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The Multilateral GATT Negotiations

by Wedige von Dewitz, Bonn*

The final package of the seventh round of multilateral GATT negotiations has been ready for initialling since April 11, 1979. What has been achieved in these negotiations, commonly known as the Tokyo Round, and what has been left undone?

The final package of trade measures prepared in the Tokyo Round has so far been initialled by the nine countries of the European Community (acting through their negotiator, the EC Commission), by the USA, Japan, Australia, New Zealand, Canada, Norway, Switzerland, Austria, Sweden, Finland and Spain, by four state trading countries – Bulgaria, the CSSR, Romania and Hungary – and by only one developing country, Argentina.

The developing countries have given their dissatisfaction with the negotiating process and results as the reason for their reluctance to initial the package. They take the view that they did not have an adequate part in the negotiations and that their particular interests did not receive sufficient consideration in the results. It was also to be expected that – partly for reasons of solidarity – many developing countries would want to wait for the outcome of UNCTAD V before committing themselves but Manila shed no fresh light on the attitude of the developing countries to the results of the Tokyo Round. Agreement was reached there only on a procedural decision, namely, to instruct the UNCTAD secretariat to examine and evaluate the Tokyo results. This is likely to take some time. In the meantime intensive talks are being held between the negotiating parties in the Tokyo Round with the aim of inducing as many developing countries as possible to give their assent to the negotiating results in the near future.

The latest round of GATT negotiations differed from previous multilateral trade negotiations which were overwhelmingly concerned with tariff cuts in that it dealt with a much larger number of subjects. In addition to the classic objective of tariff cuts they centred on the

non-tariff obstacles to trade, and they also resulted in important institutional advances of GATT.

Tariffs

The negotiations on tariff cuts were based on the so-called Swiss formula which was to achieve two purposes – to reduce the tariffs and to harmonize them. The aim of harmonization was to be attained by bigger cuts in the higher tariffs and smaller cuts in the lower tariffs. Had the Swiss formula been applied without exceptions, the average tariffs of the principal industrialized countries would have had to be reduced by about 40 %.

But there were exceptions and deviations from the Swiss formula. The tariff rates for various items were not cut at all, for others the reductions were larger or smaller than they should have been according to the formula. There were also differences about the starting rates; in some cases these were the actual tariff rates in use, in others they were the rates according to GATT rules.

The result is that the proportions of the tariff cuts may look different to different observers. The GATT secretariat calculated the tariff cuts in the industrial sphere at 33-38 % while the EC on the basis of actually charged tariffs put them at 22-29 %. By now it is generally accepted that the tariff cuts amount altogether to about 33 %.

It is difficult to arrive at a corresponding figure for the agricultural sector as very many products in this field are subject to other measures than tariffs. The agricultural tariffs are – with reservations – assumed to have been cut by an average of 32-40 %.

It is likewise difficult to make statements about the

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extent of the tariff cuts for export goods of developing countries. The available information is fragmentary but it seems that the cuts in this field are somewhat below the average which may be due to the fact that more export products of developing countries have been exempted from the tariff cuts than happened in the general average.

The Tokyo Round tariff reductions are in principle to start on January 1, 1980 and to be carried out in eight annual stages. In the sensitive sectors of textiles, steel and ceramics the tariff cuts are to be delayed by two years, starting on January 1, 1982, and proceed in six annual stages.

Code on Subsidies

In the non-tariff sphere a number of codes have been established for certain areas. The codes are intended to create more clarity and precision in the interpretation and application of the relevant GATT regulations. In part they represent a genuine advance on the existing GATT rules. Most of the codes provide for the appointment of committees with the task of supervising the implementation of the codes. They will at the same time arbitrate in disputes. The codes thereby develop GATT further in the institutional field and act at the same time directly as operationally effective instruments:

□ The code on subsidies and countervailing duties (subsidy code) relates chiefly to Art. VI and XVI GATT. Its most important element is perhaps the fact that by the criterion of "material injury" it has created a common internationally recognized basis and prerequisite for the imposition of countervailing duties. Among other important elements of this code is the fact that the list of prohibited export subsidies has been brought up to date and the so-called internal subsidies have been regulated. It is recognized that the latter are important instruments for the realization of economic and social objectives. But it is made clear at the same time that such subsidies can have harmful effects on the economic interests of other countries. The signatories of the subsidy code are urged to avoid this kind of negative effects on the interests of other countries when granting internal subsidies as they may still do. In this way it is intended to create more international discipline in this area without however putting the internal subsidies on the same level as the banned export subsidies.

According to the code Art. XVI par. 3 GATT will in future apply only to agricultural, fishery and forestry products. Minerals which were hitherto regarded as

basic materials in the meaning of Art. VI par. 3 GATT will now be classed with the manufactured products and thus be subject to the stricter provision applying to these. Important is also that the criteria of Art. XVI par. 3 GATT have been defined more precisely by the code. This is likely to prove very important for the agricultural export policy of the EC in particular.

Code on Government Procurement

□ The code on government procurement introduces the principles of non-discrimination and equal treatment with domestic suppliers for products and suppliers from signatory states into the area to which it applies. It is thus unmistakably a further development of the previous GATT regulations which permitted discrimination against foreign firms bidding for contracts of government agencies.

The government agencies to which the code applies have been listed in an annex. The code applies to contracts for SDR 150,000 (about US \$ 195,000) or more. It also contains detailed regulations on the invitation of tenders and the placing of contracts as well as the safeguarding of adequate information and transparency.

The validity of the code is confined to central governments but the signatories are required to inform the procurement agencies of regional corporations such as federal states and local authorities as well as unintegrated procurement agencies of central governments about the aims and advantages of the code. The Buy American Act in the USA is the main reason behind this proviso.

The code is to be re-examined in three years' time at the latest with the aim of extending and improving its application.

Technical Obstacles to Trade

□ The code on technical obstacles to trade (norms) – also a further development of existing GATT regulations – puts the signatory countries under an obligation not to impede international trade unnecessarily by national norms and not to discriminate against imports in the application of national norms, testing regulations and marking systems. International standards are to be accepted and made the basis of national systems of technical norms to the widest possible extent. Improved transparency is to be ensured in this area by notification of existing national regulations and consultation. The code applies equally to industrial and agricultural products.

□ The code on import licences is to ensure that import licensing procedures which in unfavourable cases are used by governments as means for curbing imports are not “misused” in this sense. The code applies to the so-called automatic licences and also to non-automatic licences.

Code on Customs Valuation

□ The procedures used to ascertain the value of imported goods can be a similarly serious obstacle to trade as the import licensing procedures. Uncertainty about the valuation of goods for import duty purposes may be a worse impediment than the duty itself, and its effect is all the greater when, as happens in some cases, the customs value is used as the basis for taxes and similar imposts charged on imports. The customs value is also often a basis for the administration of licences and import quotas.

The new code on customs valuation definitely improves the uniformity, neutrality and transparency of customs value determination. So far the states have been free to determine the criteria to be applied to customs valuation if the actual value of the imported goods could not be ascertained. Some regulations were clearly contrary to Art. VII GATT. They had been made before the inauguration of GATT and been retained by virtue of a “grand-father clause” (USA: American Selling Price). A few of the highly disparate valuation methods had a clearly protectionist bias. The customs valuation code marks a significant advance on the present situation even though individual regulations may be problematic. This is true of the customs valuation on the basis of a so-called “computed value” and also of the acceptance of invoiced prices between non-associated enterprises and between associated enterprises.

The Tokyo Round package includes only one sector agreement. It relates to trade in the sphere of civil aviation. Customs duties and similar imposts are removed from products in this sphere – aircraft, aircraft components, materials for repairs, flight simulators and parts thereof. They are zero-rated. Among the extensive regulations in the non-tariff area special mention should be made of the explicit affirmation of the applicability of the codes on norms and subsidies.

Agriculture

Mention has already been made of the arrangements for agriculture in regard to tariffs and the non-tariff area (the codes). Besides, the negotiations have resulted in two agreements on certain agricultural products,

namely, dairy products and beef. They are mainly in the nature of overriding agreements for more intensive cooperation between the signatory states and provide for exchanges of information and consultations. An international council for dairy products and another one for beef are to oversee the implementation of the agreements, watch the situation in the world market and market trends and examine possible solutions in the event of serious market disruptions.

The agreement on dairy products also contains arrangements on food aid to developing countries.

The international trade in agricultural products has special features because of manifold forms of state intervention. In order to cope with these it had been suggested that an international council should be set up as an organ for consultations on questions bearing on the trade in agricultural products. A final agreement on this has not yet been achieved; it has been suggested to the contracting parties in GATT that they should continue and conclude their deliberations on a suitable consultative organ and its tasks as soon as possible.

Legal Framework for International Trade

The conditions of international trade have changed in many respects since GATT was inaugurated in 1947, and the appearance of the developing countries is one of the main reasons for this. The discrepancies which have arisen as a result have now been cleared up by new arrangements. These include in particular special provisions allowing for more favourable treatment of the developing countries without the requirement of a special waiver in each case.

This is the purpose of the new “enabling clause” by which special treatment for the developing countries in the tariff and non-tariff areas is legalized. This is a very important step because it marks a departure from the paramount principles of GATT – most-favoured-nation treatment and non-discrimination. In consideration of the growing international competitiveness of a number of developing countries the enabling clause is linked to the expectation that the developing countries will assume the normal rights and duties of GATT members in accordance with their economic progress.

Besides, the GATT regulations have been refined on the following points:

□ Developing countries may now resort to protective measures also for the realization of their economic development objectives if these are aimed at altering or extending existing production structures;

□ Industrialized countries are as far as possible to avoid protective measures for balance of payments reasons; this applies to all restrictions on trade and not only to quantitative restrictions; the export interests of the developing countries are to be given consideration in the case of unavoidable restrictions;

□ The GATT regulations for consultation and arbitration are tightened.

Arrangements for Developing Countries

In addition to the amendments to the legal framework of GATT undertaken overwhelmingly to advance the special interests of the developing countries the negotiating results of the Tokyo Round include a large number of special arrangements for the developing countries.

Special arrangements of this kind are to be found in all the codes in the non-tariff area. The code on subsidies recognizes the importance of subsidies in connection with the economic development programmes of developing countries. Counter-measures by industrialized countries on the ground of subsidies in developing countries are subject to impedimentary conditions.

The code on government procurement recognizes the importance of public contracts in the developing countries for their economic development. The least developed countries may be given access to public contracts in industrialized countries even if they do not subscribe to the code themselves. Besides, the developing countries are to be given technical assistance in regard to the allocation of public contracts.

The special problems of the developing countries are also recognized by the codes on norms, customs valuation and import licences. In the complicated areas of norms and customs valuation the developing countries are promised technical assistance. The developing countries may be granted exemptions for a limited time from the application of the code rules (for instance in the case of the code on norms) or the application of the rules to the developing countries will be deferred for several years (in the case of the code on customs valuation and import licences).

The negotiations on tropical products which are of special importance for the developing countries have been given precedence in the Tokyo Round. Agricultural and industrial products belong to this group of commodities. The developing countries have obtained concessions for almost three quarters of the customs items for which they entered demands, and a substantial proportion of the concessions were given effect already before the conclusion of the multilateral GATT negotiations. In addition to the tariff concessions the developing countries received in the negotiations on tropical products concessions on quantitative restrictions and the operation of import licences.

The overall negotiating results for developing countries in regard to tariffs have already been mentioned. A question to be considered here is whether the developing countries could be helped further by giving earlier effect to the concessions of special interest to them than was envisaged in the general time schedule. The developing countries have registered demands to this effect, and these are still the subject of negotiations.

The negotiating parties were unable to reach agreement in the Tokyo Round on the conclusion of a

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new code on safeguards. The main reason for this was the demand of the EC for admissibility of selective safeguards. These concern import curbs for the protection of domestic producers which in contradistinction to "erga omnes" measures are not directed against all but only against one or a few countries. Although this question is not explicitly regulated by Art. XIX GATT which is the basis for safeguard measures, it is the overwhelming view that according to the general principles of GATT (non-discrimination) selective measures are not admissible. This is also the view of the GATT secretariat.

The developing countries are certainly not entirely wrong when they fear that selective safeguards may operate primarily against them. They regard them as an instrument with a distinctly protectionist strand. It has also to be borne in mind that the deterrent effect of retaliatory measures is smaller if import restrictions are directed against one or a few countries only. The mitigation of the risk might lead to more frequent recourse to this dangerous instrument and thus to gradual fragmentation of world trade. For this reason the developing countries want selective safeguards only to be allowed when they are subject to effective international control.

Another complex of questions on which it was impossible to reach agreement in the Tokyo Round concerns the export restrictions. These have an important bearing *inter alia* on the supply of raw materials. There are so many aspects to the problems involved that it was agreed to keep them apart from the Tokyo Round. The negotiations are to be continued when the Tokyo Round has been brought to an end.

Substantive Advances

The most convenient yardstick for an evaluation of the negotiating results of the Tokyo Round is the Tokyo declaration of 1973 with which the multilateral negotiations opened. The aspirations of the Tokyo declaration were quite generally

- the expansion and further liberalization of world trade, and
- additional advantages for the international trade of the developing countries.

These objectives were to be achieved through

- tariff cuts and alleviation or elimination of non-tariff obstacles to trade and, possibly, sector agreements;
- examination of the existing system of safeguard clauses with a view to further trade liberalization;

- inclusion of agriculture into the negotiations with consideration to its special features and problems;
- priority treatment of tropical products.

Measured by these objectives the negotiating results of the Tokyo Round appear on balance in a very satisfactory light. Apart from the safeguards issue substantive advances have been achieved in all the areas mentioned in the Tokyo declaration.

The tariff cuts by an average of 33 % are a gratifying result even if they do not come up to the aimed-at 40 % reduction, and also show up well in comparison with the last major round of GATT negotiations, the Kennedy Round, which ended with cuts of 35 %.

Import duties are however no longer the primary obstacle to trade. In the industrialized countries they are, on average, at a relatively low level. The tariff cuts are for this reason not the most important part of the final package. The non-tariff barriers to trade have attained a much greater importance in recent years, and this is especially true of the subsidies which have proliferated in the last few years. With the consequential distortions and the resultant danger of counter-measures by the affected countries they present an especially grave threat to unfettered trade exchanges.

Norms and technical regulations on the handling of goods exchanges, such as those concerning customs valuation and import licences, have also proved hidden but extremely effective instruments for keeping foreign products out of the domestic market or, put in different words, promoting protectionist aims. The importance of public contracts for a more liberal world trade is obvious, bearing in mind that the new code on government procurement alone covers about US \$ 25 bn worth of business orders in the USA, the EC and Japan. The real significance and momentum of the final package derives from the codes which have been designed as effective instruments against the proliferating and almost impenetrable undergrowth of non-tariff obstacles to trade.

Special Status of the Developing Countries

Considerable advantages accrue also to the developing countries. This applies of course to the tariff concessions including in particular those for tropical products which are of special interest to the developing countries. In the long run however the curbs on non-tariff barriers may prove of even greater importance also for the developing countries, the more

so as consideration has been given to their particular circumstances and problems through special arrangements. Of quite fundamental importance for the developing countries, though not easily quantifiable, is the recognition of their special status in the context of the further development of the legal framework of GATT. A bond has been created here between the aspiration of an open world trade system and the particular problems of the developing countries. Through this elaboration GATT safeguards and reinforces its suitability as a framework for foreign trade in which the interests of all world trade partners are given consideration. It is to be hoped that the developing countries will appreciate this fact in their ultimate evaluation of the final package of the Tokyo Round.

The comparison of the outcome of the Tokyo Round with the negotiating objectives of the Tokyo declaration thus shows a positive result. This comparison does not however exhaust the importance of the Tokyo Round.

Since the early seventies the world trade has been threatened by protectionist currents. These latent

tendencies in many countries have been held back by political statements of intent such as the Tokyo declaration and the trade pledge of the OECD but if the Tokyo Round had ended in failure there would most certainly have been a fresh eruption of the protectionist tendencies which would have led to a break-through for them. There were real grounds for such a fear, the more so as the additional burdens from the oil price hoist are bound to provoke louder calls in many countries for protection of domestic industry against external influences. Without the successful conclusion of the Tokyo Round there would have been very little chance of passing through this critical period without injury to international trade. The successful conclusion of the Tokyo Round on the other hand has created an auspicious starting position for coping with the existing problems and those to be anticipated in future. GATT which is not only an international organization and framework for political statements but above all and directly an operationally effective trade policy instrument may therefore be emphatically recommended as the basis for the future further development of world trade which is in the interest of all partners.

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