Editorial

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The Uruguay Round and the International Trading System

The road to Punta del Este was long and tortuous. It began with the decision to hold a Ministerial Session of the GATT in 1982, and the various proposals put forward in its Preparatory Committee. The ambiguous outcome of the 1982 Ministerial Session seriously undermined the credibility of GATT and, in retrospect, a decision to enter into a new multilateral round was perhaps the only realistic way to head off, or at least postpone, a complete breakdown in international trade disciplines. After intensive negotiations at three annual sessions of the GATT Contracting Parties, interminable and inconclusive meetings of "Senior Officials" in 1985 and of the "Preparatory Committee" in 1986, the GATT appeared no closer to an agreement on the new round on the eve of the Punta del Este meeting than it had been two years previously.

In authentic Hollywood style, agreement was reached one early spring dawn at the South Atlantic resort. This "show biz" aspect was designed largely for domestic consumption, particularly in the United States, where it was seen as a *sine qua non* for enabling the executive branch to forestall the formation of an irresistible protectionist coalition in Congress. In true GATT fashion, the Uruguay Declaration has been hailed as a great victory by all, a demonstration of each delegation's astuteness and perseverance, and has even been described as a "kiss of life" for the Agreement. The euphoria surrounding the initiation of the Uruguay Round is not reflected here.

While, as has been noted, the initiation of trade negotiations was crucial to reestablishing the credibility of GATT, holding a new round in the current political and economic environment may pose a serious threat to the international trading system and, in particular, to the future position of developing countries within it. One of the reasons for this is the "standstill and rollback" commitment with which the Uruguay Declaration begins. It is obvious that there cannot be satisfactory negotiations if countries impose restrictive measures during them in order to improve their bargaining position, or if they seek to obtain compensation for the removal of

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measures applied inconsistently with their multilateral obligations. However, the fact that it was necessary to obtain an additional promise from governments to meet their contractual obligations is in itself an indication of the somewhat sorry state into which international trade relations in general, and GATT in particular, have fallen. Trade measures may be applied "in legitimate exercise of. . . GATT rights", as long as they do not "go beyond that necessary to remedy specific situations". It is obvious that countries will interpret this as a green light to continue their accelerating resort to anti-dumping, countervailing actions and other measures euphemistically described as "trade remedies" (which proves the adage that one man's meat is another man's poison), not to mention withdrawal of generalized system of preferences (GSP) benefits, intensification of restraints under the multifibre arrangement (MFA) etc. Most of these measures have a restricting or harassing effect on the trade of smaller trading partners and are technically "not inconsistent" with multilateral obligations, particularly those falling within the context of the Codes emerging from the Tokyo Round (e.g. anti-dumping and countervailing duties). The main advantage of the standstill provision is that it provides an excuse for breaking off negotiations if significant protective measures are imposed by important trading countries, and thus further motivates governments to resist protectionist forces during the round, and is an additional justification for vetoing protectionist draft legislation.

The rollback commitment concerns measures inconsistent with the provisions of the GATT, or instruments negotiated within its framework or under its auspices, and is intended to ensure that concessions shall not be requested for their elimination. One tactical approach for countries wishing to ensure that such inconsistencies are fully recognized would be to initiate actions under the relevant GATT dispute settlement mechanisms with respect to such measures, in parallel with the negotiations themselves and the operations of the Surveillance Body.

Another cause of concern are the safeguard negotiations. The Uruguay Declaration recognizes that a "comprehensive agreement on safeguards is of particular importance to the strengthening of the GATT system and to progress in the MTNs" (multilateral trade negotiations). This seems to be something of an understatement, as such an agreement would clearly be a prerequisite for attaining these objectives. It is difficult to imagine countries agreeing to serious trade concessions when major questions about operating the "escape clause" are subject to international debate. While the text mentions a number of "elements" to be contained in the agreement, corresponding to those included in the final Tokyo Round drafts and in subsequent working papers, it skirts the most crucial issue, because it states that such agreement shall be based on the principles of the General Agreement, but does not specifically refer to Article I and the unconditional most-favoured-nation clause. Therefore, it may be surmised that the possibility of a "selective" Clause, i.e. the discriminatory application of safeguard measures, has still not been discarded from the position of certain countries.

Reference to the existing legislation, regulations and even the stated negotiating

positions of the major trading countries confirms this. The "Overall Approach" of the Community indicates a continued preference for the selective clause or, if this cannot be negotiated, the legitimization of so-called voluntary export restraints (which amounts to the same thing). Both EC regulations and United States legislation provide for the use of this discriminatory safeguard mechanism. This could imply that those countries could be seeking a solution aimed at legitimizing, rather than eliminating this "grey area" measure which has now become the preferred form of safeguard action.

Rejecting this approach would appear to be one of the greatest challenges facing the multilateral trading system, and of vital interest to developing countries. A multilateral safeguard system, which permits importing countries to single out for restriction those suppliers whose imports are growing at more than "acceptable" rates, will inevitably lead to a situation where the position of the leading established suppliers is consolidated, "frozen in time", while the newer entrants will have to scramble for the residual shares of the market. Such a system would be the antithesis of the "open and dynamic trading system" subscribed to by the international community in GATT and UNCTAD. It is perhaps not an exaggeration to state that the safeguard negotiations will "make or break" the GATT. A solution in this area should consolidate the unconditional most-favoured-nation principle, and the tariffs as the means of protection, i.e. the two "cornerstones" of GATT. It should also serve as the contractual framework for implementing the "rollback" commitment. Tariff renegotiations under Article XXVIII, or more frequent import surcharges under Article XIX, are definitely preferable to the legitimization of discriminatory protective measures, regardless of the procedural mechanisms that may be proposed to discipline them. There are all too many examples of the irrelevance of such procedural safeguards.

The Uruguay Round will also deal with a series of topics generally grouped under the heading of "market access", aimed at tariff liberalization, and the reduction and elimination of non-tariff measures, with the textile and clothing, natural resource and tropical product sectors singled out for special attention. With all due respect, however, the priority the major developed trading countries may give to these issues could be questioned. It is difficult to detect in the negotiating positions and mandates to date, any enthusiasm for further trade liberalization (except for that of other countries). Where tariff offers are implied they are counterbalanced by provisions which would intensify the harassment of trade, with the result that improved access to markets would be gained only at the cost of even greater insecurity of access. Although governments are seeking the authority to implement concessions, the political mood is heading in the opposite direction. It should be recalled that the infamous "Jenkins Bill" missed becoming law in the United States by a handful of votes only, and that proposals of even greater impact on the trading system are currently being considered in U.S. Congressional Committees. The attitude that trade liberalization can be achieved more effectively by threats of retaliation than by

offers of liberalization is obviously gaining ground. Although it cannot be denied that arm-twisting can bring short-term results, especially for those with strong arms, the philosophy of mutual advantage would be the best foundation for building a strengthened and improved trading system.

Protectionist interests have been making full use of the "unfair practice" provisions of the GATT and of domestic legislation to harass imports, and recently, the imports from developing countries in particular. Since the Tokyo Round agreements came into force, supposedly to introduce more stringent disciplines governing the use of anti-dumping and countervailing measures, resort to these measures has increased astronomically. It must be borne in mind that even initiation of the preliminary investigations has a discouraging effect on the trade of the targeted country, as importers, i.e. those who are actually liable to pay the duties, look for alternative suppliers. This can be attributed in part to certain provisions of the Codes themselves, such as those providing for bilateral "understandings" as a means of cutting short such investigations. However, most of the problem arises from the way the signatories have applied these Codes in their domestic legislation. New concepts, such as "cumulative" injury and "upstream" subsidies, are continually being introduced to facilitate the harassment of trade, in certain cases supported by administrative mechanisms. One major task of the Uruguay Round should be to reverse these trends, and by the establishment of countermechanisms to assist those being harassed (i.e. an antidote for the "remedies").

The negotiating groups dealing with the MTN Codes, and the separate group set up on Subsidies and Countervailing Duties might provide the fora for accomplishing this. However, these groups will be confronted with the even more serious problem of dealing with the resurrection of so-called "conditional most-favoured-nation treatment". Even the League of Nations recognized that this is in effect a contradiction in terms. However, some countries have been applying certain of the Tokyo Round Codes on this "conditional" basis and attempts are being made to give respectability to such an approach, generally based on the logic that if certain countries are prepared to accept a higher degree of obligation, why should they be required to extend the rights to others which are not so willing. This logic is not that of the GATT, whose first and fundamental Article contains the unconditional most-favoured-nation (mfn) clause. In practical terms the conditional mfn approach means that smaller or weaker (i.e. less "interesting") countries' views do not have to be considered when new rules are negotiated.

It seems to be universally recognized that the Uruguay Round will have to find at least a partial solution to the problem of excessive protection and competitive subsidization in agricultural trade. However, it should be remembered that trade in agricultural products has been affected by other factors, notably advances in biotechnologies, which have put the historical objective of "feeding one's own people" within the reach of an increasing number of governments. Despite all the economic arguments in favour of freer trade in agricultural products, it is unfortunately difficult

to see any dramatic progress being made in the Uruguay Round in this respect, whenever it is decided to reap the harvest.

This reference to technology raises a much more fundamental problem underlying the trade negotiations, and which will affect the future of the international trading system. Technological advance has spread more quickly than was ever expected. Traditional theories of comparative advantage and structural adjustment are being complicated because certain developing countries have been able to compete with the industrialized countries on products at the higher end of the technological ladder. It has become clear to most countries that export success is a function of their ability to innovate, adapt to new technologies and produce those goods and services for which world demand is increasing. This can be achieved only through strategies aimed at developing technological capacities and integrating them into the manufacturing process.

New technologies call for considerable forward planning: prototypes of automobiles, aircraft and electronic consumer products for 1995 have already been developed. In reality, all economies have become "planned", the only difference lies in who does the planning: governments, the transnational corporations or an *"entente"* between the two. Governments of both developed and developing countries consider it their essential responsibility to help create what has been described as "dynamic comparative advantage". However, this clearly has an impact on trade policies, and on the perceptions of what constitutes "unfair" practices in world trade.

The transnational corporations have become the leaders in the development of new technologies and of product innovation, which has become an essential component of their production costs. The success of countries in developing "dynamic comparative advantage" has become closely linked to their ability to harness the creativity and energy of the transnational corporations to further national, rather than corporate, goals. The inclusion of the issues of trade-related investment and intellectual property issues in the Uruguay Round should be seen from this perspective. When does the protection of intellectual property rights go beyond what is "adequate" and become an instrument for market domination? Is it legitimate for countries to make sure that transnational corporations serve the interests of the host as well as the home countries? In other words, traditional trade policy instruments have become a clumsy means of influencing trade flows. While some proposals in the "traditional" areas of the negotiations seemed to be aimed at facilitating the application of trade barriers against more competitive suppliers, the new issues deal with the factors contributing to the ability of countries to develop a competitive position in the future.

These comments also apply to the negotiations on services. These, and in particular "producer services", have become crucial to a country's ability to innovate, be competitive in exporting goods and derive the value added from production and export. Transnational corporations have combined information and communications technology with financial and human capital to attain a dominant position in world

production and trade of services. For these reasons many countries view with considerable trepidation the proposals to negotiate multilateral obligations on services and particularly to link them to the GATT legal framework. Fortunately, the service negotiations have begun on the right track: the objective of promoting economic development has been given equal priority to liberalization, and discussion has shifted from the rather simplistic concept of "deregulation" to that of "appropriate" regulation. "Appropriate" is to be defined in the context of the set of multilateral rules and principles which, as has just been noted, must incorporate the promotion of economic development and respect the objectives of domestic laws and regulations.

Sectoral negotiations on services could also provide benefits to all participants if they are willing to accept the appropriate trade-offs, and take full account of the development aspects, e.g. access to information, against access for information, trade in services linked to labour movement against that linked to capital flows, etc. The main contribution the negotiations on services could make, along with those relating to the other new issues (and even "old" issues such as subsidies), would be to establish a set of principles precluding the imposition of unilateral criteria and retaliation in areas where an international consensus as to what is "fair" and "unfair" does not yet exist.

In the past GATT negotiations have been conducted on the basis of multilateral reciprocity, i.e. each country calculated the overall concessions and advantages it received in the light of the concessions it had made. It is clear, however, that the new concept of reciprocity of "benefits" rather than of "concessions" is gaining ground, largely provoked by the enormous, and increasing, trade deficit of the United States and the equally impressive trade surplus of Japan with most developed countries. This approach fails to recognize that the objective of GATT negotiations is to establish a mutually advantageous balance of legal rights and obligations: the actual extent to which such concessions are reflected in economic gains is a matter for the economic policies of the countries themselves. It is asking too much of GATT to expect it to deal with problems arising from conflicting macroeconomic policies, consumption habits, financial flows, etc. The GATT concerns trade law, not economics, and trade policy is evermore being made a scapegoat for policy mistakes in other fields. The GATT system assumed that a consensus would exist among the major trading countries as to their macroeconomic objectives: the collapse of this consensus has had its trade impact. The "level playing field" analogy frequently repeated in certain circles is appropriate; such a situation should be corrected by basic engineering of the macroeconomic ground on which the game is being played, rather than tinkering with the rules of the game itself.

Much is being said in political and academic circles in developed countries of the need to "integrate" developing countries in the trading system. Considerable confusion has arisen in this context with the acceptance of a greater level of commitment by developing countries, for example by including more concessions in their GATT schedules, and their eliminating measures responding to economic criteria, e.g.

applied restrictions for balance-of-payments reasons, at the very moment when their balance-of-payments positions are the worst they have ever been. The Bretton Woods system assumed that developing countries would import more than they exported, and the difference would be made up by financial transfers mainly from multilateral lending agencies. The current situation is precisely the reverse: developing countries are exporting more than they import and transmitting the net income to the developed countries. The fact that most countries must export more than they import, to meet their external financial obligations, is not only undermining their own development process, but also constitutes an obvious source of strain on the international trading system. Liberalization by developing countries can be a result only of a meaningful solution to the debt crisis: academic arguments which advocate export-oriented policies at a time when trade barriers are proliferating, or attempts to revise Article XVIII of the GATT, create more problems than they solve. Furthermore, those proponents of "integration" should direct their attention elsewhere. A strengthened and improved trading system cannot be achieved while the GATT is not accepted as law by the world's major economic powers. The Uruguay Round should aim at integrating the United States in the trading system as its first priority.

For the first time since the 1940's China will be a full participant in a major round of multilateral trade negotiations. The modalities for China's return to GATT are being considered by a separate Working Party and it is hoped that this process will be carried out with sufficient foresight. Attempts to place China in a ghetto surrounded by bilateral safeguards, price clauses, discriminatory quantitative restrictions and special anti-dumping rules, would nullilfy any advantages of contracting party status, and probably only undermine the movement toward a more market-oriented regime in China.

Several other factors make the Uruguay Round different from the preceding seven rounds of multilateral trade negotiations in GATT. One is that, for the first time, the fundamental rules of the GATT system have been questioned. A second is that concessions are being sought outside the trade policy field relating to domestic policy instruments. A "worst case" scenario can easily be extrapolated from the most dangerous features of the negotiating positions and mandates. It is quite clear, however, that trade liberalization is a minor, if not incidental, objective in the Uruguay Round, although to preserve the system the momentum toward trade liberalization must be confirmed. The major emphasis is on rewriting the rules, which in itself is not an unworthy objective; a danger arises because this ambitious endeavour is set in a context of negotiating mandates and objectives which appear to be much more oriented toward responding to current political pressures, reflecting economic and trade problems, whose source lies outside the trading system, without any clear idea about the type of trading system desired.

In 1981 the UNCTAD Secretariat first drew the attention of the international community to the erosion of the trading system and the drift to discrimination and managed trade. Before and after receiving its more detailed mandate to review

developments in the trading system at UNCTAD VI in Belgrade in 1983, UNCTAD refined its analysis of the system and suggested how it could be strengthened and improved. In the documentation for UNCTAD VII, the UNCTAD Secretariat proposes a "comprehensive examination and review by the international community of the fundamental issues involved in the trading system and in other areas of international economic relations having an impact on the trading system".[1] This present article was prepared before UNCTAD VII, but will be published after the results of the Conference are known. It is to be hoped that these results will provide direction, and even action, toward the establishment of the strengthened and improved trading system sought by the international community.

[1] TD/328/Rev.1.