of the dispute settlement mechanism, particularly the panels of experts. As a result, this mechanism has gradually evolved into a peculiar blend of conciliation and adjudication processes having no precedent in other multilateral fora. The ultimate recourse for an injured party whose rights were found to be nullified or impaired, was to withdraw substantially equivalent concessions with respect to the offending contracting party. The value of such provision to smaller and more vulnerable countries is obviously small. Such a "good will" legalistic system can only effectively evolve if it is based on three underlying principles: (a) a clear-cut and commonly shared understanding on the trading principles and rules; (b) precise and comprehensive procedures for handling disputes which would allow several mutually complementing alternatives in the dispute settlement procedure; and (c) political commitment to abide by the rulings and decisions of the CONTRACTING PARTIES.⁵⁷

82. The Uruguay Round negotiations are expected to address most substantive differences which have in many cases led to a stalemate in the operation of the dispute settlement system. In this connection, progress in such Negotiating Groups as agriculture, subsidies and countervailing measures, MTN Agreements and Arrangements, and GATT Articles, *inter alia*, would be decisive for its credibility. At the same time, even in the context of a strengthened system of trading rules, political determination not to seek additional benefits at the expense of economically weaker contracting parties should become a permanent confidence building factor. Another important element of the dispute settlement mechanism is the guarantee of arriving at a mutually acceptable solution on the merits of the case, regardless of the economic or retaliatory power of the disputants. Deliberations in this Group should not therefore be confined to mere amendment and clarification of the already existing procedures. In particular, this would involve the following:

- Non-mandatory recourse to arbitration would seem to be a reasonable solution in relatively simple cases when neither party to the dispute contests its legal grounds. Consideration by the arbitration body would in this case be confined to a fact-finding exercise and passing its judgement which would be binding and final for the parties to the dispute. Recourse to such a procedure should be by prior agreement of the disputants. If such an approach were adopted, panels might be established only in complicated cases which involve questions of interpretation of GATT provisions and related rulings by the CONTRACTING PARTIES.
- Another new element worth considering is the working out of standard terms of reference for panels, which should apply in all trade dispute cases. Deviations from these standard terms of reference may be allowed in exceptional cases as determined by the CONTRACTING PARTIES. Bearing in mind the fact that disputes in the GATT deal with trade-policy matters and complainants must substantiate their claims by reference to particular Articles of the General Agreement, such an initiative would seem to be both practical and feasible. This would resolve the problem of working out terms of reference mutually acceptable to both disputants.
- Finally, by introducing the practice of compensation to the party affected rather than inviting it to retaliate, the CONTRACTING PARTIES would shift from the currently applied concept of "negative adjustment" in dispute settlement cases to "positive" or trade-stimulating adjustment. Such a measure would be of particular importance to the interests of developing countries for which, a theoretical right to retaliate is void of practical relevance.

Functioning of the GATT system

83. Punta del Este mandate:

"Negotiations shall aim to develop understanding and arrangements:

- (i) to enhance the surveillance in the GATT to enable regular monitoring of trade policies and practices of contracting parties and their impact on the functioning of the multilateral trading system;

⁵⁷ 'The Settlement of disputes between Contracting Parties to the General Agreement', Working Paper by Dr.G.de Lacharriere, p.16.

- (ii) to improve the overall effectiveness and decision-making of the GATT as an institution, including, *inter alia*, through involvement of Ministers;
- (iii) 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 matters⁵⁸.

84. Operation of the multilateral trading system based on the GATT has increasingly been of concern to both developed and developing countries.⁵⁹ The agenda for the Uruguay Round negotiations provides an opportunity for contracting parties to review its operation "from within". Elements of the system such as the process of decision-making and surveillance functions, which do not fall within the competence of other negotiating groups, are also being considered. Despite multiple surveillance functions existing in the GATT,⁵⁹ the incidence of trade measures taken outside its framework has been growing. The major deficiencies of the GATT system are alleged to be (a) the occasional character of the surveillance procedure; (b) the asymmetry against developing countries (to the extent that developed countries are *de facto* exempt from the comprehensive surveillance of their trade practices); and (c) lack of effective follow-up to the surveillance exercises held. There is also the question of the overall impact of the economic environment on trade.

Current proposals

85. Proposals presented in the Group cover the three major elements of the exercise: (a) surveillance; (b) involvement of Ministers; and (c) strengthening of the relationship between GATT and the international monetary and financial institutions.

- Effective surveillance is generally accepted as an important means of ensuring transparency and predictability in trade-policy matters. Whilst the need for a trade policy review mechanism appears to have been recognized by most participants, and there is a general feeling that its activities should focus on all contracting parties and on the impact of trade policies and measures on the multilateral trading system, specific modalities still remain to be agreed upon. Developing countries have underlined the need to focus especially on the major trading countries, i.e. those whose policies have a predominant impact on the multilateral trading system.
- The practice of a limited number of Contracting Parties meeting informally in consultative bodies such as the CG18 and small Ministerial groups appears to have found acceptance. However, many contracting parties, especially those which have not been regularly represented on such bodies, have serious reservations about formally institutionalizing this practice. They point out that such gatherings are essentially informal and consultative in character and that any change in their status would affect the balance of rights and obligations. In this context, it is stressed that it is the CONTRACTING PARTIES, either meeting annually or through sessions of the Council, where decision-making authority resides. A possible motivation prompting delegations that oppose greater Ministerial involvement is perhaps the consideration that gatherings of Ministers are often used to launch new initiatives.
- There is a distinct divergence of views on the nature and degree of relationships that should be established or strengthened between the GATT, the IMF and the IBRD. Factors such as the difference in the negotiating mandate between the GATT Secretariat (which only services a contract) and the Secretariats of the IMF and the IBRD, basic differences in decision-making (consensus in GATT and weighted voting in the Fund and Bank) have been mentioned.

⁵⁸ The state of the multilateral trading system and the underlying reasons for its erosion have been analyzed at length in the relevant studies by UNCTAD. For a recent detailed discussion of the issue, see TD/B/1005, TD/B/1101 and TD/328/Add.4.

⁵⁹ With a view to increasing transparency at all levels of the GATT system, contracting parties have already established multiple surveillance mechanisms. At the level of the principal bodies of the GATT, these functions are discharged by the Special Meetings of the Council, by the Committee on Trade and Development, and by the BOP Committee. In addition, sector- or subject-specific surveillance requirements and procedures are embodied in the Tokyo Round codes. Besides, under the Multifibre Arrangement, a special Textiles Surveillance Body has been set up with the aim of monitoring the implementation of the MFA's provisions.

Consideration

86. Whilst it would appear that agreement in this negotiating group may be somewhat easier to arrive at, it would seem that whatever solutions are reached in the Group, they will be lacking in credibility unless the more important and fundamental issues in the Uruguay Round are resolved. The history of GATT reveals that in the absence of solutions on the issues of fundamental importance for the multilateral trading system neither enhanced surveillance nor the highest level of government representatives can possibly ensure its smooth functioning. Both the lack of visible impact of the Special sessions of the GATT Council and the inability of the 1982 Ministerial session to lessen the strains to which the GATT is subjected are relevant examples. The efforts for improving the functioning of the system would not succeed if the system itself in its basics is not improved and if solutions are not found for the complex issues in substantive fields of negotiations.

87. It would appear that progress in this Group's deliberations can be made only in the context of a general improvement in the trade and economic environment which is the thrust of the Uruguay Round.⁶⁰ The following considerations appear relevant:

- Setting up of any new surveillance/trade policy review mechanism should proceed from the premises of renewed and strengthened commitments to the objectives and principles of the General Agreement and should be based on the provisions of the General Agreement. Merely adding another mechanism will not help. It would also be necessary to ensure that enhanced surveillance serves the purposes for which it is being proposed, i.e., renewed and strengthened commitments to GATT.
- The question of linkage of trade with issues related to money and finance is well recognised. Within the UN system, UNCTAD has been handling the issue of such linkage and interdependence right from its inception, and a lot of work has been done. Periodic deliberations take place on this subject in the Trade and Development Board. The process of this exercise in UNCTAD could be drawn upon and utilised on a systematic basis.
- Finally, the work in this Group gives an opportunity to address the issue of the legal status of the GATT and its secretariat. It may be recalled that when the United States failed to ratify the Havana Charter, and the establishment of the ITO could not materialise, GATT remained, on the basis of the 1947 Protocol of Provisional Application, the truncated survivor of an ambitious programme.

⁶⁰ "Ministerial Declaration on the Uruguay Round", Preamble. Further, this consideration found its recognition in the "Final Act of UNCTAD VII" where it was emphasized, *inter alia*, the following: "A stable and supportive international economic environment is essential for the smooth-functioning of the international trading system, as the interrelationship between trade policies and other economic policies affecting growth and development is recognized" (Part II.C., para. 105 (25)).

The "New Issues"

Economic Background

88. The inclusion of the new issues, i.e. trade-related aspects of intellectual property, trade-related investment measures, and trade in services in the Uruguay Round agenda was the direct result of initiatives taken by the United States. Their inclusion in multilateral trade negotiations would seem to constitute a reflection, in trade policy, of fundamental changes in the process of production and trade stimulated by advances in technology.

89. The leaders in the development of knowledge and information are obviously tempted to try to restrict its diffusion with a view to both artificially increasing its market value and affecting the competitive position *vis a vis* foreign competitors. In other words, there is a tendency for governments to adopt "strategic" trade policies which are aimed not simply at liberalization *per se* but directed toward securing a larger share of the "rent" on the production and export of technology, while affecting the competitive position of rival producers.⁶¹ Such strategic policies could involve actions aimed at achieving an improved and secure access to world markets for "knowledge intensive" services, particularly through the investment mechanism, while restricting the bargaining leverage of host country governments in negotiating with foreign investors, including with respect to the transfer of such information and technology. The initiative to negotiate new multilateral rules on intellectual property,⁶² services and investment⁶³ may be a move towards such objectives.

90. As has been stated frequently in various studies, advances in information and communications technology have rendered services more transportable, and facilitated the penetration of foreign markets for services. This also means that key producer services can be provided from a distance, and that more services can be "traded".⁶⁴ This creates both opportunities and challenges for developing countries. While access to more sophisticated services from developed countries is facilitated, overreliance on such services could undermine possibilities for development of a strong domestic producer services sector. The strategic character of the producer service sector in developing a national capacity and infrastructure for the production of higher value-added manufacturing goods is becoming more widely recognized.⁶⁵ In addition it has become clear that it is incorrect to refer to one country or group of countries as possessing "comparative advantage" in goods and others in services, for services have become crucial to the efficient production of goods and their ability to compete in world markets.

91. One element of this "strategic" approach is to control world markets in order to export to them those technologies that are facing a diminishing rate of productivity growth. This also enables extra benefits to be obtained from already amortized R & D investment, such extra benefits can finance the very expensive R & D activities associated with the new technologies. Second, this approach aims at appropriating new technologies and protecting this property from encroachments, to create new markets to penetrate potential markets for the new technologies in order to recover the high R & D investment and to reduce uncertainty.

92. The initiatives in the Uruguay Round would appear to be part of a more general initiative to expand the traditional boundaries of the intellectual property system, which implies (a) its

⁶¹ For a discussion of the concept of strategic sectors and policies see Paul Krugman, "Strategic Trade Policy and the New International Economics", The MIT Press, London, 1986.

⁶² Bifani *op. cit.*

⁶³ "Most licences of technology go to affiliates - foreign joint ventures as well as overseas division of US multinationals - where control of proprietary know-how is easier than with an independent foreign firm". OTA, *op. cit.*, p.18. "When foreign governments combine restrictions on inputs and investment to pressure US-based multinational corporations into licences either at arms length or with joint venture partners, they may be able to help local companies buy technology more cheaply than would otherwise be the case", OTA, *op. cit.*, p.20.

⁶⁴ The term "trade in services" has only recently emerged in economic debate, in parallel with initiatives to establish a multilateral framework for such "trade" in the context of GATT. Some economists have expressed doubts as to whether services can be "traded" at all, see T.P. Hill, "The Economic Significance of the Distinction between Goods and Services", paper presented to the International Association for Research on Income and Wealth, Twentieth General Conference, Rocca di Papa, Italy, 23-29 August 1987, (mimeo).

⁶⁵ see Office of Technology Assessment "International Competitiveness in Services *op. cit.*

internationalization, (b) the broadening of the scope of protectable new ideas, (c) the extension of the lifetime of protection, (d) the reduction of the restrictive or regulatory measures which are normally associated with a monopoly situation and (e) the improvement of the enforcement mechanisms, at both national and international levels. The latter objective would appear the reason for introducing this intellectual property issue into the GATT.

93. On the other hand, developing countries are not seeing with favour any international trade rules that would exclude them from the benefits of new technologies, they consider that the internationalization of the property right system, above all if backed up by threats of trade retaliation, will block the adoption of new technologies by developing countries.

Negotiating Background

94. The negotiations on TRIMs would appear linked to the fact that the TNCs have become one of the major sources of information and new technologies. The process of invention is no longer related to the image of the lone inventor motivated by his curiosity, but has become a common interdisciplinary enterprise requiring expensive and sophisticated laboratories and substantial human and economic resources, where the TNC's have a major advantage. Developing country governments have sought to compensate for this advantage by effectively combining restrictions on inputs and investment so as to encourage TNCs to supply local companies with technology at better terms than would otherwise have been the case.⁶⁶

95. It may be recalled that the United States Trade and Tariff Act of 1984 which provides the United States administration with clearly defined negotiating objectives in the areas of services, investment, intellectual property and high technology goods, and the authority to take retaliatory action in the form of trade restrictions on imports of goods from countries found unilaterally to have taken "unjustifiable", "unreasonable" or "discriminatory" action against United States exports of goods and services in the areas mentioned within a broad definition which includes investment. Trade action against countries who, despite whatever action they may have taken in other areas, have not breached their GATT obligations is clearly not consistent with GATT. The objective of the proponents of these subjects in the MTN may be to legitimize such actions by expanding the present contractual scope of GATT.

96. Thus, what was at stake in earlier GATT multilateral rounds, and remains so in many areas of the Uruguay Round, is the ability of countries to compete on more equal terms with domestic suppliers through the liberalization of trade barriers. In the new issues negotiations, what may be at stake is the ability of countries to develop a competitive capacity to produce and export in the future, as well as the ability to retain the value added from such production.

Trade-related aspects of intellectual property rights, including trade in counterfeit goods

97. Punta del Este mandate:

"In order to reduce the distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade, the negotiations shall aim to clarify GATT provisions and elaborate as appropriate new rules and disciplines.

Negotiations shall aim to develop a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods, taking into account work already undertaken in the GATT.

These negotiations shall be without prejudice to other complementary initiatives that may be taken in the World Intellectual Property Organization and elsewhere to deal with these matters".

⁶⁶ See Office of Technology Assessment, "International Competitiveness in Services", U.S. Congress, 1987, p.20.

98. The mandate of the Negotiating Group is thus divided into three paragraphs, or indents, and the TRIPS negotiations have therefore dealt separately with each indent, under agenda items entitled respectively trade-related aspects of intellectual property rights, trade in counterfeit goods, and consideration of the relationship between the negotiations in this area and initiatives in other fora. The extent to which the first and second indents should be dealt with separately in the negotiations is at issue; several participating developing countries have insisted that the mandate requires they be treated separately, but a few developed countries have indicated that addressing the two together would be more coherent and likely to be productive of results.

99. The consideration in GATT of the question of trade in counterfeit goods dates back to the Tokyo Round, but no agreement could then be reached on a draft agreement put forward by the EEC and the United States. A GATT Group of Experts on Trade in Counterfeit Goods held several meetings in 1985. The raising of this question in the Tokyo Round was due to the increasing flows of counterfeit goods in international and domestic trade, particularly consumer goods bearing false brand names and audio cassettes copied without authorization. This trade has continued to proliferate since then, moving into a much wider range of areas, including video cassettes, auto parts, computers and computer software.

100. The negotiations under the first indent raise more difficult and fundamental issues. The inclusion of many of these issues in the Uruguay Round of negotiations appears to have been motivated by the concern of some developed countries to ensure a minimum worldwide standard of "adequate and effective" IP (intellectual property) protection, so as to protect their technology, and thereby maintain their competitive position in world markets - technology being viewed as the key factor in ensuring their international competitiveness.

Current Proposals

101. The proposals made so far by the United States, Japan, the EEC, Switzerland and the Nordic countries do not make any distinction between the indents of the negotiating mandate, and treat them as related questions. The United States, Switzerland and the EEC have made two proposals each. The proposals made by these countries are generally grounded on the premise that inadequate, excessive and discriminatory protection of IP rights is a major source of trade distortions and impediments, and should as such be dealt with in the framework of GATT. However, while the other proposals explicitly refer to excessive or discriminatory protection of IP rights as a cause of trade restrictions and distortions, the United States proposal confines itself to inadequate protection. Although the main focus of all the proposals is on the norms and standards to be established under the auspices of GATT in order to avoid such distortions and impediments to international trade, the approaches adopted are rather different. The Swiss proposal provides for an amendment of the GATT itself, while the other proposals call for a "GATT agreement", although the EEC proposal states precisely that its use of the term does not denote a preference for a "code" approach.

102. With regard to the nature of the substantive norms and standards to be elaborated, the United States' and the Japanese proposals suggest a GATT IP agreement should contain annexes which would specify norms for the protection of IP to which national laws should conform. For the EEC, however, the negotiations should not aim at harmonization of national law, but should lead to the identification of and agreement on a set of principles related to substantive standards to be respected by all parties. All three proposals provide for the coverage of the following IP rights: patents, trademarks, copyright and semiconductor integrated circuit layout rights. The United States' proposal refers also to trade secrets, while the Japanese refers to designs. The EEC proposals refer in addition to computer programs, neighbouring rights, geographical indications including appellations of origin and acts contrary to honest commercial practices.

103. The Swiss proposals suggest a framework for the negotiations - the Negotiating Group would define the nature of the commitment relating to IP under GATT, determine the modalities for better observance and application of international IP rules, create a body to identify shortcomings of IP as regards its effects on trade, seek WIPO assistance in overcoming them and, if this is unsuccessful, take the initiative to strengthen or develop norms. The Swiss proposal substantially differs from the others in that it suggests to establish within GATT a set of general normative principles to be enforced by GATT procedures. These normative principles would essentially

consist of the following: a first principle obliging contracting parties to avoid trade distortions caused either by excessive or by insufficient or lack of protection of IP rights; a second principle obliging them to avoid treatment less favourable of foreign products and of different contracting parties with respect to IP rights; and a third principle which would oblige them to enforce appropriate protection of IP rights. Indicative lists would also be established to give examples of trade distorting effects caused by excessive or insufficient, or lack of protection. Practices and procedural deficiencies which are included in the list would constitute *prima facie* nullification or impairment of GATT rights and would be subject to GATT dispute settlement and retaliation provisions.

104. The Nordic countries' proposal refers to broad points to be addressed in the negotiating process such as the application of basic GATT principles to IP protection, norms for such protection, enforcement mechanisms, and dispute settlement mechanisms, without providing details on these points, and merely noting that particular problems have been encountered in the areas of trademarks, industrial designs and patents.

105. The substantive norms and standards suggested in the proposals are generally meant to serve as a set of minimum standards offering a higher level and wider scope of protection for IP rights than existing conventions. Parties to a "GATT agreement" on TRIPS would undertake to adopt new laws and amend existing ones, where necessary, in order to bring their national intellectual property systems to a level consistent with the agreed norms. All these proposals accept the need to ensure effective enforcement against infringing goods through border and domestic measures. These proposals suggest the extension of the GATT consultation and dispute settlement mechanism to IP and suggest as well that this would rule out unilateral action in the case of disputes. Some of the proposals (i.e. United States' proposal) provide for the possibility of retaliatory measures being adopted in the event of non-compliance, by the party claiming the impairment or nullification of its benefits. The United States' proposal refers to the need to deter trade in goods and in services which infringe IP rights. Others refer only to trade in goods. Several developing countries have objected to this reference to services in the TRIPS negotiations. These proposals stress the need to apply general GATT principles such as non-discrimination, transparency, national treatment or most-favoured-nation treatment.

106. Some developed countries have also emphasized the need to balance protection of and access to IP, the need to balance the interests of importers and exporters, and the need to delineate the appropriate scope for the exercise of private rights over trade stemming from exclusive market rights accorded under IP laws, as well as the appropriate terms of voluntary and compulsory licenses. A few countries have expressed preferences for the improvement of the existing international IP system, rather than the creation of a new system. Some countries have suggested that it would be appropriate for the Negotiating Group to deal first with enforcement problems, but others have indicated that they wish the negotiations to deal with all issues in parallel.

107. Brazil has proposed a methodology for the examination of the sufficiency of the relevant GATT articles to deal with possible trade problems arising from the operation of IP rules. Under this proposal, after examining the articles, the Group would identify national IP legislation or practice which could be deemed trade-restricting or distorting in terms of Article III of the GATT, and examine such legislation or practice for consistency with the pertinent international IP treaty. If it was consistent, it would have to be demonstrated that the practice was being intentionally and directly used to distort or unduly restrict international trade. Finally, it should be assessed whether these trade-distorting effects outweighed the benefits accruing to the community employing the practice.

108. The main difference between the participating countries is on the extent to which the Negotiating Group's mandate under the first indent allows it to elaborate new rules and disciplines in this area. It is the contention of developing countries participating in the negotiations that there is no such mandate, and that WIPO is the competent international organization to deal with such questions. In their view, the main task of the Group with respect to this indent should be the clarification of GATT rules and provisions dealing with IP rights, and the elaboration, as appropriate, of new rules and disciplines necessary to reduce distortions and impediments to international trade. Developed countries, on the other hand, generally seem to agree on the need to elaborate a set of minimum standards for intellectual property protection and of provisions for its enforcement, and to have these linked to the GATT dispute settlement mechanisms. Thus, most of the proposals presented by these countries seek to achieve a full-fledged agreement on IP rights, under the auspices of GATT, embodying substantive norms and standards to be adopted

and enforced in all participating countries. These countries consider that, in any event, a new IP system should not be built on the basis of its trade adequacy, but that other policy objectives should be considered, including in the case of developing countries', promotion of domestic technological development, access to and dissemination of knowledge, prevention of monopolies, and stimulation of investment, industrialization and internal trade. They also suggest that a new IP system would be to the advantage of technologically advanced countries, and against their interests.

109. Under the second indent (trade in counterfeit goods), some developing countries, in particular, Brazil and India have indicated their willingness to consider this subject and take into account the draft agreements already proposed within GATT, and the report of the Expert Group. Brazil also wishes the work to be based on its proposal that countries sign the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, and on the work of the competent WIPO Committee of Experts. However, a few developed countries have implicitly linked the agreement under this indent to one on the first indent, considering that effective enforcement against counterfeiting cannot redress trade distortions unless there is a rule relating to standards for protection of IP. One important issue to be resolved is what would constitute counterfeiting for the purposes of the negotiations - it could refer only to the unauthorized use of trademarks, or to the imitation of the outward appearance of a product (including its trademark), or to the infringement of trademarks and copyright, or to all competitive practices infringing any intellectual property right or imitating the appearance of products. Other questions to be resolved include the obligations to be assumed by governments in taking action against counterfeit goods (including goods in transit), and on procedural safeguards to avoid obstacles to legitimate trade.

110. In the discussions under the third indent (relationship between the negotiations on TRIPS and initiatives in other fora), the main issue has been the overlap between issues in the TRIPS negotiations with the areas covered by the existing IP conventions administered by WIPO or UNESCO, or with the negotiations proceeding within WIPO over different IP issues. A related issue has been the relationship between any new GATT agreement on IP, and the existing IP conventions. A few developed countries have insisted that their detailed proposals are complementary to and consistent with work in WIPO, and that there is no requirement to avoid duplication of work with WIPO. The WIPO secretariat has been requested to provide information on various IP questions relating to types of IP covered by WIPO treaties and/or referred to in the discussions in the Group.

Consideration

111. There is as yet no agreement among participating countries as to what the Negotiating Group is supposed to be trying to achieve in relation to the first indent (the trade-related aspects of IP rights). Points have been raised by several developing countries regarding the lack of mandate to examine the issues raised in the different proposals. They have stressed the fact that the proposals by developed countries attempted to provide for substantive rules on IP rights within the GATT and to establish enforcement mechanisms which would be linked to the GATT dispute settlement system. This approach, in their opinion, exceeded the mandate contained in the Punta del Este Declaration, according to which negotiations on TRIPS should aim at reducing distortions and impediments to trade and ensure that enforcement measures of IP rights do not themselves become barriers to legitimate trade. Several developing countries have also emphasized the need to take developmental considerations into account in drawing up IP rules, but their main argument is that GATT should not be drawing up such rules in the first place.

112. From the point of view of developing countries an important concern is for a clearer recognition of their legitimate right to take action to prevent the abuse of intellectual property (e.g. market control, unjustified high rent etc.), as well as to develop their own knowledge-intensive industries, without running the risk of trade reprisal. Most developed countries have not committed themselves to the drawing up of new IP rules, but most of these countries appear to see the necessity for a link between IP rules and the GATT dispute settlement machinery. Most of these countries have also emphasized the need to avoid excessive enforcement and discriminatory procedures. Some of these countries have also suggested factors to be taken into account so as to avoid excessive protection of IP. The difficulties in the negotiations under the second indent appear to be much less severe, but some developed countries may like to see the progress under the two indents linked. Vital technological and trading interests of all countries are involved in the TRIPS negotiations, and the search for solutions which satisfy all parties is likely to be difficult,

and may be linked to developments in the other Negotiating Groups. A good point of departure for the negotiations is to achieve a clear understanding of the mandate of the Group and to start negotiations on a multilateral framework of rules dealing with counterfeit goods (trademarks) as there exists a common basis for such negotiations.

Trade-Related Investment Measures

113. Punta del Este mandate:

"Following an examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects on trade".

Pursuant to the first stage of this mandate, seventeen GATT articles have been proposed and examined, but no common view on what GATT articles relate to the Group's mandate or on the effects of TRIMS that could be dealt with in GATT has emerged.

114. The negotiating history of the Havana Charter demonstrates that the GATT was not intended to regulate foreign investment.⁶⁷ However, recent developments in trade and investment policies have given rise to renewed debate on the need for international regulation of foreign investment policies in various international fora. The debate focuses on two inter-related issues: (i) the regulation of the conduct of transnational corporations and (ii) treatment for such corporations (national treatment, right of establishment etc.). The debate involves a broad range of interrelated issues such as social and development policy, financing, employment and industrial relations, regional development, fiscal policy, international capital flows, competition policy and control of restrictive business practices, transfer of technology, regulation of conduct of transnational corporations, and resource development policy. In the GATT context, the debate focuses on trade-related investment measures, particularly export performance requirements and local content requirements. Proponents for inclusion of the issue in the Uruguay Round argue that although the GATT does not deal directly with foreign investment, several of its articles address the trade-restrictive and distorting effects of investment measures. Obviously, the goal of this negotiation as perceived by the proponents would be to develop specific rules restricting export performance requirements, local content requirements and other investment measures aimed at disciplining the activities of the transnational corporations to ensure their conformity with national economic, social and development objectives.

Current proposals

115. Proposals have been made by the United States, the EEC, Japan and the Nordic countries in this Negotiating Group. Three approaches may be distinguished in these proposals. The United States and Japan have similar positions proposing an international investment regime which would establish rights for foreign investors seeking a freehand for TNCs and creating a regime to curb regulation of investment activities by host countries and citing a wide range of regulatory investment measures which they believe have direct effect on trade and thus should be phased out to give foreign investors full freedom. The United States' proposal is that GATT already covers trade-related investment measures and should address these issues more explicitly through the elaboration of additional disciplines to ensure the integrity of the GATT system. Specifically it suggests examination of the operation of GATT Articles particularly Articles I, III, VI, XI, XV, XVI, XV, XVI, XVII, XVIII and XXIII. It focusses on the reexamination of Article XVIII (permitting low-income countries to provide governmental assistance to promote the establishment of a particular industry) and asserts that the rule embodied in Article III applies to all contracting parties. In other words, Article XVIII should not provide for exceptions for developing countries, which implies a rewriting of that article. This proposal suggests that the following points should

⁶⁷ The lack of agreement on the special chapter on investments contained in the Charter reflects the refusal by member countries to subject their investment policies to international rules and disciplines.

be taken up by the Group:

(i) Investment measures which limit the sale, purchase and use of imports in the host country (local content requirements, local equity requirements, trade balancing requirements, technology requirements, licensing requirements, remittance restrictions, manufacturing requirements/limitations, incentives). In this context Articles III, XI, XIII and XV should be examined;

(ii) Investment measures which restrict the ability of third parties to export (product mandating requirements, manufacturing requirements). Articles XI and XIII should be examined in the context of the above measures as they apply to the restriction of exports; and

(iii) Investment measures which force increased exports from a host country and/or displace or distort trade flows in world markets (export requirements, technology and licensing requirements, remittance restrictions, trade balancing, local equity requirements, product mandating requirements, incentives). In this context, Articles XVI and XVII should be given special attention. Article VI should also be examined given the likelihood that certain of the government-mandated measures lead to cases of dumping.

The United States has also suggested that some trade policy concepts of GATT such as non-discrimination (MFN, and national treatment), prohibition, transparency, dispute settlement and appropriate transitional arrangements are applicable to TRIMS and has also called for additional GATT provisions to ensure that the harmful trade effects of TRIMS are avoided. The United States has made reference to development considerations which in their opinion, should follow the establishment of appropriate disciplines on TRIMS and should be in the context of precisely delineated obligations for all contracting parties.

116. The Japanese view is that the following measures should be considered in the Group: (i) local content requirements; (ii) export performance requirements; (iii) trade balancing requirements; (iv) domestic sales requirements; (v) technology transfer requirements; (vi) manufacturing requirements; and (vii) product mandating requirements. In this connection it is suggested that Articles III, X, XI, XII, XVIII should be examined with regard to the measures having effect of import restriction. It is also believed that the TRIMS negotiations should result in the creation of a new GATT agreement or regime on investment measures. It draws attention to the need for inclusion of both national and local government measures in order to counter the United States' policies and restrictions introduced at the state rather than federal level. Japan has also presented a methodology to facilitate the examination of the effects of TRIMS by classifying them into those which are clearly inconsistent with GATT and those which are not but which are relevant to its provisions. Japan suggests that the participants should agree to prohibit both categories of TRIMS in principle, and to lay down concrete procedures to reduce or abolish them. With respect to the second category it is necessary to elaborate further provisions in order to avoid their trade restrictive and distorting effects. Rules on non-discrimination, transparency, consultations and dispute settlement should be applied to all TRIMS which have trade restrictive and distorting effects.

117. A second approach is that of the EEC, and the Nordic countries which have adopted a more moderate position. They focus on measures that have a direct and significant restrictive impact on trade and which have a direct link to existing GATT rules. According to the Nordic countries two types of trade-related investment measures are particularly common, i.e. local content requirements and export performance requirements. Therefore, the examination of the operation of the GATT articles should in their view include the following provisions: (i) Article III (national treatment); (ii) Article VI (export performance requirements can result in dumping); (iii) Article X (on publication of trade regulations); (iv) Article XI (local content requirements may have the same effect as import restrictions); (v) Article XVI (export requirements may lead to subsidization).

118. The EEC proposal draws a clear distinction between the general issue of direct foreign investment and the more specific issue of trade-related investment measures. It opposes the inclusion of right of establishment and transfer of resources for the negotiations, but is in favour of addressing the issue of local content and export requirements. According to this view, the problem of investment flows and resources transfer could not be resolved through trade negotiations. In the EEC view, those measures are relevant which are directly trade related. These are all measures which are directed at the exports and imports of a company and the immediate objective of which

is to influence its trading patterns. They set forth eight measures which fulfill this condition as follows: local content requirements; manufacturing requirements; export performance requirements; product mandating requirements; trade balancing requirements; exchange restrictions; domestic sales requirements; manufacturing limitations concerning components of the final product. It further argues that Articles III:4, XI:1, XVII:1(c), X:1, and XXIV:12 should be examined under TRIMs.

119. A third approach is that of the developing countries with varying nuances. These countries insist on strict adherence to the mandate of TRIMs that is limiting the negotiations to effects of investment measures or regulations that have a direct restrictive or distortive effects on trade and could be related to existing GATT provisions. The developing countries generally consider that certain kinds of investment measures are needed to channel foreign investment along the line of national development policy objectives. In their opinion, the negotiations should also address the conduct of transnational corporations, particularly the restrictive business practices which in themselves have trade distorting effects. The United States and the EEC have argued that this is not covered by the Negotiating Group's mandate. They consider that all governmental and non-governmental investment measures, including the investment policies of transnational corporations, should be discussed. The developing countries stress the need for the differential and more favourable treatment for developing countries and their need to pursue policies to improve the balance of payment situation. As a preliminary reaction, a number of developing country delegations acknowledged the potential trade effects of some of the investment requirement measures but stressed their necessity and validity in seeking to regulate flows of direct foreign investment and to promote national development objectives. Moreover, they reject the view that every measure or action of a country in the area of trade-related investment measures could potentially result in a 'nullification or impairment' of its rights under GATT, and thus be amenable to GATT dispute settlement and trade retaliation provisions. If various investment measures fall under GATT Articles (e.g. on import restrictions or export subsidies) they should be dealt with under these provisions, including those providing differential treatment for developing countries. In this context Malaysia has put forward a proposal dealing with Article XVIII and Part IV of GATT relating to trade and development. The major point made in the proposal is that the developing countries need to adopt TRIMs and require special and differential treatment.

Consideration

120. The TNCs have become a dynamic element in trade in goods and services and in the development and application of new technologies. Developing countries, in particular, have imposed conditions on these enterprises in order to harness this dynamism in support of their development objectives. Their "home" countries, on the other hand, view such conditions, particularly when they involve transfer of technology and development of export capacity, as contrary to their long term interests.

121. In addition, attempts have been made to go beyond the trade implications and deal with the conditions for investment itself. National treatment and establishment is the main objective of some contracting parties in the negotiations on services and investment.

122. In the absence of operationally effective rules on the conduct of multinational enterprises, developing countries are generally reluctant to give up their right to impose performance requirement on foreign-owned enterprises to act in harmony with their national development objectives. They link any concession in this area with the results of the negotiations on the Code of Conduct for Transnational Corporations and an operationally applicable Code on restrictive business practices.

123. The developing countries see their interest in confining the negotiations within the framework of the existing GATT rules and in avoiding making new rules.

Trade in Services

124. The United Nations Conference on Trade and Development⁶⁸ at its seventh session agreed that:

"(19) UNCTAD should continue its useful work in the field of services under its existing mandate, as contained in Conference resolution 159(VI) and Board decision 309(XXX). From the point of view of developing countries and in the context of overall development objectives, the Secretary-General of UNCTAD is requested:

(i) To analyse the implications of issues raised in the context of trade in services;

(ii) To explore appropriate problematics for trade in services, keeping in view the technological changes in the field of services.

(20) UNCTAD is requested to continue its programmes of technical assistance to developing countries in the field of services. UNDP is invited to consider favourably the requests for the provision of adequate resources for this purpose."

125. At the September 1986 Punta del Este Ministerial Meeting that launched the Uruguay Round the Ministers agreed to launch negotiations on trade in services as a part of the new round of MTN and embodied their decision in Part II of the Uruguay Declaration as follows:

"Negotiations in this area shall aim to establish a multilateral framework of principles and rules for trade in services, including elaboration of possible disciplines for individual sectors, with a view to expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting economic growth of all trading partners and the development of developing countries. Such framework shall respect the policy objectives of national laws and regulations applying to services and shall take into account the work of relevant international organizations.

GATT procedures and practices shall apply to these negotiations. A Group on Negotiations on Services is established to deal with these matters. Participation in the negotiations under this Part of the Declaration will be open to the same countries as under Part I. GATT secretariat support will be provided, with technical support from other organizations as decided by the Group on Negotiations on Services. The Group of Negotiations on Services shall report to the Trade Negotiations Committee.....

When the results of the Multilateral Trade Negotiations in all areas have been established, Ministers meeting also on the occasion of a Special Session of the CONTRACTING PARTIES shall decide regarding the international implementation of the respective results."⁶⁹

Part II of the Declaration thus achieved a balance acceptable both to the proponents of including services in the Uruguay Round and those, mainly developing countries which opposed any link between negotiations on services and goods. These latter countries sought to maintain multilateral action on services outside the GATT, and considered that such negotiations should, from their outset, recognize the priority of development objectives and respect for national laws and regulations. A legally distinct negotiating process on trade in services is to be conducted in an *ad hoc* juridical frame of reference outside GATT. It recognizes the objectives of the promotion of economic growth of all trading partners and development of the developing countries, this to be achieved through the expansion of trade in services under conditions of transparency and progressive liberalization. Hence, the objective of development as provided in the Ministerial Declaration will be an integral part of any set of rules to be devised in trade on services.

126. Five elements for the initial stages of negotiations have been identified, as follows:

- Definitional and statistical issues
- Broad concepts on which principles and rules for trade in services, including possible disciplines for individual sectors, might be based
- Coverage of the multilateral framework for trade in services
- Existing international disciplines and arrangements

⁶⁸ Paragraph II.C.(19) and (20) of the "Final Act of UNCTAD VII".

⁶⁹ Ministerial Declaration on the Uruguay Round (MIN(86)6).

- Measures and practices contributing to or limiting the expansion of trade in services, including specifically any barriers perceived by individual participants, to which the conditions of transparency and progressive liberalization might be applicable.

These elements provided the framework for the negotiations in 1987, although different views exist with respect to the relative emphasis to be given to each of them. Moreover, views also vary as to the extent to which it is necessary to deal with one element before another can be adequately dealt with. The discussion, however, reflects an awareness of the linkages that exist between the issues that emerge when dealing with the elements. There was a stock-taking at the end of 1987 in order to determine how to carry forward the negotiating programme. At the stocktaking, it was recognized that the negotiating programme will be carried forward on the basis of the examination of the five elements in the initial phase of the negotiations, as well as other issues arising therefrom. At the last meeting of the GNS (18-22 July 1988), the Chairman of the Group pointed out that with a view to being in a position to present Ministers for the mid-term review in Montreal a positive picture of the efforts undertaken so far in the GNS, the Group should concentrate its attention in the immediate future on the following key issues in the list of concepts and principles: expansion of trade/national treatment/ progressive liberalization; development objective; and movement of factors. The following paragraphs summarize and comment on the relevant issues under the five "elements".

Definitional and Statistical Issues

Statistics

127. One approach is that major improvement of statistics is not necessary for the GNS to be able to successfully negotiate a multilateral framework for trade in services. Nevertheless, efforts to improve statistics should have some priority because this would facilitate the implementation of the framework for trade in services. The short term problem, however, was how to use the available data.

128. Another approach is that statistical data on trade in services are conceptually imprecise, highly aggregate and therefore leading to erroneous conclusions. Supporters of this view believe that availability of adequate statistics is of great importance both for the successful conduct of negotiations on trade in services, and in order to quantify the effects of rights and obligations under the future multilateral framework for trade in services.

129. Four elements have been identified in the discussions on statistics.

(i) statistics on the trade and production of services are in need of improvement, particularly with regard to analysis of the international dimension of services activities.

(ii) A number of national and international institutions attach importance to improving the situation and are pursuing this goal to the extent permitted by resource constraints. It had also been suggested that improvement of statistics was a matter for international cooperation, and the need for establishing a focal point or forum for this purpose had been mentioned;

(iii) GNS should be able to see how it could influence the ongoing work in improvement of the statistics and identify its needs for the negotiations. For these purposes, the GATT secretariat could be used to maintain liaison and contact with other organizations. A working group could be set up to examine what may be done over the short-term to facilitate the negotiating objectives of the GNS;

(iv) necessity of technical assistance to developing countries in improving their statistics on trade in services, and the importance of associating developing countries in the ongoing work on the improvement of statistics.

Comments

130. The inadequacies of internationally comparable statistics on services as well as data on services at the national level is generally recognized. Work has been initiated by the UNSO, in collaboration with experts from a few developed countries, with a view to drawing up elements of a reinforced and improved international statistical system for services. In its presentation to the GNS in June 1987, UNCTAD stressed that a practically applicable data base on services could only be based on the experience and methodologies of the most advanced countries which had been able to make progress with respect to the disaggregation of service classifications and the identification of sources and destinations of payments. Both of these would appear prerequisites for any country to participate in negotiations on trade in services. In the documentation for the April 1988 meeting of the Trade and Development Board, the secretariat has proposed that a forum be established in which the experts involved in the UNSO work mentioned above could participate with developing country officials in drawing up a set of methodological guidelines which developing countries could use in their national studies. This would have the added advantage of ensuring that the approaches used by developing countries were consistent with the longer term direction of the work of the UNSO group.

Definitions

131. The issue of the definition of trade in services is related closely to the question of coverage of the multilateral framework for trade in services. The Ministerial Declaration covers only "trade in services". The developing countries believe that trade in services should be treated as relating strictly to transfers across national frontiers. Therefore, transactions in trans-border data flows would be included in the definition of trade in services, but not the movement of the producers and consumers of services across national frontiers. The developing countries propose that a distinction should be drawn between "consumption" of and "trade" in services. In their view, moreover, there are two distinct features in trade in services: (a) situations when the product cannot be stored; (b) situations involving the right of establishment.

132. The scope of the definition of trade in services is of great concern to the developing countries. A narrow or a broad definition would lead to different consequences for the course of the negotiations. If the restricted definition of trade in services is used, exports and imports of services would refer only to transactions between residents and non-residents when the services in question were traded across international borders. For example, a narrow definition of trade in services would exclude all transactions between subsidiaries of transnational corporations, and expenditures in a country by non-residents. The developed countries are in favour of a broad definition of trade in services. They argue that a large number of international services trans The EEC has suggested that different definitions could be adopted according to need of the GNS. A broad definition, however, would imply the inclusion of issues like actions ntier and with the means of producing the services moving to the country of purchase. take place without the service itself actually crossing the frontier and with the means of producing the services moving to country of purchase restrictive business practices and those dealt with by Code of Conduct for Transnational Corporations and the draft Code of Conduct on Transfer of Technology.

Comments

133. The Uruguay Round is addressed to "trade" in services; therefore, any service which can be effectively "traded" (i.e. can be produced by a resident of one country and sold to the resident of another) could potentially be included in the multilateral trade negotiations. Limiting the negotiations to "trade" in services would avoid inclusion of investment policies.

134. The work on defining "trade" in services has begun relatively recently. The term "trade in services" did not appear in commonly used economic language before the end of the 1970s. Classical economic textbooks up to most recently still did not mention any topic such as "trade in services". Thus the very concept that services could be "traded" has largely been developed by protagonists of including services in GATT negotiations and thus the whole conceptual debate is somewhat an *ex post facto* exercise. While some authors have claimed that the same laws of comparative advantage apply to both goods and services, certain reputable economists have

challenged this view, going so far as to question whether one can speak of trade in services or simply movement of factors of production. Classical economic textbooks up to most recently still did not mention any topic such as "trade in services".

135. The debate in the Uruguay Round has largely focussed on drawing the line between trade and investment in services, although some developing countries have introduced the labour and goods factors claiming that temporary migration of labour as well as the value-added in outward processing should be considered as trade in services rather than goods. In any case, regardless of the intellectual arguments, the definition of "trade in services" has become a matter of international negotiation in the GNS.

136. Whatever the definitions finally negotiated, it is evident that for a service producer to penetrate a foreign market, combinations of at least one of capital, persons, information and goods must cross borders. On the other hand, all such movements do not constitute "trade" in services and the question is where to draw the line. A definition of "services" designed for the purposes of negotiation, if not necessarily intellectually satisfying, will at least have to be equitable, so that all countries will gain from any liberalization. For many developing countries, temporary migration of labour is the only means at their disposal for penetrating foreign markets for services, so a definition which favoured capital-intensive, information-based services would certainly not meet the test of equity, which is a *sine qua non* for any meaningful multilateral agreement. In other words, if "trade" in services is to be defined narrowly, then it would have to exclude all movements of factors of production, if a wider interpretation were to permit some degree of capital movement related activities, labour movements should logically be included as well. It must also be noted that trade in services could also involve movement of goods for repair, assembly and leasing, and transborder data flows.

137. Definitions developed for statistical purposes may be somewhat different from those elaborated to define the scope of legal commitments (as in other sectors), it is necessary, however, that such definitions be compatible and not contradictory. In other words, the work on statistic and legal definitions should not be conducted in mutual isolation but it should be kept in mind that one does not substitute for the other.

Concepts and principles for trade in services

138. The United States has submitted a proposal which addresses the general considerations that should be taken into account in elaborating the framework, together with a number of specific concepts. According to this view, the priority objective is to reach an early agreement on a legally binding framework of rules that would achieve a "progressive liberalization" of a wide range of services sectors in as many countries as possible and allow the GNS maximum scope for subsequent negotiation on individual sector agreements. The framework would deal only with measures that restrict the access and operation of foreign service providers and that restrict or distort trade. In the meantime there should be a standstill on new services restrictions and the elimination of existing barriers within a multilateral framework.

- This proposal seeks elimination not only of regulations governing the flow of services across the border, but also of those regulations controlling the establishment of foreign branches and subsidiaries for purposes of producing or delivering the service within the host country. The framework would be based on the following concepts: transparency, non-discrimination, national treatment, discipline on state-sanctioned monopolies, subsidies, nondiscriminatory accreditation procedures, consultation and dispute settlement. These concepts have been defined in the following manner.
- **Transparency:** Since measures used by governments to control services industries are often promulgated for reasons unrelated to trade, it is necessary to provide a structure that allows for the examination of such measures, existing and future, directed at services and service providers and affecting the coverage of a services framework agreement. The structure would also need to cover identification of both intended and unintended effects of government measures on the access and treatment of foreign services and service providers to a particular market. The obligation on transparency should require governments:

(i) to publish proposed and final rules and regulations affecting services and, subject to certain exceptions, to provide interested parties the opportunity to comment on proposed rules and regulations. The rules and regulations which are legally effective and whose content are considered to be inconsistent with the framework could be subject to review under the traditional notification/consultation procedure.

(ii) to notify other countries, through an agreed procedure, of a certain category of government measures affecting services, which would be subject to consultations, including those that the notifying country itself recognized as potentially having an adverse impact on the trade of others, either through its own internal assessment or by virtue of the measure having been called to its attention by other signatories.

- **Non-discrimination:** This proposal lays down that signatories to the framework agreement should extend its benefits unconditionally to all signatories. Exceptions limited in number and extent to the coverage of the agreement would be permitted; however, provision for non-application to those countries that have taken exceptions excessively would be included.
- **National Treatment:** should generally require that foreign service providers receive treatment no less favourable in like circumstances than that accorded to domestic service providers, so as to prevent discrimination against foreign service providers as compared with their domestic counterparts.⁷⁰ National treatment should also apply to access to local distribution networks, local firms and personnel, customers and licenses, and the right to use brand names. In cases where national treatment alone will not assure liberalization in all services, for example when regulators have effectively cartelized a given services market by denying the issuance of new licenses for decades, the framework agreement should provide for a degree of foreign participation. Where establishment or investment requirements imposed on foreign service providers bear no relationship to legitimate regulatory needs, service providers should, according to this proposal, be able to sell their service across the border.
- **Disciplines on state-sanctioned monopolies:** disciplines governing the behaviour of such monopoly entities in their capacity as sole service providers, as well as in their activities when engaged in competitive services should be provided for. Such a provision should be included in a framework agreement, with the objective of ensuring that a sole service monopoly provides its service to foreign-based users on a non-discriminatory basis with respect to price, quality, and quantity, and that appropriate compensation to affected signatories or their affected entities is provided when a government decides to transform the provision of a service from a competitive to a monopoly environment.
- **subsidies:** there should also be provision for rules on domestic or export subsidies in the framework agreement, analogous to some of the approaches existing for trade in goods in various GATT instruments. a mechanism for the resolution of disputes over the interpretation of the subsidy provisions, and authority to take offsetting measures equivalent to the impact of the injurious subsidy, should also be provided for in the agreement, although countervailing duties in the traditional sense are not viewed in this proposal as a practical way of dealing with subsidy practices, because of the different means of trading services across borders.
- **Non-discriminatory accreditation procedures:** the framework agreement, according to this proposal, should provide for non-discriminatory accreditation procedures so as to discourage licensing measures that are unrelated to competence and ability to perform, and prohibit those measures whose purpose or effect is to discriminate against foreign providers of licensed services.
- **Consultation and dispute settlement:** finally, the proposal includes the concept of consultation and dispute settlement, which might be similar to Articles XXII and XXIII of GATT or similar provisions of the various non-tariff measure agreements.

The United States second proposal covers procedures for reaching and implementing a multilateral

⁷⁰ Modifications to this approach would be permitted such as in cases of national security and fiduciary responsibilities, but the modified treatment would have to be equivalent in effect. Non-identical treatment would have to be justified to ensure against disguised violations of the national treatment principle.

framework for trade in services This proposal elaborates on the procedures for reaching a framework agreement, as well as on procedures for negotiating the reduction or elimination of measures that are not otherwise liberalized under the framework. It concentrates on the phases and sequence which the negotiations should follow towards a progressive liberalization of services trade by the end of the Uruguay Round. The negotiations, in the US view, could be visualized as a three phase process. These phases could be characterized as follows:

- Phase one : the "general rules drafting phase" which would involve political commitment and the negotiation of the rules and disciplines that would be initially included in an informal understanding and subsequently incorporated in a legally binding framework whose provisions would be generally applicable to a wide range of service sectors ;
- Phase two: the "sectoral coverage phase" which would involve reaching agreement on a common list of specific services industries to which the framework agreement would be applicable in all signatory countries. The proposal suggests the anonymous notification to the GATT Secretariat of the sectors by delegations. On the basis of these anonymous notifications, the Secretariat would prepare a consolidated list of all sectors notified, constituting a point of departure from which the negotiation would then be undertaken to arrive at an agreed list of services sectors subject to the framework. Procedures would also need to be developed to add new sectors to the list subsequent to the Uruguay Round. Participants would be allowed to notify reservations with respect to existing measures which would not be brought into conformity with the framework agreement. These reservations would be subject to future negotiations aimed at reduction or elimination on a reciprocal basis. On the other hand, to stop any abuse of this mechanism a non-application provision could also be envisaged. Interpretative notes to the agreement which might take the form of sectoral annexes could also be included that would clarify the application to individual service sectors for all signatories. Finally, separate sectoral agreements with rules that were legally apart from the provisions of the framework agreement could be considered in very limited instances.
- phase three: "further liberalization phase" which would involve negotiations among signatories aimed at the progressive liberalization of measures not liberalized in phases one and two. These negotiations would include reservations made during the second phase. The final phase would also establish a process for agreeing to a series of subsequent negotiations after the Uruguay Round.

With respect to the timing of the phases, the representative of the United States has proposed that the Mid-term review to be held in Montreal in December 1988, would provide the occasion for a political undertaking and notification of sectoral coverage which would be terminated by the end of 1988. Subsequently, in 1989 the third phase would be dealt with and would be completed by 1990.

139. The proposal by the European Community supports a multilateral framework of principles and rules to govern international trade in services. The framework agreement, in the opinion of the EEC, should include the following core concepts: (i) progressive liberalization of market access and respect for policy objectives; (ii) preservation of international competition; (iii) transparency; and (iv) development compatibility. These are considered as conditions for the attainment of trade expansion which is presented in the EEC proposal as the major aim of the Agreement. However, the EEC view is that not all perceived barriers to trade in services could be subject to liberalization, since regulations are usually the expression of national policy objectives, and that accordingly an agreed distinction is required between appropriate and inappropriate regulations. As different services sectors have their own characteristics, any future multilateral framework should therefore take into account these sectoral specificities. The multilateral nature of liberalisation would be ensured through some form of MFN principle. There should be a standstill on inappropriate regulations and a provision similar to Article XXIV of the General Agreement, allowing trade in services within a customs union to be liberalized more fully and faster than trade between a customs union and third countries.

140. This proposal thus, seeks progressive liberalization based on a set of principles for the determination of "appropriate regulations" and believes that a final agreement would be possible only through a balanced result with "mutual advantage" for industrial and developing countries. The definition of tradeable services should be such as to embrace all types of transactions necessary to achieve effective market access. In their opinion, this might be done through an illustrative list of types of transactions covered in each sector of tradeable services. Moreover, the EEC proposal provides for development compatibility and national definition of the content of the concept of development, reflecting differences in the economic structures and policies of different countries.

Moreover, this proposal views the development objective of the Punta del Este Declaration to be less of a direct objective than the objective of trade expansion. Any rules, therefore, that reduce trade are unacceptable even if it is argued that they were promoting growth and development. In their opinion, while development is an important criterion, rules should be checked against the absolute criterion of expansion of trade. The proposal also provides for an illustrative list of additional concepts, such as dispute settlement, balance of rights obligations and benefits, escape clauses, exceptions, government procurement, and evolutionary adaptation. The EEC suggests that the GNS has identified the following two criteria against which future discussions should be evaluated:

(i) how far do different concepts conform to the objectives set out in the Punta del Este Declaration; and

(ii) how far are general propositions appropriate in individual sectors

141. Switzerland has made two submissions in which it stipulates that three essential points should be made concerning the framework:

(i) progressive liberalization of trade in services should take place, without seeking to impose a general liberalization or to oblige countries to adopt a uniform behaviour;

(ii) principles of the framework should be comparable to those of the General Agreement, in particular freedom of trade and equal treatment, to ensure that the regimes for trade in goods and services are not incompatible;

(iii) readiness to innovate, in particular in case of opening of markets for services (scope of such openness and the grounds and modalities for reservations) and equal treatment of parties (MFN and non-discrimination) should be considered.

Owing to the difficulty of application of the MFN treatment to services, the Swiss proposal provides for the optional most-favoured-nation clause (OMFN) as a starting point (OMFN would consist in giving any third country the right to become party to the agreement concerned). To enjoy such right or option, the countries concerned would in exchange have to offer a counterpart, such agreements would make it possible to define the specific scope of equivalent treatment, and even of the national treatment corresponding to the subjects dealt with. The proposal also envisions that provisions governing competition applicable for example with respect to state monopolies, subsidies, antidumping, standards surveillance, dispute settlement, sanctions, transparency should also be established; Switzerland believes that there is need for exceptions, concerning for example public health, the service consumer and security. Moreover, the need to provide safeguard possibilities and define their conditions and modalities, should also be examined.

142. Australia, Canada, Japan and the Nordic countries have also made proposals on broad concepts on which principles and rules on trade in services could be based. Australia in its initial proposal provides that in the application of the non-discrimination concept to a services agreement, the "conditional" MFN approach would be warranted. Since the barriers to services trade would be mainly non-tariff barriers, Australia raises the issues of unconditional and conditional MFN, and the exceptions to these rules in accordance with national policy objectives. In a second proposal, Australia provides an "illustrative outline" of a framework agreement which is based on the establishment of strong rules of general application which would nevertheless allow to a certain extent individual member countries to find their balance of rights and obligations and market access benefits. The discretion of each party would be limited by requirements for reciprocity. There would be initial listings in the form of schedules by each individual member country of national regulations to be excluded from the coverage of the agreement and market access undertakings. Through an "open season" procedure the schedules of exclusion would be shortened and the market access undertakings expanded through regular rounds of plurilateral negotiations. The outline contains three parts as follows:

- Part I on objectives and scope, which includes a reference to development, that is provision consistent with the rules and principles of the agreement, for the economic development needs of developing countries;
- Part II on obligations and benefits, including non-discrimination, national treatment, market access, preservation of market access, transparency, monopolies, subsidies, accreditation and licensing procedures, government procurement, economic integration arrangements, consul-

tations and dispute settlement, permanent exceptions, existing international agreements, sectoral agreements, and non-application;

- Part III on institutional provisions including sections on administration of the agreement through the establishment of a governing body and a secretariat, accession of new members and periodic revision of the agreement.

143. The Nordic countries advocate an open-ended approach, where no aspect of trade in services is excluded *ab initio* and the types of barriers which are encountered in such trade would be identified through an analysis of perceived barriers. In their proposal, emphasis is placed on an initial analysis of the possible formulation of the principles at the sectoral and sub-sectoral level. This approach, in their opinion, should give rise to clear formulations on a consensus basis and not excessive reservations. Any impediment to trade in services not covered by initial commitments would be open for later negotiations. Immediate elimination of trade-distorting measures was infeasible, owing to either the possibility of gradual adjustment to the rules of an agreement or to the existence of exceptions based on important national policy objectives. In the Nordic countries' proposal the framework should include the MFN principle, access to service markets dealing with establishment-related barriers, and provisions enabling parties to a framework agreement to enter into regional agreements regarding liberalization of trade in services. National treatment need not necessarily mean identical treatment, but rather equal or equitable treatment, taking into account legitimate national policy objectives such as national security. Transparency on an MFN basis applicable to all trade in services would enable suppliers to learn the rules of the game and adjust to varying market conditions; the mechanism for transparency could be based on the GATT model. The Nordic countries believe that the concepts of transparency, non-discrimination, a commitment to endeavour to apply regulatory measures with the least possible impact on trade, some form of stand-still provision on the introduction of new trade restrictions and provisions on consultations and dispute settlement should be included in the framework or "umbrella" agreement. Whilst, national treatment, MFN, right of establishment, safeguards, subsidies, mobility of key personnel, investment and government procurement are more appropriate for the sectoral agreements, as they are not identically applicable to all sectors. Some principles in their opinion, would be split between the framework agreement and the sectoral agreements, for example the principle of transparency could be stricter in each sector agreement than in the framework agreement.

144. Canada's hypothesis on negotiation of a multilateral agreement on trade in services includes the following four main elements:

- a framework of principles (the distinction between "principles" and "rules" is that the former refers to more longterm negotiating aims which requires considerable negotiations, whereas rules are more clear-cut provisions which would be applied in a more categorical and automatic way); i.e. national treatment for further market access undertakings and trade liberalization;
- a set of rules i.e. transparency, MFN and non-discrimination;
- institutional arrangements for multilateral surveillance, enforcement of the agreement, settlement of disputes and arrangements for further market access liberalization; and
- an exchange of specific market access undertakings and trade liberalization measures, which would determine the commitments of the parties (the commitments under the agreement would be negotiated bilaterally or plurilaterally and then extended on an MFN basis to all the parties. Such commitments would be set out in the form of schedules to the agreement. Notifications and cross- notifications would ensure transparency in the negotiations) the practical scope of the Agreement;

145. The Canadian proposal sets forth four areas of market access undertakings:

- concessions on measures relating to traded services i.e. those produced in the territory of one country and provided in the territory of another;
- concessions relating to commercial presence, establishment, and national treatment for enterprises providing services once they are established;
- impediments to information and payment flows; and
- impediments to temporary movement of business people.

146. The latest Japanese proposal adopts the approach of having an enforceable general framework incorporating all the principles and rules which must be enforced. This proposal covers four areas: rules and principles; sectoral coverage; negotiation of potential reservations; and future ar-

rangement. In the opinion of Japan, the following principles and rules should be enforceable in the services framework: transparency; most favoured nation treatment (non-discrimination); national treatment; special and differential treatment of developing countries; state enterprises; subsidies; safeguards; exceptions; consultation and dispute settlement; regional and local governments; regional economic integration; and evolving arrangement. On the question of coverage, the Japanese proposal envisages the possibility of reservations for measures which are difficult to bring into conformity with the principles. These reservations would be listed in an annex to the agreement and the participating countries would be enjoined to refrain from adopting new trade restrictive or distorting measures during the negotiations. The mechanism for enforcement and management of the framework, including the modalities for further reduction or elimination of existing discriminatory measures and reservations after the entry into force of the framework, would need to be examined. Particular sectoral arrangements could be established where the special characteristics of the sector makes it difficult to bring into conformity with the principles of the general framework or when the enforcement of those principles alone would not remove trade obstacles. In the Japanese view, the provisions of the sectoral agreements would take precedence over those of the general framework. Japan supports the principle of national treatment for imported services, foreign service enterprises or sellers delivering services, and agents thereof as an essential instrument to expand services trade. Japan also suggests the establishment of a mechanism for periodical negotiations to review within the framework agreement, laws and regulations inconsistent with the national treatment principle, together with the obligation to notify such laws and regulations. This proposal makes a marginal reference to the needs of developing countries by suggesting that this matter needs further examination which could take into account the work of the GNG on this matter.

147. Many developing countries consider that the discussions should first focus on statistical issues, the definition of "services" and "international trade in services" and identification of sectors covered by the multilateral framework. The developing countries consider that the limitation of the negotiations to "trade" in services (i.e. trade in services that takes place across the national frontiers), would exclude internal trade, as well as the whole series of operations involving investment, production and distribution of services within national borders. The only criterion against which all proposals for a multilateral framework on services could be tested should be the Punta del Este declaration and its mandate that the basic objective of a multilateral framework should be "promoting the economic growth of all trading partners and the the development of the developing countries". The developing countries therefore question the applicability or validity of some of the GATT concepts and ideas such as "national treatment", "transparency" in regulations and decisionmaking, and "non-discrimination" in the future multilateral framework on services. They also consider that the negotiations should cover those services sectors in which developing countries have demonstrated international competitiveness, in particular, labour-intensive services (such as construction). The negotiations should also, in their view, be accompanied by a parallel effort to relax controls on the cross-border movement of the services sector labour force. Whereas the United States considers this to be an immigration issue, the developing countries believe that it is a traded service.

148. The developing countries believe the scope, limits and potentials of the existing international disciplines and arrangements in the area of services, (e.g. civil aviation and telecommunication), agreements should be examined, to see whether there is a need to incorporate these sectors in a new multilateral framework or a sectoral discipline. They suggest that the existing international arrangements may also furnish alternative approaches or models, (such as the UNCTAD Code of Conduct for Liner Conferences).

149. For its part, Mexico in its first submission, argues that economic development should be the objective of the framework agreement. The starting point of such an agreement could be "relative reciprocity", which could include such elements as development, financial and trade needs of each developing country party to the eventual agreement, and would determine national treatment of imported services and labour. Labour flows and a number of exceptions for the developing countries -not to be identified with "special treatment"- should also be included in the framework agreement. The exceptions for developing countries, according to this proposal, should include such items as the possibilities of regulating new services or traditional services whose transportability has been enhanced by the new technologies, and new regulations required for balance of payments purposes. Mexico also proposes that developing countries should be granted the right to give subsidies to their industries. Moreover, Mexico stresses the following with respect to principles:

-**Transparency:** Mexico recognizes that this is an extremely important element in the negotiations, but first, agreement must be reached on what is or is not a regulation affecting trade. Mexico has proposed a negative list, in other words, for what should not be considered a barrier to trade in services: (1) laws and regulations on foreign investment; (2) equal treatment for services, whether local or imported, and not for foreign investment; (3) non-discrimination among foreign suppliers of services; and (4) solely in the case of developing countries, law and regulations on the "new" services or traditional services with enhanced transportability.

- **National Treatment:** Equal or equivalent treatment for services and labour, but not for investment (commercial presence or establishment).

-**Most-favoured-nation:** Unconditional and non-discriminatory treatment. The following are five secondary objectives outlined in the second Mexican proposal which give real content to the development objective:

- sustained growth of production and productivity of the services sector in the developing countries, in particular of the producer services;
- sustained growth of employment in the services sector in those countries, especially that of producer services;
- improvement of the international competitiveness of raw materials and processed and semi-processed goods as well as services produced by developing countries;
- sustained growth of exports of developing countries of services, including producer services;
- fair and equitable access to new technologies generated or distributed internationally to the services sector, including technologies related to telecommunications, data processing and access to world information networks.

The proposal also provides the following ten concrete measures which are required to implement these objectives:

- principle of "relative reciprocity" should be established recognizing the fact that there cannot be equal treatment among unequal parties;
- labour and labour intensive services should be the subject of negotiations, the Framework Agreement should also deal therefore with regulations that have a negative impact on labour flows;
- "right" of establishment or commercial presence of direct foreign investment should not be included in the negotiations;
- developed countries should undertake not to impose any further restrictions on imports of services from developing countries after the mid-term review meeting at Montreal;
- the following measures adopted by the developing countries should not be considered as barriers to trade in services: laws and regulations that are already in existence or would be adopted in future on the "new" services or the greater transportability of "traditional" services, and on direct foreign investment; exclusion of foreign direct investment from equal treatment for services, whether domestic or imported; and non-discrimination among foreign suppliers of services;
- developed countries should grant developing countries unconditional MFN treatment in the framework agreement and the sectoral agreements;
- in the sectoral agreements preference should be given to the liberalization of services exported by developing countries;
- transfer of technology from developed to developing countries should be speeded up-the Code of Conduct for transfer of technology under negotiation at UNCTAD should be studied in this regard;
- the framework agreement and the sectoral agreements should indicate the fact that the main national policy objectives of developing countries' laws and regulations was economic development which relates to the infant industry argument and the fact that only the developing countries themselves could determine their own development needs; and
- sectoral agreements that may be established under the framework agreement should be considered as independent of each other and of the results of the negotiations on goods at least for developing countries.

150. Argentina's proposal on the elements for a possible framework agreement on trade in services, contains the following main elements: (i) respect for national policy objectives (laws and regulations which pursue national policy objectives should not be questioned); (ii) the

concept of development (this concept goes far beyond mere economic growth and contains elements which would allow developing countries to have an independent decision-making capacity regarding trade in services, ensure those countries a larger share and better integration in such trade, and provide security and capability to adapt to new circumstances in international trade); (iii) definition of trade in services (two approaches are proposed a technical definition or an open-ended annex in which the sectors covered could be detailed); (iv) principles placing signatories on an equal footing whilst providing for the specificity of services trade and sectoral disciplines; (v) uniform treatment (equality of opportunity of market access); (vi) unfair practices (export practices, clauses relating to the prohibition of limiting or prohibiting exports of services and clauses guaranteeing access to sources of services and technology); (vii) integration agreements among developing countries (the benefits under such agreements should not be impaired or called into question); (viii) procedure for progressive implementation (practical procedures for parties to gradually adjust their national provisions); (ix) and other elements (transparency, consultation and dispute settlement, exceptions, balance of rights and obligations, and emergency measures).

Comments

151. The negotiation of the framework of principles and concepts which could provide the basis for a multilateral framework on services, should recognize the legitimacy of measures applied as part of the essential development strategies of developing countries. This would provide the developed countries with a negotiating framework within which to pursue liberalization in specific sectors, whilst at the same time protecting the developing countries from claims that their development strategies in the service sector somehow constituted "unfair" or "unreasonable" trade practices.⁷¹ Thus, negotiations related to more specific issues or in individual sectors could take place in a more constructive atmosphere once the threat of possible retaliatory measures had been withdrawn.

152. Any multilateral framework for services should recognize the right of developing countries to develop their service sectors through a variety of strategies. Developing countries will also require support in their negotiations with TNCs, as the strengthening of the service sectors in developing countries can be greatly facilitated by a willingness on the part of TNCs to rely upon the services of the host country and, where feasible, to transfer the service content of their activities to domestic firms. Developing countries are concerned by the clear threat that their service producers would be dominated by TNCs if they were to liberalize in certain sectors.⁷² Measures that would increase the capacity of developing countries to compete with such corporations, or to negotiate effectively with them, should be an essential element of multilateral cooperation. The possibilities of imposing obligations upon the TNCs themselves or upon their home governments with respect to their operations could also be envisaged.

153. It should be noted that the situation has emerged in which some developed countries have proposed that developing countries should receive "differential and more favourable treatment" in any agreement on services. However, developing countries see it in a somewhat different manner. They feel that since development is a priority objective of the negotiations on services, provisions supportive of the development process should be incorporated as an essential component of any multilateral agreement on services, and not treated as an exception warranting "special treatment", as has been the case in GATT, where development considerations were "grafted on" in a somewhat precarious manner, long after the initial framework of rules and principles had been negotiated.

⁷¹ I.e. the main objective being to blunt the coercive application, with respect to services, of Section 301 of the United States Trade Act of 1974 as amended in the Trade and Tariffs Act of 1984.

⁷² The concerns of developing countries have been analysed in a variety of papers, see D. Nayyar in "International Trade in Services, Implications for Developing Countries", lecture published by Export-Import Bank of India, Bombay, 1986, and Edson Fregni, "La Informatica en Brasil", Capitulo de Sela 12, Caracas, 1986, and M. Rodriguez Mendoza: "Estados Unidos, America Latina y el debate internacional sobre el comercio de servicios", Integracion Latinamerica, 115, Buenos Aires, 1986.

Coverage of the Multilateral Framework for Trade in Services

154. Two approaches to this element could be identified in the discussions at the GNS:

- (i) sectors should first be identified for inclusion in the coverage before deciding what concepts would be appropriate;
- (ii) concepts should be determined first and then the sector to which these concepts may be applied would be determined.

155. One view is that, at this stage of the negotiations, all services sectors should be included in the coverage. Another opinion is that the coverage should include the movement of labour and labour-intensive services. A related point is that all movements of factors involved in the production of services should be covered by the framework. This includes not only capital, but also skilled and unskilled labour, which raises the question as to how far the concepts which have been proposed apply not only to services involving essentially capital, but also labour. One approach is that unless it is known which sectors the framework would cover, it will be difficult to participate in the negotiations, because countries should know the possible benefits which could be expected from the framework.

156. The negotiation of an adequate multilateral framework would permit the developing countries to participate actively in the negotiation of sectoral disciplines. However, it would be essential that sectors of export interest to developing countries be included. It is also of importance that the sectoral disciplines deal with the real problems affecting developing countries' exports of services, which might not arise only from regulations in other countries. Such disciplines should also serve to assist developing countries in obtaining more value-added from their service exports.

Existing International Disciplines and Arrangements

157. Specific proposals have not been made on this element in the Group. It has, however, been suggested that to ascertain the extent to which the existing international arrangements and disciplines in services provide a framework within which the objectives of the Punta del Este Declaration can be met should be examined. Such examination would also be useful to determine whether there is a need to establish new arrangements for particular sectors. One approach is that it would be useful to evaluate the extent to which existing arrangements contribute to the creation of a favourable environment for the promotion of economic growth and the development of developing countries. According to this view, the principles, rules and disciplines of existing arrangements should be examined also in light of the broad concepts on which principles and rules for the multilateral framework might be based. The suggestion has been made that the future multilateral framework would have to be compatible with existing agreements. No conclusion has been made, however, on the manner in which the existing agreements should relate to the outcome of the negotiations conducted by the Group.

Comments

158. Sectoral agreements on services have been negotiated in the past. Such agreements which essentially deal with standards or norms of behaviour which all parties should follow may have an important bearing on trade in that service sector. The most notable of such agreements is perhaps the Chicago Convention, 1944, which established the International Civil Aviation Organization (ICAO). The Chicago Convention lays down the five freedoms, covering overland flight and landing, and subject to certain exceptions, taking on and discharging passengers, cargo or mail. Moreover, it provides for national treatment with respect to the use of facilities, charges for such facilities and use of airports. It provides a multilateral framework for bilateral concessions. These sectoral agreements, therefore, may contain certain useful elements of relevance to the Uruguay Round negotiations.

Measures and practices contributing to or limiting expansion of trade in services

159. Developing countries face a variety of obstacles to entry to the world market for services going beyond government regulations, including dominance by established suppliers, lack of access to technologies or to an adequate services infrastructure, restrictive business practices and the like. These barriers to entry into the world market should be assessed.

160. Developed market economy countries have identified a growing number of measures, usually of a regulatory nature, which act as barriers on the development of international trade in services. Examples of such barriers are currency control and foreign exchange legislation, legislation regarding state authorization for the purchase or lease of real property, legislation defining the conditions on which foreigners may enter, leave, reside and be employed, as well as legislation relating to business competition, the protection of intellectual property, the protection of national security, planning, employment or the intent to defraud. Special rules are also applicable within various services sectors which influence all services transactions in those sectors, such as different types of tax rules, public procurement policy, regulations concerning certain professions and regulations which impose the use of locally available services in preference to services supplied from abroad.

161. Mexico stresses that the Group should first define what should not be considered as "obstacles" to such trade; these would include: (i) regulations related to foreign investment (in accordance with the Punta del Este Declaration which refers to trade in services and not to foreign investment in this field, (ii) new regulations pertaining to new services or to an enhanced transportability of traditional services adopted by developing countries, etc. Moreover, it suggests that discussions should take place on whether or not migration laws constitute barriers to trade or whether the requirement of a deposit in any construction work is an obstacle.

Comments

162. If the liberalization foreseen in the Uruguay Declaration is effectively to promote the expansion of trade of developing countries and their development, it will of necessity have to (a) address those measures impeding the expansion of such trade and (b) not undermine the implementation of measures aimed at strengthening the domestic service sector and its contribution to the development process.

163. In this respect certain principles might be considered:

(a) that balance be retained in addressing regulatory barriers to trade in services, for example, regulations interfering with trade in services associated with the movement of people or goods, would receive equal priority to those associated with capital and information; and the selection of sectors should cover those of interest to developing countries,

(b) that the negotiations address the non-regulatory and nongovernmental barriers facing the service exports of developing countries aimed at establishing guidelines for multilateral cooperation touching upon a variety of areas, and falling within the competence of other organizations. Governments should assume responsibilities to take various forms of action supportive of the expansion of the service trade of developing countries.

General Comments

164. If the Uruguay Round is to accomplish its mandate with respect to services, comprehensive proposals, such as elements supportive of the development process in the multilateral framework will have to be made.

165. Multilateral trade negotiations on both goods and services will undoubtedly be complicated

by the fact that the underlying economic assumptions seem to have changed. According to the theories of comparative advantage, all parties were assumed to benefit from the efficiency benefits of international specialization. Under the new technological paradigm, however, it may well be a zero-sum negotiation where those retaining an advantage in knowledge-based production (goods and services) will "win", while the others will "lose". This does not mean that liberalization of trade in services cannot be beneficial to all; it does imply, however, that efforts at liberalization need not be undertaken according to those principles and concepts applied in past decades to multilateral negotiations on goods. Part II of the Uruguay Round Declaration, which identifies liberalization, and expansion, of trade as a means of furthering economic growth and the development of developing countries, seems implicitly to recognise this fact.

166. It must be recalled that the Uruguay Declaration does not recognize liberalization of trade in services as an end in itself but states that liberalization and the expansion of trade should be such as to lead to economic growth and the development of the developing countries. A matter of crucial importance for developing countries is to ensure that the balance achieved at Punta del Este in Part II of the Ministerial Declaration, among the aims of the negotiations, should be preserved. If this objective is to be pursued effectively, the negotiations will have to advance beyond their current preoccupation with regulations (which basically builds upon concepts developed over the years in the OECD context) and address ways and means by which the contribution of services to the development process, including by increasing developing country export earnings, could be enhanced through international cooperation. (Some of these were proposed in the documentation for UNCTAD VII.)