

RECENT DEVELOPMENTS

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In December 1990 the approximately 100 Contracting Parties of the General Agreement on Tariffs and Trade (GATT) were scheduled to conclude the gargantuan Uruguay Round of multilateral trade negotiations. The objective was nothing less than the revitalization and expansion of the entire international trading system. For the moment, a successful outcome has eluded trade negotiators. The talks broke down at the trade ministerial meeting in Brussels, principally over the refusal by some nations to reduce their use of export subsidies and other measures distorting agricultural trade.

The current issues of this article are: (1) what is the status of negotiations in the Round; and (2) whether, when, and how the talks will conclude.

I. Background

After World War II the Allies sought to establish a multilateral trade organization aimed at liberalizing and stabilizing international trade. While the desired International Trade Organization did not materialize (due to rejection by the United States Senate), the GATT was established in Geneva as both a legal agreement and small organization.

While a laudable first step at achieving its objectives, the GATT has sought to liberalize trade further through rounds of multilateral trade negotiations. Six

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rounds of such talks succeeded in reducing tariff levels around the globe dramatically from their Great Depression-World War II levels.

The seventh such multilateral trade negotiations were called the Tokyo Round after their launch at a ministerial meeting in Tokyo in 1975. The Tokyo Round was the first to seek to eliminate or reduce a host of nontariff barriers to trade. The fruits of the Tokyo Round at its conclusion in 1979 included not only traditional tariff reductions, but also various separate codes to which some, but not all, GATT Contracting Parties subscribed: for example, codes on the use of subsidies and countervailing measures, antidumping standards, and government procurement. In the Tokyo Round, the GATT took its first, albeit faltering, step toward encompassing nontariff barriers to trade under the GATT umbrella.

Following the Tokyo Round, the United States sought to capitalize on its momentum in order to liberalize international trade further. The next major GATT initiative was the meeting of trade ministers in Geneva in 1982, which was intended (at least by the United States) to carry forward the baton of trade liberalization. This GATT Ministerial, however, was a great disappointment to the United States. United States Trade Representative William Brock and his staff returned to Washington discouraged about the prospects of further multilateral liberalization in the short term. Consequently, U.S. trade policy experts began to explore more earnestly prospects for liberalizing trade through other avenues (culminating, for example, in free trade agreements with Israel and Canada, proposed free trade negotiations with Mexico and Canada, and the Enterprise for the Americas Initiative, which includes the vision of a possible free trade zone through North and South America).

Nevertheless, the United States never abandoned its commitment to the GATT as the cornerstone of the international trade system and U.S. trade policy. Indeed, at the same time the United States embarked on free trade negotiations with its largest trading partner, Canada, it was also instrumental in launching the eighth round of multilateral trade negotiations, called the Uruguay Round after its launch in September 1986 at a trade ministerial meeting in Punta del Este, Uruguay.

II. Status of the Uruguay Round Negotiations

The objectives of the United States in helping to launch the Round were to: (1) strengthen current but deficient GATT rules, particularly for agriculture and the settlement of disputes; and (2) expand the GATT's umbrella to cover the new, "frontier" areas of trade: trade in services, the protection of intellectual property rights, and investment.

However, not everyone shared the United States' objectives. Many developing countries opposed in particular any negotiations regarding trade in services. While the United States succeeded in Punta del Este in including services on the negotiating agenda, services were to be negotiated more independently of other subjects.

The other two “frontier” subjects, in addition to traditional topics (including agriculture, dispute settlement, safeguards, textiles, tariffs, and “functioning of the GATT system” (FOGS)) were handled by a negotiating group on goods. Despite the separation of these two overall groups on services and goods, however, they both were to report to a single overarching Trade Negotiating Committee.

A. PROGRESS IN THE ROUND

1. *Midterm Review*

The GATT Secretariat and trade ministers agreed to hold a Midterm Review of progress in the negotiations in December 1988 in Montreal. A key objective of the review was to ensure that ministers became more deeply engaged in the direction and substance of negotiations, in order to increase the likelihood of successful resolution of the negotiations within the final two years of the scheduled four-year negotiations. To that extent the Midterm Review succeeded. Issues were crystallized, ministers previously less involved in the negotiations were more deeply engaged, and a road map was drawn and a timetable of meetings established for reaching the desired goal of successful conclusion of all negotiations in 1990.

However, perhaps the Ministers’ inability to conclude the Midterm Review on schedule had its own significance. While blueprints were developed in Montreal for all other negotiating groups, ministers were unable to reach agreement in four subject areas: agriculture, textiles, intellectual property, and safeguards. The Ministers resumed discussions on these subjects at a follow-up meeting in Geneva in April 1989, at which the remaining blueprints were finally accepted.

2. *Brussels Ministerial*

While all negotiations following the Punta del Este ministerial meeting were held in Geneva, the concluding session was hosted by the European Communities in Brussels from December 3–7, 1990. However, the Brussels meeting proved quite disappointing.

By the summer of 1990 significant progress had been made in various negotiating groups. However, in a few groups (notably agriculture, textiles, and services) earnest negotiations had not truly begun. In agriculture in particular, the United States and other agricultural exporting countries sought agreement in principle to undertake reforms in three major areas: export subsidies, internal supports, and market access. Time after time, however, the European Communities (EC) refused, indicating its intention to agree to an overall level of reform without necessarily reducing, much less eliminating, export subsidies.

Some major trading partners met in Puerto Vallarta, Mexico, in April 1990 to facilitate progress in the Round in general and in agriculture in particular. Some delegations considered that they had succeeded in the objective of obtaining a commitment from the EC to make reforms in each of the three key agricultural areas, not just overall. However, the trumpeted consensus vanished.

In July at the Houston Summit, President Bush made the agricultural negotiations in the Round one of his top priorities in discussions with heads of state of major trading partners. Some delegations understood the EC to agree with President Bush's proposal to undertake reforms in each of the three agricultural areas. Again the consensus proved illusory.

A trade ministerial meeting in Geneva in August 1990 offered the last likely opportunity to resolve impasses in negotiations prior to attempting to wind up negotiations in the fall. Many had hoped that this meeting would provoke a crisis sufficient to galvanize political leaders to make the painful concessions needed by all trading partners to conclude the Round successfully. In fact the session provoked yawns rather than crises and was adjourned early.

As a result, it became clear by November 1990 that trade, finance, and other ministers would arrive in Brussels the following month with all the tough issues outstanding, and in some cases with even key issues inadequately crystallized. In some cases texts that had been developed were riddled with brackets indicating disagreement on alternative proposals. In other cases there were no legal texts; negotiators had not made sufficient progress.

Foreshadowed by the shortcomings of the Midterm Review and meetings in the spring and summer of 1990 at Puerto Vallarta, Houston, and Geneva, the Brussels ministerial meeting failed to conclude negotiations. While numerous problems plagued numerous negotiating groups, the center stage impasse was in agriculture. As in each of the prior meetings, the United States and other exporting nations sought a commitment from the EC to undertake reforms in each of the areas.

Agriculture negotiations in Brussels, however, proved no more harmonious than elsewhere. Prospects for a breakthrough seemed all but hopeless when Swedish Minister Hellstrom offered an eleventh-hour proposal to serve as a basis for further negotiations. Unfortunately, it was rejected or severely qualified by the delegations of Japan, Korea, and the EC. Latin and South American negotiators, dismayed at the intransigence of opponents of meaningful agricultural reform, instructed their representatives in other negotiating groups to withdraw and cease to participate. While there were many other disagreements in Brussels, the agricultural impasse proved to be the monkey wrench thrown into the gears. The operations of the machinery were halted and ministers adjourned *sine die*.

Finally, in February 1991, the EC agreed in principle to negotiate agricultural reforms in *each* of the major areas—export subsidies, internal supports, and market access. With this at least symbolic progress, negotiations in the Round have resumed in Geneva, albeit to date generally only at the relatively technical level.

3. *Status in Negotiating Groups*

While no agreements were concluded in Brussels, the status of negotiations in each of the groups is as follows:

a. Tariffs

At the Midterm Review in December 1988, GATT Contracting Parties agreed to seek agreement to reduce tariffs overall by at least a third. In the United States, a private sector coalition called "Zero for Zero" seeks tariff elimination (not just reduction) in critical trade areas, including pharmaceuticals, wood, paper, construction equipment, beer, electronics, nonferrous metals, fish, and steel. This coalition's message is that elimination of such tariffs would generate substantial private sector and congressional support for implementation of agreements reached in the Round. Many negotiators are using the current hiatus in negotiations to do the technical work necessary to make further requests and offers.

b. Nontariff Measures

Negotiators have concluded ad referendum agreements on rules of origin and preshipment inspection. The former consists of general principles and commitment to a further work program to flesh out the all-important details; the latter consists of safeguards against abuses of the preshipment inspection practices used most often by developing countries. Beyond rules of origin and preshipment inspection, negotiators seek commitments to eliminate existing nontariff barriers and to agree not to adopt new ones. Without such agreements, any success in reducing tariffs would be jeopardized and potentially offset.

c. Natural Resources

This negotiating group is unlikely to reach any separate agreement; it is, rather, an additional forum in which to discuss issues likely to be addressed in other groups, such as subsidies.

d. Textiles

The United States retreated from its proposal for a global quota; discussion now focuses on a transition back to normal GATT rules based on the Multifiber Arrangement. Despite this breakthrough, all other issues remain unresolved: duration of the transition, growth rates, product coverage, safeguard measures, and treatment of fraud.

e. Agriculture

As noted above, EC intransigence to significant agricultural reform, echoed by Japan and Korea, precipitated the collapse of the Brussels ministerial meeting. While the Round is plagued with numerous disagreements, no area has proved so intractable nor such a barrier to progress in other areas as agriculture. If the agriculture reforms are substantially less than those originally proposed by the United States, then the United States is likely to insist that its current import restraints on such items as peanuts, sugar, and dairy products will be protected.

f. Tropical Products

Like natural resources, this group principally provides an additional forum for discussion of issues addressed elsewhere (such as subsidies and market access).

g. GATT Articles

Negotiators have reached some ad referendum agreements on reforming some GATT articles. However, the key reform sought by developed countries—reducing article XVIII's broad authority for a developing country to restrict trade to protect its balance-of-payments position—remains in dispute. Developed countries consider article XVIII a backdoor undermining the certainty of trade liberalization. Moreover, the developed countries are not likely to make concessions sought by developing countries (such as reintegration of textiles into normal GATT rules) unless the less developed countries agree to strengthened GATT rules and disciplines, including article XVIII balance of payments actions.

h. Multilateral Trade Negotiations (MTN) Codes

A number of the GATT codes concluded in the Tokyo Round need to be revised. Some agreements have been tentatively reached regarding valuation, licensing, and standards. However, increasing calls to put environmental issues under the GATT umbrella have not yet resulted in any specific new provisions in the Standards Code.

The leading candidate for code reform is the Antidumping Code. While this debate will continue when Round negotiations are resumed, it seems unlikely that the sweeping, fundamental reforms advocated by some exporting nations and multinational corporations will be adopted. Rather, a balanced package is more likely to include some reforms advocated by the United States and other major proponents of strong antidumping laws (such as anticircumvention) and some reforms advocated by exporting nations and multinationals (such as the way fair value is calculated, requirements regarding standing, and criteria to determine injury as a result of imports).

i. Safeguards

The debate unresolved in the Tokyo Round on safeguard negotiations focused principally on whether safeguard actions should be universal (based on most-favored-nation (MFN) treatment) or selective (applied to imports from some, but not all, trading partners). Before the Brussels ministerial meeting concluded, the EC accepted the MFN standard in principle. However, the EC is expected to seek to dilute this concession in practice through authorization for quota modulation (that is, the ability to modulate quotas to affect imports from selected countries disproportionately).

Proposals have been made to limit the duty of a Contracting Party to compensate adversely affected trading partners when it takes a safeguard action under article XIX, temporarily restricting imports to protect a domestic industry. The aim is to encourage parties to take transparent, MFN-based safeguard actions rather than grey-area, selective voluntary-export restraints.

j. Subsidies

The center ring subsidies debate is whether certain types of subsidies should be classified in the prohibited "red light" category, the permissive "green light"

category, or the ambivalent (proceed-at-risk-of-domestic-countervailing-duty-proceedings) "yellow light" category. The more contentious types of subsidies in this regard are those to promote structural adjustment, regional development, research and development, and protection of the environment. Key representatives of the U.S. manufacturing sector have indicated that more subsidies need to be subject to a red light for U.S. manufacturing interests to support the Round's outcome.

k. Trade-Related Intellectual Property (TRIPs)

Contracting Parties went into the Brussels ministerial meeting with a heavily bracketed text, and no new text with significantly fewer brackets emerged. The macro issues include the competence of the GATT over intellectual property issues, whether any GATT agreement should prescribe substantive standards, what transition should be permitted to enable developing countries to come into conformity with any such standards, and how to treat compulsory licensing. The micro issues are plentiful, such as the appropriate term of patent protection, whether such protection should be accorded to the first to file or first to invent, and the like.

In the United States, the outcome of this negotiating group is pivotal. The TRIPs agreements appear likely to be the principal achievement of the Round for developed countries; without a satisfactory TRIPs outcome, developed countries are not likely to make the concessions sought by developing countries in areas such as textiles and agriculture.

l. Trade-Related Investment Measures (TRIMs)

The United States and other developed countries are seeking discipline (and in some cases, prohibition) of barriers to foreign direct investment. For example, proposals include prohibitions of local content and export performance requirements. However, some developing countries continue to resist, particularly any outright prohibitions. These talks are further complicated by opposition from some foreign investors already operating abroad to free riders, that is those who want to be foreign investors but who have not paid their dues by meeting local content, employment, export performance, or other such requirements.

m. Dispute Settlement

Extensive procedural reforms were agreed to ad referendum in the Midterm Review in December 1988. The major issues still being debated are: (1) whether and how to make the dispute settlement process more automatic; (2) whether to provide an opportunity for appeal, at least in extraordinary cases; and (3) whether to improve surveillance and enforcement of the implementation of dispute settlement outcomes.

n. Functioning of the GATT System (FOGS)

Essentially, the big issue in this negotiating group is whether and how the GATT organization should be modified in light of the outcome of the Round and

any greater responsibilities it may bear. To date, the major achievement of the FOGS talks is the trade policy review mechanism, which examines and thus makes more transparent the trade practices of countries under review.

o. Services

Services, one of the frontier areas not currently subject to any GATT discipline, has proven quite difficult. It spans an enormous range of different industries, involves new parts of many national bureaucracies not experienced in trade negotiations or substantive trade issues, and involves some technical areas (for example, regulation of telecommunications or transportation services).

One particular complication involves the Framework Agreement that calls for automatic application of MFN treatment, but nonautomatic availability of market access and national treatment (which must be negotiated, presumably through more-or-less traditional exchanges of requests and offers). Governments whose markets are already open oppose the lack of reciprocity in locking their markets open (through automatic MFN) without obtaining comparable access to foreign markets (because market access negotiations have not been concluded and may not be satisfactory).

Another complication is that only the Framework Agreement, itself riddled with brackets, has been drafted. With few exceptions, annexes covering particular service industries are nonexistent. Without such texts, businessmen and legislators have difficulty weighing the results.

p. Government Procurement

While legally separate from the Round, negotiations to modify the Tokyo Round Government Procurement Code are probably on the same general timetable. While some progress has been made, parties continue to disagree, *inter alia*, on whether rules about government procurements should be applied as well to procurements by private bodies subject to government regulation. (For example, the United States opposes, but the EC supports, such extension.)

q. Steel

At the Round's launch in Punta del Este, Uruguay, and at the Midterm Review in Montreal, no sixteenth negotiating group on steel existed. However, in the wake of debate in the United States in 1988 and 1989 on whether (and how) to extend a network of voluntary restraint agreements, Contracting Parties are now discussing the possible multilateralization of those bilateral agreements. In exchange for agreements by exporting nations to limit steel subsidies, *inter alia*, steel importers might agree not to use quantitative restrictions, either as safeguards or in settlements of antidumping or countervailing duty cases. Exporters also seek restrictions on the initiation of such antidumping or countervailing duty cases, but agreement here by the United States is unlikely.

III. Whether, When, and How the Talks Will Conclude

The EC is considering internal proposals to reform its Common Agricultural Policy (CAP). Conceivably, such reforms, if effected, could make it easier for the EC to accept substantial discipline on its export subsidies and other trade-distorting agricultural measures. However, during meetings with U.S. Trade Representative Carla Hills and Secretary of Agriculture Edward Madigan in early May 1990, EC Commissioner for Agriculture Ray MacSharry reportedly was preoccupied with proposals for internal CAP reform. United States Government officials indicated that Commissioner MacSharry did not address the issue of how such internal reforms could be tapped to revive the moribund agricultural negotiations in the Round.

In addition to the EC's preoccupation with its internal CAP proposals, through May 1991 the United States Government is preoccupied with the prospects for extension of the "fast track" in U.S. law. Under the Constitution, the President does not require any authorization from Congress to enter into trade negotiations. His power to conduct foreign affairs provides ample negotiating authority. However, since Uruguay Round agreements will require U.S. implementing legislation, the President needs the support of Congress. Most consider that the only realistic means of obtaining such congressional support and ensuring the passage of legislation to implement broad trade agreements is the use of fast-track procedures in which Congress extraordinarily agrees in advance to vote on an up-or-down, take-it-or-leave-it basis, without unraveling amendments. Further, the fast track requires Congress to act promptly (within a maximum ninety legislative days) on any implementing bill submitted by the President.

Current law does not provide an open-ended fast track. To ensure access to the fast track, by March 1, 1991, the President had either to notify Congress of his intention to enter into trade agreements or to request extension of the fast track for two years. In view of the deadlock in Brussels, he could not notify Congress of the former. Moreover, to facilitate free-trade negotiations with Mexico and Canada he needed to request a fast-track extension regardless of the status of the Round. Therefore, he did so on March 1, 1991.

That request is subject to disapproval by either the House or the Senate before May 31, 1991. Any bill submitted to implement either the Uruguay Round or a free-trade agreement with Mexico and Canada would be ineligible for fast-track procedures in the house of the Congress that passed a fast-track disapproval resolution.

Without question, the Congress will vigorously debate the President's request. In the Senate, the proposed negotiations with Mexico have received considerable support, but the Round has provoked widespread skepticism. Many in the House, by contrast, generally support the Round, but fear or oppose the proposed talks with Mexico (in large part due to the staunch opposition of organized labor).

Until the ninety-day period for disapproval of the President's fast-track extension request expires, earnest negotiations on politically sensitive issues are

unlikely to take place. The Administration would be reluctant to make meaningful concessions for fear of provoking further opposition to the fast-track extension request. Other governments presumably would be loathe to make concessions at a time when they are unlikely to obtain reciprocal rights and benefits. The Brussels stalemate, therefore, is likely to continue until at least the summer of 1991.

In the interim it is possible that substantial progress can be achieved in less controversial areas; in underdeveloped areas (notably the services negotiations), muscle and flesh could be added to any skeletons (or skeletons created where they too are absent). Nevertheless, without visible progress on the controversial issues, GATT Contracting Parties are likely to be distracted by other developments and momentum will surely be lost. Key nations must make major efforts in the summer of 1991 to recoup the momentum.

IV. Possible Outcomes

For the negotiations to succeed, an overall balance of reciprocal rights and obligations must be achieved. Nations must consider themselves net winners rather than losers, or they will either refuse to accede to the agreements or (worse) do so but not comply with their terms.

Most important to the developing world, presumably, is access to markets in developed countries, in particular in textiles and agricultural goods. The Round cannot succeed without fundamental reform in these areas. In the eyes of the developed world on the other hand, the Round cannot possibly succeed without a wholly satisfactory agreement on the protection of intellectual property. To encourage innovation, facilitate progress, and expedite improvement in standards of living around the globe, intellectual property needs to be protected from current widespread piracy. Without the limited periods of market exclusivity afforded by patents, copyrights, trademarks, and so on, to encourage innovation, the wheels of progress would turn far too slowly.

To a lesser extent, most developed countries also need satisfactory agreements on market access, trade in services, and investment. Market access is perhaps especially important because it would provide political support for the manufacturing sector, which in the United States at least does not appear to consider success in the frontier areas alone satisfactory.

V. Conclusion

Success in the Uruguay Round is not assured; to the contrary, the negotiations are imperiled. However, they are not dead and can be resuscitated if, *inter alia*, the U.S. fast track is extended beyond 1991 and the EC forges the political will to undertake satisfactory reforms in agriculture. These two developments would likely break the logjam preventing further progress in the Round and enable the GATT Contracting Parties to enjoy a real opportunity to conclude this mammoth, marathon endeavor successfully within the next year or two.