

THE GATT URUGUAY ROUND

In October 1987 the General Agreement on Tariffs and Trade (GATT) celebrated the fortieth anniversary of its inauguration in 1947. Since then the GATT has achieved a major reduction in tariffs and other barriers to world trade, but its future is threatened by tensions in the world trading system. The new Uruguay Round of multilateral trade negotiations launched at Punta del Este in 1986 and due to be completed by 1990, is therefore likely to be particularly significant. This Briefing Paper provides a review of the principal items on the ambitious agenda of the Uruguay Round, explains their importance to developing countries, and identifies the current positions of the main actors:

The Background to the Uruguay Round

The General Agreement on Tariffs and Trade was established in 1947 to set out rules for the free conduct of international trade. It has already been through six successive rounds of multilateral talks on trade liberalisation which have already lowered significantly the most favoured nation (mfn) rates, which are designed to establish the upper limit of tariffs that any GATT signatory can levy. Given the complexity of the issues involved and the need for extensive political compromise, GATT negotiations have often been very lengthy — the previous Tokyo Round lasted for seven years (from 1973 to 1979) largely because of the impact of the oil crisis. Many regarded the successful launching of the Uruguay Round as something of a victory in itself; at the start of 1986 it seemed far from certain that sufficient agreement could be reached to allow negotiation of the Uruguay Round to begin. Conflicts existed among the signatory countries over several issues, and these have been carried over into the Uruguay Round. The US was pressing for a new Round in which high priority would be to be given to services and agriculture, but the European Community (EC) was reluctant to become involved in negotiations on agriculture which might expose its export subsidies to scrutiny. And some developing countries, notably India and Brazil, argued against including sensitive new items like services on the agenda, either because they fall outside GATT's competence or because the developed countries have not yet fulfilled pledges they have already made on trade in goods.

The force with which these positions have been put forward has undoubtedly been related to the global trade environment. Since the 1970s selective and discriminatory trade restrictions and derogations from international trade rules have become increasingly common. The US Administration, for example, argued that it needed the successful launch of multilateral trade negotiations on its terms if it was to head-off protectionist legislation in Congress.

In addition, there are North-South tensions. Developing-country demands for improved access to industrialised-country markets for their exports have been joined more recently by demands from the developed countries for better access to Southern markets (eg. cars, shoes, insurance, information services and computers).

The Role of GATT

One consequence of these conflicts has been a decline in

the authority of GATT. Solutions to recent trade disputes have been sought largely outside the GATT or under special derogations such as the Multifibre Arrangement (MFA). Hence a growing share of world trade is taking place outside the even imperfect discipline of GATT rules. A further deterioration of GATT principles has resulted from the innovation in the previous Tokyo Round of the *conditional mfn* — a trade agreement restricting benefits to a limited number of participating countries. During the Tokyo Round codes on subsidies and government procurement were drafted but no consensus was reached. Rather than completely abandoning the agreements, those countries satisfied with the result signed the codes, but the rights and obligations they confer apply only to relations between the signatory countries.

The need to reinforce GATT's authority and credibility is a thread running through the Uruguay Round and the improvement of dispute-settlement procedures could go a long way toward restoring faith in the GATT's ability to protect countries' rights. For example, streamlining settlement procedures and expediting settlement terms between contracting parties might encourage greater, more frequent reliance on the GATT to solve mutual trade problems rather than seeking solutions outside the GATT framework.

The ministerial declaration at Punta del Este identified three specific areas in which negotiations should aim to improve the standing and functioning of the GATT:

- i. improved surveillance through regular monitoring of trade policies and practices;
- ii. improved decision making;
- iii. strengthened relations with the IMF to achieve greater coherence in global economic policy making.

The implementation of these goals would necessitate a considerable strengthening of GATT as an institution; until now GATT's ability to adapt to the changing global economy has been stretched by a lack of human and financial resources.

The first test of the new resolve will be whether the GATT members will be able to adhere to agreements reached in Punta del Este on *standstill* and *rollback*. On *standstill* there has to be a commitment that no new protectionist measures affecting trade in goods will be introduced during the negotiations. On *rollback* there must be a commitment by participants to phase out trade restricting and distorting measures inconsistent with the GATT during the course of the negotiations, on a non-reciprocal basis. These two agreements were defined in the Punta del Este ministerial declaration but, ominously, some confusion and difference has already appeared among members about their practical meaning. In the six months following Punta del Este, GATT has noted an increase from 93 to 116 in non-tariff barriers to imports (NTBs).

The Negotiating Issues

The widening range of issues on the agenda for the new Round reflects the problems and frictions afflicting the international trading system and the GATT itself. This Briefing Paper focusses on the key topics that are likely to generate the most controversy. They can be divided

Box1 The EC's position

Although not as outspoken as the US, the EC has been a strong supporter of the need for a new Round. But its objectives for the Round are limited. The EC's principal concerns have been to find a way of dealing with Japan's trade surplus, to head off the rise of protectionism in its trade partners, to strengthen the role of GATT, to extend its competence into the area of services, and especially intellectual property, and to oppose any attempt to single out the Common Agricultural Policy for attack. Although the EC is in favour of strengthening the authority of GATT, it is opposed to legally binding arbitration. It wants dispute settlement to maintain the present rules of consensus which make the reports of GATT panels of enquiry only advisory.

The Community has also expressed a wish to build a bridge between the US position and that of developing countries, and to identify areas of possible bargaining between North and South. So far this wish has not been translated into any tangible action. Indeed, the EC appears to be somewhat isolated from the principal developing-country groups. Is the EC likely to be able to establish an identity of view with developing countries on many issues? It is possible that a consensus will emerge in some areas, with tropical products, international taxes, textiles, tariff escalation and services as contenders. In October, the EC offered to eliminate or reduce all tariffs on tropical products from ldc's provided other developed countries follow suit. On other issues, however, the EC is likely to be in dispute with some developing countries. The EC, for example, is firmly in favour of the graduation of newly industrialising countries (NICs) to phase out the extra-GATT concessions from which they currently benefit. Moreover, three obstacles stand in the way of wide ranging consensus.

First, the EC's ability to mediate between North and South is hampered by its limited freedom of manoeuvre within the negotiating mandate handed down by the twelve member states. This structural problem is a normal feature of the Community's international negotiations: any significant departure from the delicate compromises established between the Twelve normally requires the Community negotiators to refer back to the member states.

Second, the EC's goals in the Round are limited. On many issues, the EC wants either the maintenance of the status quo or, at most, modest change. Some of the issues on which it has a strong concern are outside developing country interest e.g. the balance of benefits involving Japan. On these issues the developing countries as a group do not have many things to offer that the EC wants.

Third, a number of the most important developing country demands would involve a change of practice by the EC. There is likely to be some resistance within the Community to "concessions" particularly since the move to complete the creation of the internal European market by 1992 will remove some of the national sub-barriers to imports created by member states to supplement the protection of the common commercial policy.

roughly into issues left unresolved from the Tokyo Round, and new issues born of the emerging needs and trends of the current world economy.

Outstanding Issues

Non-tariff Barriers

The spread of non-tariff barriers to trade exemplifies the breakdown of GATT discipline and is of major concern to developing countries. The GATT was founded on the premise that the price mechanism, in the form of a non-discriminatory tariff, is the least damaging way to protect domestic producers from international competition in those circumstances where such protection can be justified. Quantitative restrictions are less transparent than the tariff and have numerous side-effects, including the incentive for the restricted suppliers to move into higher quality and higher-priced products.

NTBs have been increasing in frequency and impact. About one-fifth of OECD imports are affected by NTBs, particularly in the clothing, textiles, footwear, food and

iron/steel sectors. This is partly because earlier multilateral negotiations have substantially reduced the levels of tariff protection on a variety of products. In addition, this trend has been strengthened by the dramatic success of many new entrants in global markets and the resistance of Northern labour, firms and governments to the adjustment this requires. NTBs have provided governments with a very effective direct mechanism for dealing with import competition.

The Tokyo Round distinguished itself from earlier trade negotiations even by attempting to deal with NTBs. But progress then was limited to the areas of government procurement, technical barriers to trade, and customs valuation. The challenge for the Uruguay Round will be to review and build on the existing codes as well as to reach agreement on banning new restrictions and ultimately phasing out existing ones.

There has been a proliferation not only in the *number* but also in the *type* of NTBs. Barriers involving the imposition of volume limits on imports (unlike tariffs which simply raise the price at which imports can be supplied to the market) are becoming increasingly frequent. Furthermore, systems may be complex to administer. Indeed, onerous import regulations may in themselves form an NTB as, for example, when France required Japanese electronics imports to be cleared through the small customs post at Poitiers. Some NTBs have a quasi-official status as special derogations to GATT. The Multifibre Arrangement is the most extensive of these. Others are purely informal such as the use of health regulations to prohibit imports of a competitive product.

Particularly favoured are market-sharing deals usually involving *voluntary export restraints (VERs)*. They are favoured because they provide developing countries with an "offer they cannot refuse" and so provoke less international complaint than, say, an outright quota. Domestic producers in the protected state and the exporter applying the VER effectively combine to restrict the supply of goods to the protected market and thus raise the price. The exporter is thus partially compensated for the loss of export volume by higher unit values. This collusion between importers and dominant exporters is taken a step further in the MFA, in which quotas based on past performance are established for most suppliers. Hence the *early entrant* developing countries, such as Hong Kong and Taiwan, are given a measure of protection against competition by lower-cost *new entrants* with smaller quotas.

Trade in Agricultural Products

During the six months before the Punta del Este meeting, agricultural trade was one of the most hotly debated agenda items. Preparations for the new trade Round took place in the context of a growing rancour cutting across North-South divides. There is friction not only between the US and the EC but also between these two groupings and other agricultural exporters. A group of 14 countries from North and South describing themselves as non-subsidizing exporters, banded together in Cairns, Australia, to demand that trade in agriculture, and export subsidies in particular, should be given a high priority in the new trade Round.

Few countries have not experienced government intervention in support of agriculture. A recent OECD study examined a wide range of forms of state support to agriculture, and estimated that US government support is equivalent to 20% of the value of production; in the EC the proportion is 40%, and in Japan it is as high as 70%.

At the centre of the dispute is the EC's **Common Agricultural Policy (CAP)**, and particularly the CAP's export subsidies and their impact on American agricultural trade. The effects of the CAP on developing countries and

other third parties are mixed, and the overall impact of the CAP depends on the commodity structure of each state's trade; some developing countries have gained and others lost.¹ The EC has been a focus for particular attack because of the speed at which it has shifted from being a net importer of major commodities to a net exporter, and because of its wide use of export subsidies. Between 1973 and 1983 the EC's agricultural exports increased by 42% in real terms. The entry of Spain and Portugal into the EC, which has seriously hit US export sales, strengthened American resolve to include agriculture in the GATT talks. The EC riposted that the Round can consider agriculture provided that all forms of trade-distorting intervention are covered. In the final hours of the Punta del Este conference a compromise was reached: agricultural trade could be included on the agenda provided that export subsidies were not singled out for special attention. The GATT Agriculture Group began its deliberations in February 1987. Its terms of reference cover "all measures affecting trade, market access and competition and supply in agricultural products, including subsidies and other forms of assistance".

Subsidies

Agricultural trade provides only one illustration of the wide range of trade-related problems caused by the spreading use of domestic and export subsidies. The declining importance of tariffs, coupled with the general malaise in the world economy have both contributed to the spread of trade-distorting subsidies. Government responses to what are perceived to be unfair subsidies vary and, accordingly, the use of countervailing and anti-dumping duties has been erratic.

Subsidies remain one of the most intractable problems facing the international trading system. They impinge directly on the role of governments in national economic activities and involve judgements about the kind of domestic interventions that result in unfair trade. The political sensitivity and complexity of such issues in all countries goes a long way to explain why so small an impact has been made on the major problems despite extensive negotiations and consultations.

The GATT Code on Subsidies and Countervailing Measures, developed during the Tokyo Round, made some headway but left the major problems unresolved. First, no acceptable definition has been found of what constitutes a subsidy, or of how its size is to be measured. Second, once it has been identified, there is no agreement on how the trade impact should be measured. Third, assuming that a trading partner has been adversely affected, what remedy or redress would be appropriate? Finally, the effectiveness of the code will always be restricted because not all trading countries are signatories.

The Safeguards Issue

In cases where imports are causing, or threatening to cause, injury to domestic producers, Article XIX of the GATT allows national governments to take emergency action against imports by imposing a non-discriminatory global quota on all suppliers of the goods. In return, the foreign suppliers are entitled to some financial compensation. Article XIX recognizes that there will always be a need for temporary escape from normal GATT discipline and that some industries require time to adjust to new competition. Despite these good intentions, Article XIX is viewed by GATT members as inadequate and is therefore rarely used. Since the mid-1950s, many governments have felt that the temporary protection it

allows is insufficient to cope with the problems posed by the rapid import penetration of new and competitive suppliers. The increasing vulnerability of labour-intensive industries in industrialized countries has compounded these problems.

Instead of utilising GATT safeguards, countries have pursued more insidious methods of protecting domestic producers, ranging from legitimization within the GATT of discriminatory textiles and clothing restraints under the Multifibre Arrangement, to the producer agreements found, for example, in the steel sector, and "voluntary" restraints imposed upon exporters. Suppliers lacking the necessary political muscle within the GATT have normally been on the receiving end of such measures. In the 1950s Japan was hardest hit but since the 1960s developing countries have experienced their worst effects. Since these measures are taken outside the legal framework of the GATT, the "victims" cannot demand compensation. And, although there is sometimes a measure of consolation in the quota rent they can collect, this is normally less than the loss suffered.

Negotiations on safeguards reached deadlock during the Tokyo Round, largely because of the EC's insistence that an exception to the GATT's most favoured nation (mfn) principle should be made so that exporting countries seen to be causing disruption in domestic markets could be singled out for restraint. The EC argued that Article XIX of the GATT was being ignored mainly because of its stipulation that import restrictions must be applied against all suppliers, and that the GATT system itself would be strengthened if current discriminatory practices were legalised.

Seeing the dangers inherent in such a circumvention of one of the GATT's fundamental principles, many of its members (including the developing countries, Canada and the US) rallied to the defence of the mfn principle during the Tokyo Round and rejected the proposal. But the EC is maintaining its position in favour of selectivity in safeguards in the current round (see Box 1).

The New Issues

In view of the significance of these outstanding issues many developing countries question why the new Round should now be called upon to confront difficult new issues that do not clearly fall within the traditional jurisdiction of the GATT. Much of the acrimony in the debate over the negotiating agenda has centred on how these issues should be dealt with. In the end, a compromise was reached at Punta del Este. The new issues, with the exception of high technology trade, have been included in the agenda on the condition that services will be dealt with on a separate basis: there will be two parallel negotiating fora using the same rules of procedure, one for services and one for all the other issues, until the final stages of the Round when they may be synthesised. Developing countries hope that this will hinder attempts by the US or other developed countries to trade-off concessions on old issues against progress on services.

Trade in Services

For the North, services mean banking and insurance. Two of the US's motives in lobbying intensively for services to be discussed within the GATT and formally inscribed on the agenda for the new trade Round were that services thus defined are claimed to be increasingly significant in international business (though hard evidence on this is lacking), and that some elements of the US service sector are among the most vigorous supporters of a new trade Round. Developing countries have adopted two lines of response. One group, led by India and Brazil, have objected on principle to liberalisation of services. Others,

1. The wide-ranging effects of the CAP are described in ODI's Briefing Paper *The CAP and Its Impact on the Third World*, (June 1986).

such as South Korea, have sought to widen the discussion to include flows in which they have a direct interest, such as shipping and contract migrant labour.

A resolution of these positions will be hindered by the complexities of service-sector activity. For example, despite some advance, definitional problems and lack of systematic and reliable data present serious obstacles to detailed analysis of the services problem and to the development of concrete negotiating positions. Another obstacle is the overlap between the trade and investment aspects of service activities. Some services "trade" is essentially an investment issue insofar as many service firms must be physically located in the market to sell or trade their services. The EC position is less aggressive than that of the US but, nonetheless, there is a desire to gain access to Third World markets for Europe's competitive financial-services industries and, particularly, to use the Round to put pressure on those newly industrialising countries (NICs) of east Asia most involved in counterfeiting.

Trade-Related Investment Measures (TRIMs)

In an increasingly interdependent and open world economy, it is not surprising that the distinctions between investment and trade flows have become blurred. With this in mind, the US government pressed to have TRIMs placed on the agenda for the negotiations. But most other countries find investment issues much too delicate to be legislated internationally, and were reluctant to introduce so complicated an issue into an already heavy agenda. Nonetheless, it has been agreed to review existing GATT articles dealing with trade-distorting investment policies and to negotiate improvements if necessary, although it is not yet clear precisely which items will be selected.

Trade Related Intellectual Property Rights (TRIPs)

The main targets of a GATT-based initiative to tighten the protection of intellectual property would be the Asian NICs, especially Taiwan, Singapore and South Korea, and particularly their publishing, recording, electronics and computer software industries. Both the US and the EC have applied intense pressure on these countries, bilaterally and multilaterally, to improve their patent and copyright legislation and stiffen the penalties for firms pirating technology and producing counterfeit goods for international marketing.

Outlook

The Uruguay Round will be the first set of GATT multilateral trade negotiations in which developing

countries have played an active role. However, partly because of this, it is likely that traditional North-South lines of cleavage will be superseded in the negotiations by more complex groupings, reflecting the diversity of interests in both the developed and developing countries. The Cairns Group, made up of the smaller developed-country agricultural exporters and developing countries, is a case in point; the Pacific Rim group that is focussing on safeguards is another.

For these reasons the Uruguay Round has an importance over and above the interests at stake in the detailed items of negotiation. Moreover, the Round has a major role to play in restoring support for a liberal trade system and halting the trend for an increasing share of world trade to take place outside GATT rules.

Agreements on the detailed negotiating issues will begin to emerge in the coming months. There remains some disagreement on how they will be implemented. Many developing countries want each item to be put into effect as soon as agreement is reached. But some developed countries, including those of the EC, regard the Round as a package which will be implemented in one exercise when all the issues have been resolved. This increases the scope of developed countries for demanding concessions from developing countries as part of any deal. Given the failure of developed countries, and the EC, to implement past commitments made in GATT, it also raises the danger that although the industrialised countries will require developing countries to change their ways, they may then fail to follow suit. In this sense the Uruguay Round is only the first part of the story. The way in which countries interpret and implement the commitments made will be the crucial second part. The extent of the disagreements that have emerged already over the meaning of the rollback and standstill commitments is therefore particularly worrying.

Parts of this briefing paper draw heavily on the North-South Institute Briefing on the same subject. For further information contact Chris Stevens at ODI.

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