The Tokyo Round: Results and Implications for Developing Countries

SWP372

World Bank Staff Working Paper No. 372

February 1980

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This paper provides (a) background information to the Tokyo Round of Multilateral Trade Negotiations, (b) describes and summarizes its results, (c) looks at the response of developing countries to the outcome, and (d) assesses the implications for the future conduct of world trade. It is argued that, even though the results did not meet the initial expectations, they have to be regarded as the best that was politically feasible at the time. Given this, the developing countries, by judging the Tokyo Round primarily in terms of what special treatment they will receive, are taking too narrow a view.

The developing countries will hurt their interests by not signing because (a) as regards the institutional and political dimensions of trade, they will be giving up the chance to participate actively in the future management of world trade, a role provided for under the committees set up in each subject area of the codes; (b) as regards the substance of the results, they will lose the material benefits which can be achieved under the improved and updated rules of the codes, which only apply to signatories.

The results of the Tokyo Round should be looked at as a step in the right direction on which the future trading relationships could be based.

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List of Abbreviations

BTN . . .	Brussels Tariff Nomenclature
GATT . .	General Agreement on Tariffs and Trade
GSP . . .	Generalized System of Preferences
MFN . . .	Most Favored Nation Treatment
MTN . . .	Multilateral Trade Negotiations
NTM . . .	Non-Tariff Measures
OMA . . .	Orderly Marketing Arrangement
VER . . .	Voluntary Export Restraints

SUMMARY AND CONCLUSIONS

On April 12, 1979, the Tokyo Round of Multilateral Trade Negotiations in the General Agreement on Tariffs and Trade (GATT), initially launched with the Tokyo Declaration of September 1973, was formally concluded. This seventh round of GATT negotiations was the largest and most comprehensive ever held. Directed not only toward further reduction of tariffs, for the first time the negotiations laid particular emphasis on multilateral agreements in the area of non-tariff measures, thus responding to their growing importance in world trade.

The results achieved in the various areas of the negotiations are, in summary:

-- In the field of tariffs, it was agreed that industrial tariffs would be further reduced on a most-favored-nation basis by roughly one-third in set installments, beginning in general on January 1, 1980.

-- In the area of tropical products, developing countries will receive further improvements relating to trade in areas of special importance to them. For the most part, improvements will be in the Generalized System of Preferences (GSP). In addition, industrialized participants made a commitment not to increase existing levels of internal taxation on tropical products.

-- In the non-tariff area, widely regarded as the most important, a series of multilateral agreements were worked out, covering both the industrial and agricultural sectors and comprising:

a. An Agreement on Subsidies and Countervailing Duties, aimed at ensuring that subsidies do not harm the trade interests of other trading partners and that all participants in world trade operate equally with respect to countervailing duties.

b. An Agreement on Government Procurement, covering individual government contracts of more than 150,000 SDR value and establishing the principle of non-discriminatory treatment.

c. An Agreement on Import Licensing, designed to ensure that licensing procedures will be administered neutrally and fairly and will not as such create restrictions to international trade.

d. An Agreement on Technical Barriers to Trade, aimed at ensuring that technical regulations and standards are not used to impede trade and that all parties to the agreement will be treated equally.

e. An Agreement on Customs Valuation, replacing the current divergencies in methods of assessment by a uniform, fair and neutral system for the valuation of goods.

f. An Agreement on the Implementation of Article VII, GATT, concerning the Anti-Dumping Code already negotiated in the Kennedy Round and aimed at establishing conformity between the basic provisions of this code and the Agreement on Subsidies and Countervailing Duties of the Tokyo Round.

--In the agricultural field, in addition to the tariff reductions and non-tariff barrier codes outlined above, two international arrangements, one concerning bovine meat, the other dairy products, were reached. Both aim at bringing greater security, expansion and stabilization to these areas, through establishing a global information system and a standing forum for international consultation within the GATT.

--A Framework Agreement was worked out, whose purpose is to bring the present rules of the GATT closer into line with the development needs of developing countries. Of special importance is the adoption of the "enabling-clause," which establishes a secure legal basis for preferential treatment for developing countries; it also calls for gradual withdrawal of preferential treatment if warranted by the overall economic situation and changing development needs of a beneficiary. Other results under the Framework Agreement are more flexibility for developing countries with respect to protective trade measures for balance-of-payments purposes and the reaffirmation, refinement and updating of the current procedures for settling disputes within the GATT.

At the time of the formal conclusion of the negotiations, agreement had not been reached on the revision of the international safeguard system. This key area is still characterized by widely divergent views between developing and developed countries. The major point of contention is the issue of selectivity, i.e., whether and under what conditions future protective action against disruptive imports may be applied discriminatorily. Participants agreed to continue these negotiations.

Though 99 countries participated in the negotiations, as of October 1979 only 17[/1] signed the Proces-Verbal of April 12, 1979, which formally incorporated the results. They include all Western industrialized countries and, except Poland, all Eastern European centrally planned economies which participated, but only Argentina from among the developing countries. The latter in general have been highly critical of the results of the Tokyo Round, complaining that they did not receive adequate preferential treatment, a major goal according to the Tokyo Declaration, and furthermore that the strong focus during actual bargaining on the major industrialized countries compromised the multilateral character of the negotiations and precluded adequate participation by them.

An analysis and assessment of the position taken by the developing countries, especially in light of their request that negotiations be continued until the goals of the Tokyo Round were met, ultimately leads to the conclusions that:

-- The results, though they certainly did not meet all initial expectations, politically have to be regarded as the maxi-

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/1 Counting as one participant the nine member states of the European Community covered by the signature of the Commission of the European Community.

mum possible at that time. They are a major achievement as an expression of the political willingness of participating governments to maintain and improve the existing free trade regime under the GATT.

Given this point and in light of the actual achievements, especially in the non-tariff barrier field, the developing countries, by judging the Tokyo Round primarily in terms of what special treatment they will receive, are taking too narrow a view.

The developing countries will hurt their interests by not signing because:

-- As regards the institutional and political dimensions of trade, they will be giving up the chance to participate actively in the future management of world trade, a role provided for under the committees set up in each subject area of the codes;

-- As regards the substance of the results, they will lose the material benefits which can be achieved under the improved and updated rules of the codes, which only apply to signatories.

There are both pro's and con's to the negotiations. A rational approach is to take the results as a step in the right direction which can be built on in the future.

THE TOKYO ROUND: RESULTS AND IMPLICATIONS FOR DEVELOPING COUNTRIES

I. INTRODUCTION

The recently concluded Tokyo Round of Multilateral Trade Negotiations (MTN) is the seventh under the framework of the General Agreement on Tariffs and Trade (GATT) and the most comprehensive ever held. Ninety-nine countries, accounting for 90% of world exports and including 26 which are contracting parties to the GATT participated, /1 compared with only 48 in the previous Kennedy Round.

For the first time the negotiations were not limited to further reductions in tariffs, but also covered the area of non-tariff barriers. The overall goal was to shape the rules of the world trading system in the agricultural as well as the industrial fields, in the context of the demands of the next decade and beyond.

The negotiations were formally launched in September 1973 by the Tokyo Declaration. Agreed to by the ministers of participating countries, it embodied the overall policy guidelines. The Tokyo Round was to be directed toward two basic goals:

> "... [1] to achieve the expansion and ever-greater liberalization of world trade...inter alia, through the progressive dismantling of obstacles to trade and the improvement of the international framework for the conduct of world trade, and [2] to secure additional benefits for the international trade of developing countries so as to achieve a substantial increase in their foreign exchange earnings, the diversification of their exports, the acceleration of the rate of growth of their trade... and a better balance between developing and developed countries in the sharing of the advantages resulting from this expansion...."/2

Negotiating groups were set up for the major areas of the negotiations. They included participants from all interested countries.

/1 A list of participants appears in Annex A.

/2 See Tokyo Declaration of September 12-14, 1973, para. 2.

The active phase of the negotiations began in February 1975. A special feature of the Tokyo Round was that throughout the negotiating process a series of target completion dates were set, /1 none of which were, however, met.

The Proces-Verbal of April 12, 1979, adopted in Geneva, marked the formal conclusion of the negotiations in all but two areas, in which work is ongoing--the GATT safeguard provisions and the code concerning counterfeited goods. This document, used to state formally the results and the commitment that the agreements be submitted for domestic approval has since been opened up for signing by all participants./2 As of October 1979, only 17 participants had signed the Proces-Verbal, thus accepting the various agreements./3 They are:

-All industrialized countries (US, Commission of the European Communities on behalf of the nine EC member states, and Japan, Australia, Finland, Canada, New Zealand, Norway, Austria, Switzerland, Sweden and Spain);

-All Eastern European centrally planned economies participating in the negotiations except Poland (Czechoslovakia, Rumania, Hungary, Bulgaria); and

-Among the developing countries, only Argentina.

In the area of safeguards, of particular importance to developing countries, participants had decided to continue the negotiations, with the objective of reaching an agreement by July 15, 1979. This was not achieved, nor has it yet been possible to bridge the wide gap between the developed and developing countries, but negotiations are continuing.

The balance of this paper:

--Summarizes the results of the negotiations in the different subject areas, with particular emphasis on the extent to which preferential treatment was achieved by developing countries;/4

--Analyzes the position they have taken concerning the negotiations, with a review and assessment of their concerns; and

--Makes a tentative assessment of the achievements of the Tokyo Round and its impact for the further conduct of world trade, with special reference to the prospects for developing countries.

/1 For further details on the development of the negotiation process, see Sidney Golt, The GATT-Negotiations 1973-1979 (London 1978).

/2 In the fields of dairy products, customs regulations and anti-dumping, two alternative texts have been put forward by the developed and developing countries.

/3 In those subject areas covered by alternative texts, developed countries signed their version of the code, whereas Argentina subscribed to the version put forward by developing countries.

/4 Not analyzed because of its significance for only a limited number of participants is the Agreement on Trade in Civil Aircraft, the only sectoral agreement which emerged and, the Draft Agreement Concerning Commercial Counte... ...ing

II. RESULTS OF THE TOKYO ROUND

Following is a summary of the results in the main areas of the negotiations and a brief description of the current status of the negotiations concerning safeguards.

Tariffs

Tariffs, despite their declining economic importance in the conduct of world trade relative to the growing significance of non-tariff barriers, nevertheless received much attention and in fact played a key role in launching the final phase of the Tokyo Round. It was not before agreement was reached on a single tariff cutting formula that this decisive phase could really begin. As a result of previous rounds of GATT tariff negotiations, the average level of tariffs was already comparatively low in most industrialized countries./1 Thus, the overall goal in relation to tariffs was to achieve "a substantial degree of liberalization compared with the Kennedy Round." /2

Though all participants subscribed to this goal, their views on how to achieve it differed substantially./3 It took considerable time to reach an agreement on a single tariff cutting formula. The Swiss formula,/4 the one finally accepted, accomplishes significant overall reductions and greater harmonization, the latter through greater reductions of higher tariffs than of lower ones. Cuts according to the formula were limited to the industrial sector (BTN /5 25-99), whereas an item-by-item approach was applied to the agricultural sector.

/1 See Cline, William R., et al., Trade Negotiations in the Tokyo Round--A Quantitative Assessment (Washington, D.C.: Brookings Institution, 1978), p. 70. For example, as relates to dutiable items: European Community, 9%, US 8.9%, Japan 11.2% (figures which are even lower if related to all imports, namely 7.1% for the US, 6.3% for Japan, and 4.2% for the European Community).

/2 See Framework of Understanding on the Tokyo Round, Geneva, July 1978, in the Kennedy Round, in which negotiations aimed at a 50% cut across the board. As a result of exceptions, an average reduction of approximately 35% was achieved.

/3 All major industrial countries proposed tariff-cutting formulae of their own. The US, for example, wanted all tariffs to be reduced uniformly by 60%, whereas the European Community favored an approach which aimed at a combination of significant reduction and harmonization.

/4 Specifically, the Swiss formula calls for a tariff rate, X, to be reduced to the new post-MTN rate, Z, by the formula $Z = 14X / \langle X + 14 \rangle$, where Z = the new tariff rate and X = the existing tariff rate.

/5 Brussels Tariff Nomenclature, Chapters 25-99.

This across-the-board application to the industrial sector automatically led to the crucial issue of exceptions, i.e., which products to exempt from formula cuts or to assign lower cuts. Reaching agreement in this field was one of the most crucial tasks of the negotiations. Two conflicting interests had to be satisfied: on the one hand, some participants felt the need for continuing protection for domestic reasons; on the other, the objectives of maintaining the overall balance between individual offers and achieving meaningful reductions had to be addressed.

The final commitments were incorporated in the GATT schedules by June 30, 1979, thus making them legally binding./1 In the end, 14 delegations applied the formula approach./2 Another 20 participants, primarily developing countries, though not participating in the across-the-board formula reduction, offered tariff concessions and contributions on selected items.

Though the tariff reductions were negotiated bilaterally or multilaterally, their benefits are, according to the MFN rule of Article I of the GATT, the corner-stone of that agreement, extended to all GATT member countries. The reductions will be carried out in equal installments over an eight-year period, to begin, as a general rule, on January 1, 1980. However, in some areas, labeled sensitive sectors, /3 the reductions will be postponed until January 1982.

According to a first tentative analysis made by the GATT Secretariat,/4 the total value of trade affected by the Tokyo Round MTN tariff cuts and agreements amounts to more than US$125 billion (US$112 billion in industrial products and some US$15 billion in agricultural imports). The level of all industrial tariffs will be reduced by just over one-third, or about 38%, if based on simple

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/1 GATT-bound rates can be modified or withdrawn only if the requirements and procedures laid down in Article XXVIII of the GATT, providing for adequate compensation, are followed.

/2 Australia, Austria, Bulgaria, Canada, Czechoslovakia, EC, Finland, Hungary, Japan, New Zealand, Norway, Sweden, Switzerland, US. See GATT Document MTN/26/Rev. 2 of April 11, 1979.

/3 Especially steel and textiles. In the latter, there was an additional qualification made by major participants that implementation of the offer be conditional on further prolongation of the Multi-Fiber-Arrangement scheduled to expire in 1981.

/4 See GATT, The Tokyo Round of Multilateral Trade Negotiations, Geneva, 1979, subsequently referred to as GATT-study. The analysis is based on 1976 trade figures and on the concessions agreed to by 10 developed country participants, namely Austria, Canada, EC, Finland, Japan, New Zealand, Norway, Sweden, Switzerland and the US; see Study, page 117ff.

average rates, and by about 33% if based on weighted rates (i.e., rates based on actual customs collection). These figures are the results of an overall assessment; averages will differ for individual countries and products./1

Among the sectors which will receive less than average reductions are textiles and leather, both of particular interest to developing countries. The most important cuts are for non-electrical machinery, wood products, chemicals and transport equipment.

In the tariff field, developing countries have voiced as their main concerns, in addition to the well-known argument that MFN reductions lead to harmful erosion of preferential margins under the Generalized System of Preferences (GSP), /2 the following:

--Dissatisfaction with the uneven distribution of the tariff reductions among products, which exposes products of export interest to them to more exceptions and lower than formula cuts, and

--Disappointment that no meaningful way was achieved for giving them special and differential tariff treatment.

With respect to the first argument, the still fragmentary data on which the GATT Secretariat based its analysis tend to support the criticisms of the developing countries. The average MFN reduction on products of export interest to them is less than the overall cut. If products of traditional export interests to developing countries are singled out, the tariff cut amounts to only 25%, as compared with the roughly 33% overall reduction achieved in the industrial field./3

Though these figures tend to support the criticism from developing countries, a different picture emerges if products of potential interest to developing countries are included. While the GATT study does this, it fails to specify what those products are. It does conclude that on this basis the cuts, using simple average rates, amount to more than 35%, making them comparable to the overall MFN reduction.

Taking into account the speed with which the composition of trade products change in developing countries and the growing diversification of their exports, it is this more dynamic approach that really counts.

In addition, the issue really has to be addressed in a broader context. For example, a longstanding concern of developing countries has been the problem of tariff escalation based on the nature of the product. They argue that the tariff structure of developed countries is more favorable

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/1 For more detailed information, see GATT study, p. 118ff.

/2 See pp. 26, 27 for further details.

/3 See GATT study, p. 121.

to imports of raw materials than of manufactured products and thus tends to prolong their traditional role as suppliers of raw materials.

Looking at the Tokyo Round results from this point of view and taking into account products currently of export interest to them according to the stage of processing, the results achieved are a step forward in the right direction. As a result of the built-in harmonization of the tariff-cutting formula, the highest reductions are for finished industrial manufactures, namely 39% based on simple averages, compared with 32% for industrial raw materials and only 7% for agricultural products./1

Finally, special efforts were made to tailor differential treatment in favor of developing countries. For example, the tariff reduction offer of the EC included a list G, for which greater than formula cuts would be applied to certain products of export interest to developing countries, and a list E, which consisted of exceptions to formula cuts for some products currently covered by the GSP. In addition, the developed countries generally seem willing to implement tariff cuts in advance for products of major interest to developing countries./2

Tropical Products

The Tokyo Declaration singled out tropical products as a priority sector, given their particular export interest to developing countries. In fact, it was in the framework of the Group on Tropical Products that the first results of the Tokyo Round were implemented. Most participants put their agreements into effect as early as January 1977, certainly a positive response to the negotiating guidelines.

The initial requests by developing countries in this field covered 4,400 dutiable items and included not only agricultural but also industrial products originating in developing countries. Developed countries wanted to include only tropical products in the classical sense, that is, agricultural products generally covered by Chapters 1-24 of the Brussels Tariff Nomenclature.

The main results achieved in the Tropical Products Group are improvements in the GSP. Of the 4,400 initial requests of developing countries, developed countries met 2930, either in the form of MFN concessions or GSP contributions. /3 Nine hundred and forty of those offers were implemented immediately in 1977. Requests not covered by the developed countries were transferred to other negotiating groups. With the exception of only one major industrialized country, the US, the developed countries made their offers without demanding reciprocity.

/1 See GATT-study, p. 122.

/2 See statements of developed countries on signing the Proces-Verbal.

/3 For a detailed description and weighted analysis, see GATT-study, pp. 156ff.

The most important concessions involve products such as coffee, tea, spices, cocoa and animal products, whereas they were less than average for such products as fishery products, honey, fruit, oil, sugar and tobacco./1

An additional agreement was reached on the issue of internal taxation of tropical products in developed countries. Developing countries had demanded complete abolition of internal taxes on products such as coffee and tobacco. While developed countries were not prepared to accede to this demand, they did agree not to increase existing levels of taxation.

Non-Tariff Measures

The agreements in the area of non-tariff measures (NTM) /2 are widely regarded, and rightly so, as the most important of the Tokyo Round, given their recent growing importance in world trade. A major objective in this area had been to establish generally accepted international rules covering these practices. Non-tariff measures are usually applied in such a subtle way that while they might be in keeping with the letter of existing international agreements, they are certainly not in keeping with their spirit./3

The work in the NTM area is the main feature distinguishing the Tokyo Round from previous rounds. Following is a summary of the principal aims and provisions of the agreements, which provide for updated measures and more effective international discipline in their use. The codes should allow the rules governing the conduct of world trade to be reshaped in a way more appropriate to present and future needs. Generally they will become applicable on January 1, 1980, for signatory governments (for the Agreements on Government Procurement and Customs Valuation, the date is January 1981).

Subsidies and Countervailing Duties

This topic was one of the most difficult, sensitive and important as a result of the growing influence of production and exports subsidies in recent years. The main goals of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT are to ensure that subsidies do not harm the trade interests of other trading partners and that countervailing measures do not unjustifiably impede international trade.

/1 See details in GATT-study, p. 157.

/2 For the codes achieved in the NTM area, the term "agreement" was officially chosen, whereas for the results achieved in the dairy and meat sectors the term "arrangement" was chosen. Since no legal implications are drawn from these different terms, throughout this paper "codes," "agreement" and "arrangement" are used interchangeably.

/3 For example, in the safeguard area circumvention of Article XIX, GATT, the basic GATT provision dealing with market disruption by application of Voluntary Export Restraints or Orderly Marketing Agreements, is presently not covered by the GATT.

The pre-MTN GATT provisions governing subsidies and countervailing duties are as follows. Article XVI: 4 only bans the use of export subsidies on other than primary products, whereas Article XVI: 3, which governs trade in primary products (agricultural and non-agricultural), is limited to ensuring that subsidies do not result in a more than "equitable share" of world export trade in these products. The application of domestic subsidies is not presently covered.

Article XVI: 4 has been accepted only by developed countries and is applied on the basis of an illustrative list of export subsidies drawn up as early as 1960 and never updated. In addition, the US, as a legacy from the "grandfather-clause" of the GATT, /1 has claimed to be free of the limitations of Article VI, GATT, which requires that countervailing duties to offset the harmful effect of subsidies be imposed only if material injury or threat of material injury to a domestic industry can be demonstrated.

The Subsidies and Countervailing Duties Code clarifies, updates and further elaborates on the existing GATT provisions and gives equal footing to all trading partners with respect to countervailing duties. It contains the following basic provisions:

(i) Renewal and further elaboration of the commitment by signatories not to subsidize the export of manufactured exports, a result to be achieved mainly by updating the illustrative list of subsidies and extending the commitment to non-agricultural primary products (i.e., minerals) previously covered by the more flexible rules of Article XVI: 3.

(ii) Extension of the coverage of the agreement to domestic subsidies, achieved by incorporating some of the basic principles related to their use, including illustrative references to present practices in this field. Participants also committed themselves not to use domestic production subsidies - whose value in achieving important domestic goals they explicitly recognize - so as to harm seriously the trade interests of other participants.

(iii) Clarification of the provision of Article XVI:3 governing the use of export subsidies for primary agricultural products.

(iv) Agreement by all signatories to apply countervailing duties only in accordance with Article VI, GATT, that is, after demonstration that the subsidized imports cause or threaten to cause material injury to a domestic industry.

/1 Under the Protocol of Provisional Application of the GATT, each country retained the right to apply the GATT articles only to the extent that they were consistent with existing legislation.

In addition to these substantive results, another major achievement is the section of the code dealing with procedures for settling disputes. A committee of signatories is to be set up to monitor application of the rules. In addition, more precise and predictable procedures are spelled out, particularly, e.g., prior consultation with the country concerned before an investigation is opened.

The code, in a special section dealing with differential treatment for developing countries, addresses positively one of their major concerns. It explicitly recognizes subsidies as an integral part of the economic development programs of developing countries. As a result, the rules applicable to developing countries are less strict. The basic commitment not to grant export subsidies on products other than certain primary products is not applied to developing countries, and the larger role their governments may play as far as internal subsidies are concerned is expressly recognized. Furthermore, in the case of countervailing actions against a developing country, the need for subsidization must be proven by positive evidence. The illustrative list of export subsidies cannot be used as a basis for presumption of harmful effects, nor will the examples given by the code in the field of internal subsidies be recognized per se as subsidies. However, in the field of export subsidies on primary agricultural products, developing countries and other participants are equally obligated under the agreement.

In return for the greater flexibility they were conceded, developing countries agree that export subsidies on industrial products will not be used so as to prejudice seriously the trade or production of another signatory. They are also expected to subscribe to a graduation clause which provides that a developing country signatory should reduce or eliminate export subsidies when their use is inconsistent with competitive and development needs. By entering into and carrying out a commitment of this kind, developing countries will not be subject to the normal countermeasures covered in Parts II and VI of the code. /1

In summary, the Subsidies and Countervailing Duties Code provides an elaborate set of rules for special and differential treatment of developing countries. The improved discipline, uniformity and clarity in this area, which is of major importance for the conduct of world trade, should benefit all participants, including developing countries.

The graduation provision is of particular importance. The basic idea is to allow tailor-made exceptions to the general rules by linking the preferential and less stringent rules of the code to the real needs of developing countries. On the one hand, this approach offers more generous treatment where warranted by the economic conditions and circumstances of a particular country, and on the other calls for the more advanced developing countries to be gradually incorporated under the general rules of a single and unified world trading system, in keeping with their overall economic progress.

/1 See Sections III.7 and III.8 of the code.

Government Procurement

The procurement activities of governments are of considerable economic importance and cover a wide variety of goods, ranging from simple manufactures to high technology equipment.

The pre-MTN GATT provisions (Article III, 8a) allow for discrimination in government procurement. This approach is a major exception to the non-discrimination principle which is the basic cornerstone of the General Agreement.

Discrimination in favor of domestic suppliers or between foreign suppliers can have a severe impact on international trade. The Agreement on Government Procurement aims at ensuring greater international competition by establishing the rule of non-discrimination in government procurement. According to initial provisional estimates, a market of $20 billion will be opened which to date has been closed to international competition. This area is the single largest new market opportunity to result from the MTN.

The central provision of the agreement is directed at ensuring equal treatment of foreign versus domestic suppliers and of all foreign competitors and at bringing about greater transparency of laws, regulations and practices in this field. The provisions apply to individual governmental contracts valued at more than 150,000 special drawing rights (approximately US$195,000) carried out by government entities listed in an annex to the agreement.

Acceptance of the list of entities was a major part of the bargaining. The list, despite its technical form, was regarded by all participants as the key to mutual reciprocity and economic balance among their offers. To join the agreement, a government has to provide a list of purchasing entities to be subject to the agreement.

In its present form, the agreement applies only to products, not services. It contains detailed rules on how tenders for contracts should be invited and awarded. In addition, as with the Subsidies and Countervailing Duties agreement, explicit and elaborate provisions are contained concerning multilateral settlement of disputes. A Committee on Government Procurement consisting of representatives of parties to the agreement is to be established, charged with monitoring implementation and a regular annual review. A major review has to be carried out no later than the third year of application of the agreement, with the goal of improving implementation and broadening coverage (explicitly mentioned is extension to the service sector or adding further governmental entities).

As far as preferential treatment of developing countries is concerned, the code contains/1 elaborate rules aimed at taking into account, in its implementation and administration, the development, financial and trade needs of these countries, in particular the least developed.

/1 See Part III of the agreement.

Developed countries are called upon to include in their list of entities those which purchase products of especial export interest to developing countries and to provide on a non-discriminatory basis technical assistance to developing countries. Application of the code will be more flexible for developing countries in that they may negotiate with other participants mutually acceptable exclusions from the code. Explicitly mentioned as illustrative products for exception are those subject to common industrial development programs in the context of regional or global arrangements among developing countries. In addition, like other participants developing countries not only may modify their lists of entities in accordance with the rules of the agreement, i.e., with respect to mutually balanced reciprocity, but certain products or entities may also be excepted from the rules of the codes by decision of the committee if warranted by development needs or overriding reasons of global or regional cooperation.

The Code on Government Procurement is one area in which a positive response to the objective concerning special treatment for the least developed countries was made. Signatories may grant the treatment provided for in the agreement to suppliers in the least developed countries even if they are not parties to it. As a consequence, they can take advantage of the benefits of the agreement without necessarily being subject to its obligations.

Import Licensing Procedures

Import licensing usually occurs in two basic forms: non-automatic licensing to administer different types of import restrictions, the licenses being evidence that the imported goods are permitted under existing restrictions; or automatic licensing, where approval of the application is freely granted and which mainly provides statistical and factual information on imports.

The Agreement on Import Licensing Procedures covers both types of licensing. It recognizes that licensing procedures, for example, those frequently used by developing countries to control the use of scarce foreign currencies, can serve legitimate purposes. Accordingly, the main emphasis in the agreement is to ensure that licensing procedures are administered in a neutral and fair way in accordance with the relevant GATT provisions and do not as such restrict international trade.

Governmental parties to the agreement make a commitment to simplify their import licensing procedures to the extent possible and to follow the rules of the agreement in the operation of their systems. The agreement provides greater transparency, uniformity, predictability and hence security in this area.

Implementation will be supervised by a Committee on Import Licensing, composed of representatives from each signatory. There are provisions for a review of the implementation and operation of the agreement at least every two years and for eventual amendments in the light of experience.

No special section deals with preferential rules for developing countries. Such treatment, as far as the procedural targets of the agreement are concerned, might run counter to its basic aims, which clearly are to establish uniform rules of application and better international discipline. However, developing countries are benefitted, as simplifying the rules and improving the licensing procedures assists the international trading community as a whole. Further, there is a stipulation that licenses to new importers be reasonably distributed and that in this respect special consideration be given to products from developing countries, in particular the least developed.

Technical Barriers to Trade

Presently, an increasing number of government regulations require that products have specific characteristics conforming with health and safety requirements, consumer protection, environmental safeguards, etc. Such domestic regulations serve legitimate purposes and generally are not intended as barriers to trade. On the other hand, de facto they can hamper the free flow of trade severely, and governments may use them as subtle but effective barriers to imports.

In assessing the Code on Technical Barriers to Trade, it should be emphasized that it was not supposed to establish standards and technical regulations or testing and certification systems. Rather, the basic goal was to "ensure that technical regulations and standards, including packaging, marking and labelling requirements and methods for certifying conformity with technical regulations and standards do not create unnecessary obstacles to international trade." /1 In particular the code was to provide for equality of treatment for all parties to the agreement, which meant that exports were to be treated as favorably as like domestic products.

In relation to standards, one of the basic stipulations of the code is that where international standards exist, parties should use them. Parties are furthermore called upon, within the limits of their resources, to play their full part, in the preparation of such international standards so that harmonization is achieved. Where international standards do not exist, the code spells out a detailed system for provision of early and non-discriminatory information on national regulation systems for parties concerned (among other ways, through notifying the GATT and prompt publication).

/1 See preambular paragraph 5 of the Code and operative part 2, paragraph 1.

In the field of testing requirements and certificates, the code seeks to guarantee that imported products are not exposed to more onerous measures than like domestic products and comparable imported products. A central provision is the requirement that test results, certificates or marks of conformity issued by other participants be accepted by the importing party whenever possible, provided the measures are satisfactory.

Though only central governments are signatories of the code, its obligations are intended for use in local, state and regional regulations and voluntary standards when federal regulations do not apply at these levels. In order to enhance implementation at these levels, central governments subscribe to a best-endeavors clause, i.e., they will take "such reasonable measures as may be available to them" to ensure that agencies at these levels comply with the provisions of the code.

The Code on Technical Barriers to Trade spells out elaborate procedures for consultations and settlement of disputes. The Committee on Technical Barriers to Trade, composed of representatives of each signatory, is the principal body for monitoring and reviewing implementation, assisted, as necessary, by special technical expert groups or panels. A major review of the code is called for at the end of each three-year period and is to address the possibility of adjusting the rights and obligations under the agreement to ensure mutual economic advantage and balance.

Participants acknowledge that developing countries may have special difficulty in formulating and applying technical regulations and standards and certification systems. The code therefore not only provides for technical assistance, but also tries to respond favorably to their specific situations, in particular to the needs of the least developed countries. Developing countries are not expected to use international standards not appropriate to their stage of development or financial and trade needs. Instead, they may continue to apply technical regulations or standards "aimed at preserving indigenous technology and production methods and processes compatible with their development needs." /2 In addition, exceptions may be granted for limited periods in whole or in part, and developing countries are assured that parties to the agreement will take into account their needs.

Customs Valuation

The technical nature of this subject tends to hide the immediate and serious restrictive effects that customs valuation can have on international trade. One problem in the past has been uncertainty over the exact definition of value as used in the assessment of customs duties, which results from the lack of a uniform and globally applicable valuation system. Existing GATT rules (Article VII) cover customs valuation, generally using a basis for the customs value the actual value of the imported merchandise. However, they do not set forth the elements of a complete valuation standard. Though presently more than 100 countries use the Brussels definition of value, major participants in world trade such as the US, Canada and New Zealand remain outside this system.

/1 See Sections 2.9 and 4.1 of the code.

/2 See Article 12.4 of the code.

Further, under the legal rules governing the provisional application of the GATT, those countries whose pre-GATT legislation contains provisions not in accordance with Article VII are not required to bring them into line.

The Customs Valuation Code aims at abolishing the widely varying assessment methods and at providing a uniform, fair and neutral system for the valuation of goods. It spells out five valuation methods, ranked in hierarchical order. If no valid customs value can be found with the first method, then the second method can be used, and so on. The first and primary method determines customs value on the basis of value, obtained from the invoice price, the price actually paid or payable for the goods imported. The second and third methods use the price of identical or similar goods exported to the same country. The fourth method starts with the re-sale price of imported goods in calculating customs duties. The fifth relies on "computed value," established on the basis of material and manufacturing costs, profits and general expenses for the product.

The code also contains provisions relating to more technical aspects of valuation, such as currency conversion, prompt clearance of imported goods, right of appeal to judicial authorities and publication of laws and regulations. Interpretive notes provide specific guidance.

Two permanent bodies are to be set up to ensure proper implementation. The Committee on Customs Valuation, the main one, is composed of representatives of each party, assisted on a more technical level by a Technical Committee on Customs Valuation under the auspices of the Brussels Customs Cooperation Council.

The Code of Customs Valuation is one in which developing countries are apparently not satisfied with the scope of the differential treatment embodied in the version of the developed countries. They put forward their own alternative text. The two versions have been submitted for acceptance by participants. Both provide for technical assistance to developing countries. The basic differences are the time frame for accepting the provisions and the treatment of related enterprises. According to the text of the developed countries, developing countries may delay application of the code for a maximum of five years, beginning with the entry into force of the agreement, currently fixed for January 1, 1981. They may further delay specific provisions dealing with sales between related enterprises and the valuation method of computed value for a maximum of another three years. The text put forward by developing countries calls for a general delay of 10 years. Furthermore, it gives greater powers to their customs authorities as far as related enterprises are concerned, to enable them to counter potentially unfair advantages stemming from their particular relationship and especially to combat possible dangers from fraudulent invoice practices.

Anti-Dumping Code

This agreement basically aims at securing conformity between the major provisions of the Anti-Dumping Code negotiated during the Kennedy Round and the relevant provisions of the Code on Subsidies and Countervailing Duties. Issues in point are determination of injury, price undertakings between exporters and the importing country, and the imposition and collection of anti-dumping duties.

The developing countries put forward a different text in this area as well, with further amendments to the Anti-Dumping Code relating to their imports into developed countries. Their goal is to see that determination of whether goods are being dumped will not be made by comparing the prices in the internal market and the export market, as is now the general rule, but rather by comparing the export price and the price of a like product when exported to a third country. They argue that this is the way to take into account adequately the special situation of their internal markets.

Both texts have been annexed to the Procès-Verbal for signature. The task of bridging this gap lies ahead.

Agriculture

Agriculture was one of the most controversial areas of the Tokyo Round. The list of subjects where agreement was not reached seems nearly as long as that of successfully negotiated subjects. Areas where agreement was not achieved are as follows.

It was not possible to reach a new International Agreement on Grains (conducted under the auspices of UNCTAD) within the time frame of the Tokyo Round, as originally intended by the participants. Nor was it possible to agree on "some fundamental understandings on the conduct of agricultural trade," designed to provide "a framework for avoiding continuing political and commercial confrontations in this highly sensitive sector in the future," as proclaimed in the Framework Agreement of July 1978. As a final result of the negotiations in this field, participating countries expressed their willingness to define a framework and the tasks to be undertaken in this area as soon as possible and adopted a vague recommendation that contracting parties to the GATT "further develop active cooperation in the agricultural sector within an appropriate consultative framework." /1 These steps do not adequately cover the fundamental difficulties which remain.

In addition to the codes in the non-tariff measures area, described above, which apply to industrial and agricultural products, and the tariff reductions in the agricultural field, agreement was reached on two multilateral arrangements, one covering bovine meat, the other dairy products. The basic provisions are outlined below.

Bovine Meat

International trade in meat in recent years has been particularly prone to fluctuations in supplies and prices. The Arrangement Regarding Bovine Meat aims to promote expansion, liberalization and stabilization of international trade in meat and livestock, as well as to improve international cooperation. The arrangement covers beef, veal and live cattle.

/1 See GATT Doc MTN/27 of April 11, 1979, embodying the final results of negotiations in this field.

Signatory governments agree to establish an International Meat Council within the GATT to review the functioning of the arrangement, evaluate world supply and demand of meat, and provide a forum for regular consultation on international trade in bovine meat. They will provide the Council with information regularly and promptly to enable it to monitor and assess the world meat market overall, as well as each specific product.

The Council, whose decisions require consensus, will be made up of the representatives of the participating countries. It will meet at least twice a year and provide for adequate and speedy consultation for all participants.

Developing countries will have more flexibility as far as the commitment to provide basic information. Further, developed countries have declared their readiness to consider sympathetically requests for technical assistance in developing data collection systems.

Dairy Products

The market of dairy products has also been characterized by unstable conditions. There are already two international agreements, one negotiated in the context of the GATT, which sets floor prices for world trade in skim milk power and in milk fat, the other negotiated under the auspices of OECD, called the Gentlemen's Agreement on Minimum Prices for Whole Milk Powder.

The International Dairy Arrangement of the Tokyo Round will supersede these two arrangements. It covers all dairy products and contains three protocols stating specific provisions which, among other things, cover minimum prices for milk powder, milk fats including butter, and certain cheeses. The arrangement aims at improving international cooperation and creating greater stability in trade in the dairy sector. The major responsibility for achieving this goal is given to an International Dairy Products Council, to be established within the GATT framework. It will consist of representatives of each signatory and will be charged with periodic review of the functioning of the arrangement and with monitoring and assessing the world market overall, using information provided by participants. It will meet regularly at least twice a year, and provide a forum for adequate and speedy consultation.

The dairy sector is the third area where developing countries, not satisfied with the provisions for differential treatment embodied in the text of the developed countries, put forward an alternative one. Both texts give developing countries flexibility as far as the commitment to provide information is concerned, and both call upon developed countries to provide technical assistance. Further, developed countries, within the limits of their possibilities, will undertake to furnish dairy products to developing countries as food aid and have declared their readiness, when applying specific measures in the dairy field, to take the interests of developing countries into account. The main distinguishing feature is that the text of developing countries not only provides for minimum prices, but also established maximum prices.

Framework Group

The results achieved in this group, which was trying to bring the rules of world trade closer into line with the development needs of developing countries, involve four basic issues.

Enabling Clause and Reciprocity

The text here may well be regarded as a historic turning point in international trade relations. For the first time in the history of the GATT, a secure legal foundation has been provided for the application of preferential treatment to developing countries.

To assess the real importance of this clause, it has to be recalled that MFN treatment and reciprocity--that is, that a country is expected to make trade concessions equivalent to those it receives--have been the basic cornerstones of the General Agreement. Though the fact of non-reciprocity vis-a-vis developing countries had been recognized in principle in 1965, when Part IV - Trade and Development - was added to the GATT, /1 nevertheless, under present GATT rules, the implementation of preferential treatment in the tariff field, as provided by the GSP, has to be authorized by a formal decision of GATT contracting parties. This "waiver" removed for a limited time and under clearly defined circumstances the MFN obligation under Article I, GATT, for those parties wanting to secure tariff preferences for developing countries.

The enabling clause does not limit preferential treatment to tariffs the only area where it had been applied on a global basis in the pre-MTN period, but also covers non-tariff measures and regional and global arrangements among developing countries, as well as special treatment for the least developed.

Preferential treatment is delimited by qualifying provisions to ensure that this treatment, designed to help the trade of developing countries, will not result in barriers to the trade of others or impede further reduction or elimination of trade barriers on a MFN basis.

As regards reciprocity, Part IV of the GATT already embodied the commitment of developed countries not to expect reciprocity inconsistent with the needs of developing countries. This principle is restated and further elaborated on by the Framework Agreement. However, the text also contains a graduation clause. The issue of graduation, i.e., whether the granting of preferential treatment should be linked to the real needs of developing countries and gradually modified in accordance with their development, was much debated.

/1 Article XXXVI, paragraph 8.

Developing countries rejected any graduation approach, arguing that it represented "an unilateral and arbitrary manner of discrimination among developing countries." /1 Developed countries, on the other hand, maintained that it was not only economically justified by the widely different needs and levels of development among developing countries, but was also indispensable to avoiding a permanent two-track trading system in world trade./2

Despite its rather mild wording, the text of the Framework Agreement clearly links preferential treatment to development needs. If necessary, preferential treatment may be changed "to respond positively to the development, financial and trade needs" of the respective countries./3

This language and the additional formulation that developing countries would accordingly expect to participate more fully in the framework of rights and obligations under the GATT clearly mean that gradually and in accordance with their development, preferential treatment will be phased out and the countries will be incorporated under the general obligations of the world trading system.

The framework also addresses the developing countries most in need. Developed countries recognize their specific difficulties and commit themselves to exercise utmost restraint in seeking concessions and contributions from them.

Measures Taken for Balance-of-Payments Purposes

Two declarations were drawn up in the context of the Framework Group, one dealing with trade measures taken for balance-of-payments purposes and the other directed toward safeguard actions for development purposes. Both aim at greater flexibility for developing countries than is provided under present GATT rules (especially Articles XII and XVIII). Of particular importance is the scope of possible actions. In the case of balance-of-payments difficulties, existing GATT rules only allow for quantitative restrictions if a country deems it necessary to take restrictive actions to safeguard its external financial position. However, de facto, other protective measures have also been widely used.

/1 See Declaration of Group of 77 on the Multilateral Trade Negotiations, adopted at UNCTAD V in Manila, Part II, No. 5.

/2 See, for a more detailed analysis of this issue, I. Frank, "The Graduation Issue in Trade Policy Towards LDCs," World Bank Staff Working Paper No. 334.

/3 See Framework-results, topic I, paragraph 3c.

The Declaration on Trade Measures Taken for Balance-of-Payments Purposes embodies as a general principle recognition by all participants that restrictive trade measures are generally insufficient and inefficient for maintaining or restoring balance-of-payments equilibrium. At the same time it still emphasizes the special needs of developing countries. Though developed countries have not been prepared to renounce in general the use of restrictive trade measures for balance-of-payments purposes, they declare their readiness to avoid these measures as much as possible and to try to exempt products of export interest to developing countries. As one step toward greater international discipline, all restrictive trade measures, not just quantitative restrictions, are brought under GATT Articles XII and XVIII.

The Agreement on Safeguard Actions for Development Purposes has to be seen in the context of exceptions from different GATT provisions which already are accorded developing countries under present GATT rules (Article XVIII). These allow greater flexibility in meeting essential development needs through applying restrictive trade measures such as tariff protection or quantitative restrictions for balance-of-payments reasons.

The text of the Framework Agreement extends the purposes for which these exceptions can be invoked. Most importantly, they are no longer limited, as in the past, to the establishment of a particular industry, but now cover measures to attain broader development objectives as well. In addition, greater flexibility is assured developing countries under the text regarding procedures. Altogether, the provisions can be expected to facilitate the adaptation of import policies of developing countries to their changing needs and permit more effective use of GATT provisions to meet these needs.

Notification, Consultation, Dispute Settlement and Surveillance

The negotiations in the Framework Group revealed widespread agreement that, as far as present GATT notification, consultation and dispute settlement procedures are concerned, GATT's pragmatic approach has been satisfactory. Participants decided that reaffirming and updating established practices would be more useful than a major revision of the rules or a completely new approach. Consequently, the Framework Agreement tries to bring as much clarity as possible to the dispute settlement provision of the General Agreement. The intent is to make application of these provisions more predictable and to define rights and obligations more clearly.

In summary, procedures regarding notification of trade measures, consultations and rules concerning conciliation and resolution of trade disputes have been refined. Detailed provisions govern the establishment, composition, prerogatives and functions of panels set up to examine complaints. Also

regulated are the submission and handling of panel findings and recommendations and follow-up action by contracting parties.

A number of provisions deal specifically with developing countries, especially regarding consultations. Special procedures for the settlement of disputes between developing and developed countries already agreed upon in 1966 have been reaffirmed.

These commonly agreed upon and strengthened rules for the resolution of trade disputes are important contributions to the maintenance of an open and balanced international trading system. They will be especially beneficial in safeguarding the trade interests of smaller and developing countries.

Export Restrictions and Charges

The agenda of the Framework Group included the issue of access to supplies, which in today's world is certainly no less important than the issue of access to markets./1 However, agreement on new or revised rules to govern export restrictions was not reached.

Instead, the participants limited themselves to an examination of the various provisions of the General Agreement relating to export controls. They drafted an understanding in which they agreed on the need to reassess these provisions in the near future in the context of the international trade system as a whole, labelling this task as one of the priorities to be taken up after the Tokyo Round.

Revision of the International Safeguards System

Though the Tokyo Declaration charged negotiators with examining the adequacy of the multilateral safeguard system "with a view of furthering trade liberalization and preserving its results,"/2 the prospects for attaining these goals and for successfully concluding this key area of negotiations are rather gloomy.

Under present GATT rules dealing with emergency actions relating to imports in cases of market disruption (Article XIX), protective measures can be taken only if evidence is submitted that imports are taking place in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers. Action must be taken without discrimination. Thus safeguard actions cannot be limited to those countries whose imports are causing the injury, but must be applied to all imports of that product. It may be because of these rather stringent provisions that increasing reliance is being placed on bilateral, restrictive agreements with the trading partner concerned, such as Voluntary Export Restraints (VERs) or Orderly Marketing

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/1 For an analysis of the issue at stake, see Fred Bergsten, Completing the GATT: Toward New International Rules to Govern Export Controls, British-North America Committee, 1971.

/2 See Tokyo Declaration, No. 3d.

Agreements (OMAs), instead of invoking Article XIX, GATT. OMAs and VERs are not covered under present GATT rules, and a dangerous circumvention of existing GATT provisions is possible, especially since there is no multilateral surveillance and control to limit the discretion of more powerful negotiating countries.

The issue of selectivity--whether the present non-discriminatory application of safeguard measures should be maintained, or instead be replaced by selective ones--was and still is the major point of contention in the safeguard negotiations. On the one hand, the developing countries in particular have violently opposed selective application on grounds that it would facilitate arbitrary establishment of trade barriers specifically aimed at their exports in sectors where they presently enjoy comparative advantages.

On the other hand, those in favor of selectivity, among which the European Community has taken the lead, claim that limiting trade restrictions to selective sources will minimize their distorting effects on world trade as only a few countries would be affected, and, furthermore, an effective and meaningful safeguard clause would be a necessary corollary for the far-reaching liberalization goals of the Tokyo Round.

Discussion focused on the issue of selectivity. However, important as it is, it has overshadowed the many other issues which are equally important to the formulation of mutually acceptable solutions in this area. They include:

--Whether OMAs and VERs should be covered by the new multilateral safeguard system, a step which seems highly desirable in order to achieve consistency of government attitudes and to ensure that the new, more effective rules cannot be circumvented;

--The definition of precise criteria for governing the application of safeguards, including mandatory time limits and rules assuring progressive liberalization;

--Whether safeguard actions should be linked to domestic adjustment measures, as the developing countries have especially requested; and

--Whether the present provisions on retaliation should be maintained or replaced by rules providing for compulsory compensation to offset the limited retaliatory power of smaller trading partners, especially the developing countries.

The concern of developing countries with respect to the selectivity issue is certainly legitimate. That only a limited number of them actually seem to be exposed to the potential threat of safeguard actions vis-a-vis their exports does not lessen their fears.

While they no longer seem to oppose selectivity in principle, they are not willing to concede any kind of unilateral selective action and require as a basic precondition that any selective safeguard action be taken only with prior authorization by an appropriate multilateral body or with prior approval of the parties concerned. The champions for selectivity, on the other hand, especially the European Community, reject the idea of prior authorization by an international body as unacceptable interference with national sovereignty.

The participants have not reached agreement on any of the issues noted above, although mutually acceptable solutions are of crucial importance for the future conduct of world trade. The key question to be solved seems to be whether it will be possible to arrive at mutually acceptable solutions to prevent potential abuse of selective application of safeguards in the future. This could be accomplished, for example, by establishing strict and precise criteria for the application of the measures and effective international machinery for monitoring and control.

Negotiations are to be continued. It is difficult to ascertain whether and how a final deal can be reached, but given present protectionist pressures, it certainly is essential that all participants in world trade be able to refer to and rely on a commonly agreed upon and realistic set of rules to govern safeguard actions against imports, if they turn out to be unavoidable.

III. THE POSITION OF DEVELOPING COUNTRIES

Developing countries have repeatedly and strongly stated their disappointment with the negotiations in terms of both procedure and substance, and have been unenthusiastic about signing the results. Further, at the time the Procès-Verbal was opened up for signing in April 1979, the developing countries were preparing for the Fifth UN Conference on Trade and Development, scheduled for May 1979 in Manila. The meeting was to address trade matters, especially the issues of protectionism and MTNs among its major topics. That no member of the Group of 77 (except Argentina) was prepared to accept the final package at this time was explained as tactical: with UNCTAD V coming up, the developing countries did not want to be restricted on any major issue by signing the results of the Tokyo Round. In addition, it may well be assumed that internal solidarity of the group of 77 played a major role.

Developments at UNCTAD V

In their stand on MTNs, the developing countries may have been attempting to achieve in the framework of UNCTAD V what they did not achieve in more than four years of GATT negotiations. They adopted the very firm position/1 that the developed countries should immediately rectify the existing situation, before the final MTN instruments were adopted, and that participants in the Tokyo Round should negotiate until the objectives and commitments of the Tokyo Declaration relating to developing countries were fully realized. They provided precise demands in all areas of negotiations.

Developed countries argued no less firmly that the negotiations for all but two areas, which were ongoing, had been formally concluded by the Procès-Verbal and that bargaining could not be reopened. To do so could unravel what had been achieved and risk complete failure. Though they acknowledged this was not the case with respect to the still unresolved issue of safeguards, they opposed substantive discussion at UNCTAD V on grounds that UNCTAD should not interfere with ongoing GATT negotiations.

It was impossible to bridge the wide gap between the developed and developing countries on the MTN issue. The negotiations concluded with only a procedural decision—a request that the UNCTAD Trade and Development Board make a global evaluation of MTNs. This request was accompanied by statements in which developing as well as developed countries put their views on record.

/1 See the relevant parts of the Arusha Declaration.

Concerns of Developing Countries

The Declaration on the MTN adopted by the Group of 77 in Manila/1 is the most recent and comprehensive statement by the developing countries on the MTN question. The major criticisms expressed there provide an indication of possible future attitudes toward the Tokyo results.

According to the Declaration, the criticism of the developing countries focuses on two basic subjects, one of procedure, one of substance. As far as procedure is concerned, they complain that the multilateral character of the negotiations was compromised and that they had been unable to participate effectively.

As far as substance is concerned, their position is that the negotiations failed in all areas to meet the objectives of the Tokyo Declaration. In particular, the offers for differential and preferential treatment were regarded as disappointing.

Among the specific concerns listed in the Declaration are:

-- In the tariff field, the MFN cuts were seen as resulting in an erosion of the preferential margins provided developing countries under the GSP; many products of export interest to them were either excluded from the negotiations or received insufficient cuts; and the problem of tariff escalation remained unsolved./2

-- There was no liberalization on quantitative restrictions or measures having a similar detrimental effect such as VERs or OMAs, particularly in the fields of agriculture, textiles and leather goods.

-- Tropical products continue to face trade barriers in developed countries and, further, not all offers of the developed countries have been implemented.

-- The importance of export and other subsidies for achieving the social and economic objectives of developing countries and for overcoming the structural disadvantages of their economies was not sufficiently reflected in the Subsidies Code.

-- The concept of "graduation" introduced into the negotiations by developed countries would allow them to discriminate among developing countries arbitrarily.

/1 See Resolution of the Group of 77 to TOP 9B, adopted June 3, 1979, to be published in the official record of the Conference.

/2 See, for an evaluation of these two latter arguments, part II, pp. 5,6.

--In relation to safeguards, the specific demands of developing countries must be reflected in the language of the code; in particular, no safeguard action should be used to discriminate against exports from developing countries on grounds of low costs or prices.

Evaluation of the Concerns

Procedural Issues

Developing countries have a valid point in terms of the conduct of the negotiations and the lack of multilateralism. The predominant approach, especially in the final phase, seemed to be to work out solutions bilaterally or trilaterally among the major trading partners (US, EC, Japan), and it had a severe negative impact on transparency and participation. Smaller industrialized countries also complained bitterly about the lack of multilateralism, though they still accepted the results.

On the other hand, it has been argued that negotiations between the "big two or three" were indispensable to maintaining the momentum of the negotiations and striking the final balance successfully.

It would be mere speculation to assume that a policy of more information to and greater participation by developing countries would have altered their present negative attitude. Negotiations, after all, should be judged on their final results. These are addressed below.

Substantive Issues

To assess the concerns of developing countries in relation to the MTN results, a distinction must be made between their complaints over the results in general and their belief that, contrary to the Tokyo Declaration, they received inadequate differential treatment.

As regards the general criticism such as uneven distribution of tariff reductions or lack of progress on quantitative restrictions, the results certainly did not meet all initial expectations. Again, this problem is not unique to the developing countries, but has repeatedly been noted by the developed countries, too. A major shortcoming admitted by all participants is that it was not possible to achieve agreement in all important areas. The task, for example, of establishing a general framework for trade in agriculture or new rules to govern export controls had to be shifted to the post-MTN period. It is as yet unclear whether a mutually acceptable solution to the divergencies existing in the safeguards area can be reached.

Finally, developing countries are right in stating that the results relating to quantitative restrictions were disappointing. In fact, the only visible progress seemed to be the multilateral rules on how to administer them correctly./1

Signatory countries, although the results embodied in the Procès-Verbal did not meet all their expectations, accepted that this is a characteristic of negotiations in general, and especially of multilateral ones, which involve extensive give-and-take, with the overall goal of reaching a mutually acceptable balance. While it might be argued that the results represent the lowest common denominator for all participants, politically more far-reaching results and more progressive liberalization were not possible given the time constraints on the negotiations./2

The question, therefore, should not be how or whether the results can be further improved. Rather, it is whether the final balance should be accepted as it stands--or complete failure of the negotiations be risked by not signing.

The developing countries have focused their complaints on the lack of meaningful results favoring their interests. In analyzing this criticism, it is useful to distinguish between results in the tariff field and in other areas.

Differential treatment of developing countries with respect to tariffs was already being practiced before the Tokyo Round. Their main complaint was that the MFN reductions achieved in the Tokyo Round would result in an erosion and diminution of existing preferential benefits under the GSP. In the other areas, the complaint is that no meaningful differential treatment in their favor was accomplished at all, despite the political commitment embodied in the Tokyo Declaration.

The GATT study, in assessing the effects of the tariff negotiations on the GSP,/3 concludes that for industrial products GSP coverage would be marginally reduced because MFN duty-free concessions affect US$0.8 billion of imports, out of which US$0.4 billion were previously covered by the GSP. On the other hand, duties on industrial supplies not benefitting from the GSP would

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/1 Agreement on Licensing, dealt with on p. 11.

/2 Under the US Trade Act, the US negotiating power was scheduled to expire in 1980.

/3 See GATT study, pp. 123-127, for more details.

in general be reduced significantly, whereas agricultural products supplied by developing countries would benefit from increased MFN duty-free admission and increased GSP coverage. /1 The criticism of developing countries, therefore, seems more inspired by the theoretical dispute of GSP vs. MFN reductions/2 than by factual evidence.

From the point of view of policy, it should be stressed that the underlying rationale for differential treatment for developing countries in the tariff field was, from the very beginning, the clear and common understanding of the donor countries that the GSP should in no way impede further tariff reductions on an MFN basis. This problem is inevitable if beneficiaries can legitimately claim the maintenance of existing preferential margins and oppose further MFN cuts on the grounds that they would erode existing preferential benefits for specific trading partners.

The major counter-argument to the criticisms of developing countries with respect to tariffs, however, is the actual non-reciprocity of concessions on the part of developed countries, a point developing countries have tended to overlook in their public statements. According to the MFN rule, all contracting parties to the GATT are entitled to receive the benefits of the Tokyo Round without having to reciprocate with comparable reductions. This clearly is a major benefit for developing countries since they, unlike the developed countries that subscribed to the formula approach, either offered no concessions or limited their reductions to selected items.

It might be argued that developing countries, given the present structure of their trade, will not, and certainly not with the same effect, be able to make immediate use of the improved opportunities. However, the tariff cuts do represent future opportunities. Thus, the world-wide reduction of tariff barriers achieved in the Tokyo Round is a valid example of the benefits that

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/1 According to the GATT study, p. 123, the following picture emerges:

	AGRICULTURE		INDUSTRY	
	Pre-MTN	MTN Change	Pre-MTN	MTN Change
TOTAL	$23.3 billion		$45.9 billion	
m.f.n. free	8.1	+1.2	17.0	+0.8
m.f.n. dutiable	15.2	-1.2	28.9	-0.8
GSP Covered	4.1	+0.8	18.5	-0.4
dutiable	1.9	+0.7	1.8	-
duty-free	2.2	+0.1	16.7	-0.4

/2 This paper does not address the well-known and controversial issue of whether improvement in the GSP or of further MFN reductions would serve the long-run interests of developing countries better, to which considerable attention has already been devoted. For a detailed analysis, see Baldwin and Murray, "MFN-Tariff-Reductions and Developing Countries Trade Benefits under the GSP." The Economic Journal, No. 82, pp.30-46, and Tracy Murray, Trade Preferences for Developing Countries (London, 1977)

developing countries can achieve in trade, not only through special and differential treatment (e.g., further improvement of existing GSP schemes), but also--and perhaps more importantly--by a general improvement in international trading conditions, which is going to benefit all trading partners, including developing countries.

As regards the criticism concerning the insufficient scope of preferential treatment given the developing countries in the different codes, the provisions, particularly for the least developed, are generally phrased vaguely and only in permissive clauses, that is, instead of giving developing countries a legal claim to differential treatment, the matter is left entirely to the discretion of donor countries. They will decide whether and to what extent they want to apply existing provisions and respond positively to the mildly formulated appeal "to take into account the interest of developing countries."

It can be argued in defense, again, that an attempt was made in the different codes to address the needs of developing countries./1 That a full-fledged set of two-track rules did not emerge for all fields of the negotiations reflects the undeniable fact that preferential treatment in the trade area is inherently limited. The Tokyo Declaration explicitly recognizes this. Though recognizing the importance of special and more favorable treatment for developing countries, the Declaration limits its actual application to areas where this is "feasible and appropriate." /2

For example, in some areas differential treatment and more favorable rules for developing countries had to be limited to either technical assistance in fulfilling the obligations of the codes (which all provide for) or to greater flexibility in applying the new rules (as the Code on Customs Valuation provides for). It is a widely shared opinion that differences in substantive provisions would have run counter to the major goals for a harmonized and uniform set of international rules to benefit all parties.

The overall goal of the negotiations--one important to both developing and developed countries--clearly was directed toward maintaining and improving the efficiency of the world trading system. The multilateral codes agreed upon without doubt are important contributions to this goal. They update, clarify and refine existing GATT rules.

To secure active participation by developing countries in the GATT and to respond attentively and positively to their particular concerns is a major task to which all participants from developed countries subscribed. It might be asked whether the best way to achieve this goal is through the perfectionist approach of the developing countries to establish preferential treatment in all areas. To judge the GATT results only or primarily in terms

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/1 See pp. 7-17.

/2 See Tokyo Declaration, Paragraph 5.

of what they provide in the way of special treatment is too narrow. Aid to developing countries and trade are different though complementary subjects. The GATT is an institution and a legal instrument for governing the conduct of world trade. While it has a major responsibility toward developing countries, to focus on this function, as developing countries seem to do, is wrong. The GATT is only one institution--and certainly not the one with primary responsibility-for meeting the demands for aid of developing countries.

The issue at stake in the GATT negotiations is much broader--it is the importance the results have in terms of the maintenance and improvement of the world's open trading system against the still prevailing and perhaps even increasingly protectionist pressures which characterize the present economic environment. It is in this context that the complaints of developing countries have to be assessed and the question of whether they will lose or gain from the results achieved have to be answered. The final section of this paper addresses those issues.

IV. IMPLICATIONS FOR THE FUTURE CONDUCT OF WORLD TRADE

General Assessment

Although quantitative assessment of the Tokyo Round will have to await actual implementation of the new codes, one basic result is indisputable. There was no viable alternative to the agreements expressed in the Procès-Verbal, given the desire to maintain the liberal trading system as incorporated in the GATT. Despite their shortcomings, the results achieved are clearly preferable to a failure of the negotiations. The fact that it has been possible to conclude the negotiations at all successfully and to implement their ambitious and far-reaching goals in a difficult economic environment, characterized by prolonged uncertainty that strained all economies and revived and intensified protectionist pressure world-wide, can be regarded as a major achievement.

The Tokyo Round agreements may be important not so much for what they will accomplish as for what they will prevent. They represent the political willingness of participating countries to maintain and improve an open and free trading system. This approach has influenced decisively and will continue to affect positively the political climate. The agreement incorporates consensus among participating governments that this system must be further developed by maintaining its basic foundations in a way that will enable the international trading community to respond better to the manifold challenges of the international economic environment.

The codes have particular importance in this respect. Though they might have been more specific in detailing acceptable and non-acceptable practices, they are still important first steps. They provide for institutional enforcement by the GATT and serve as an effective barrier against unilateral protective actions. It is the improved discipline achieved through the codes and the strengthened institutional weight and structure of the GATT that clearly offer greater benefits, especially for the weaker members of the international trading community, than do any specific provisions dealing with differential treatment in favor of developing countries in the different subject areas of the negotiations.

By subscribing to the international discipline incorporated in the codes and especially to the provisions for international surveillance and control, governments have declared their willingness to limit their national economic sovereignty. This analysis casts the criticism of developing countries in a different light. Clearly the Tokyo Round results have to be measured in relative and broader terms.

Implications for Developing Countries

The impact on developing countries of the Tokyo Round is still uncertain. Since April 1979 only Argentina has signed the Procès-Verbal, although 10 countries have signed the tariff protocol./1 Does their negative position in Manila reflect a determination never to accept the results? Are they abstaining only temporarily to build up possible bargaining power for further concessions from developed countries, especially in the field of safeguards, where negotiations are not yet concluded, or in the areas of customs valuation, anti-dumping and dairy products, where alternative texts exist? Is their unanimously negative attitude at UNCTAD V the genuine opinion of all members of the Group of 77 or--as bilateral contacts with individual developing countries suggest--will some of them sign the agreement because their economic performance and actual or potential position in world trade will give them better opportunities to participate actively in the international trading community?

To answer these questions, it is useful to look at two others:

--Whether developing countries, given their dissatisfaction with the results, have a realistic chance of reopening negotiations;

--And, if not, whether they will lose or gain from accepting the results as they now stand.

The first question can only be answered in the negative. It cannot reasonably be expected that the results achieved after more than four years of negotiations will be opened up again. Further, to open only one part of the package would automatically lead to the unravelling of all issues and endanger the delicate balance as a whole. Signatories of the Procès-Verbal have made it clear that the negotiations have been concluded as spelled out by the Procès-Verbal. Finally, a change in this position is all the more unrealistic because one major participant, the US, has already incorporated the results in its internal legislation.

Since the package achieved in April has to be regarded as the maximum possible result, the only viable and realistic approach is to accept it as such. The question, therefore, is whether it is in the interest of developing countries to sign the Procès-Verbal.

The failure of all except Argentina to sign leaves a series of serious legal, political and institutional questions involving the relationship between the existing GATT rules and the MTN agreements. For example, will the benefits of the Tokyo Round apply only to trade relations between signatories? This situation would limit the improvements in MTNs to a small number of industrialized participants, while the existing provisions of the GATT would continue to apply to all other countries.

/1 Argentina, Chile, The Dominican Republic, Egypt, Indonesia, Israel, Ivory Coast, Jamaica, Singapore, Zaire. See GATT document L/4914/Add. 1 of January 1, 1980.

In addressing this issue, it is useful again to distinguish between tariffs and other areas. As far as tariffs are concerned, reductions are applied on a MFN basis. Consequently, contracting parties to the GATT or participating parties enjoying MFN treatment on the basis of bilateral agreements will benefit from reduced future tariff rates, even if they do not submit matching offers, as was the case with the developing countries. Non-reciprocity for developing countries in the tariff field--which, as described in previous parts of this paper, was a specially designed means of preferential treatment--might even act as a disincentive in getting them to accept the results. If they achieve the same benefits anyway, why should they take the major political step of signing the Procès-Verbal?

A different picture emerges with respect to the multilateral codes, especially those in the area of non-tariff barriers, the most important of the negotiations. The issue here is complex. The codes are meant to update, improve and streamline the existing provisions of the GATT. They are not --and this must be stressed--intended to change the rules of the General Agreement as such. To do so would require following the precise procedures laid down in the GATT./1 Accordingly, signatories to the agreements have always maintained that the new and improved rules governing international trade are to be regarded legally as additional rules, creating rights and obligations only for signatories. The developing countries have maintained, to the contrary, that the codes in fact change the rules of the General Agreement and therefore require their formal consent.

It goes beyond the scope of this paper to explore the legal issues in detail. However, according to the provisions of the codes, any institutional participation, such as membership on a committee and all the functions derived therefrom, is limited to signatories. Developing countries, by not signing the agreements, will not be able to participate institutionally.

Given the structure of the various codes and the central roles they give to the committees of signatories, the disadvantage would be substantial. The committees can be expected to play important roles. The central functions of monitoring current and past developments, assessing whether parties have acted in compliance with the rules, the major reviews to be conducted at regular intervals, and the concrete possibility of broadening the scope of the agreements or reviewing their rules in the

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/1 Article XXX, GATT: for amendments to certain basic rules of the GATT, the general requirement is acceptance by all contracting parties; for other amendments, a two-thirds majority is foreseen. Even if acceptance by the required majority is met, the new amended rules would--as is the basic rule for changing existing international treaties--only become effective for those contracting parties which have accepted them and could not impose changed rules or new and additional burdens on signatories of the initial agreement without or against their will.

light of past experience give them a critical function in the further conduct of trade in each particular area and a major responsibility for future refinement of the rules through the development of a consistent body of case law. By not signing, developing countries would be deliberately giving up the important influence they could have through a coordinated and united attitude.

The other issue at stake for these countries is the material treatment provided for in the codes. Signatories to the agreements have declared their firm and common intention to follow a "conditional-MFN-approach." This means that as a general rule, the material benefits of the codes will be extended to participants only. The Agreement on Subsidies and Countervailing Duties is an illustrative example, according to which only participants will benefit from the prior injury test./1

It may be argued that in some areas uniform application of the new rules on a de facto basis to all commercial transactions, regardless of specific adherence to the codes, may be warranted simply for reasons of practicality and efficiency. Though this may be the final result in some areas--e.g., customs valuation--the difference between de facto and de jure treatment is important. Legally the rights and obligations of the codes are limited to the parties of these agreements, whereas the relations of signatories and non-signatories (i.e., basically developed and developing countries) continue to be governed by the existing rules of the GATT. /2 Consequently, non-signatories will not be entitled to claim the treatment provided for in the codes, but will be dependent on whether signatories are prepared to extend it to non-signatories.

In conclusion, by continuing their present negative attitude, developing countries would not only be giving up important opportunities for institutional participation in the management of world trade, but also would lack a secure legal basis for claiming the material benefits achieved in the Tokyo Round. Clearly they would gain by signing the results.

/1 I.e., the commitment--of principal importance to the US--to apply countervailing duties only after an injury test has been met.

/2 The only area where this might be regarded as beneficial for developing countries is the revision of the safeguard clause, in case no adequate check-and-balance system against future selective action is worked out. However, particularly in this field, any kind of legal reasoning about the continuing validity of Article XIX might well be overriden in subsequent political practice for reasons of internal domestic protection.

There is an additional and no less important political and institutional argument. The situation, as it now stands, creates a severe danger of a permanent split in the world trading system. On the one hand are trade relations between signatories to the agreements, which, though small in number, nevertheless account for the majority of world trade in quantitative terms. They will be governed by the new set of international rules agreed upon in the Tokyo Round. On the other hand is the large group of developing countries, all of which except one will be subject to the pre-MTN trade rules. This situation would seriously throw into question the whole future of the international trading system as it is presently embodied in the GATT, which has the double function of being the legal basis for world trade and its operational and institutional center. It certainly would also affect the present delicate balance between UNCTAD and GATT in the field of trade, if developing countries decided to intensify and strengthen the future role of UNCTAD as a more appropriate forum--in their view--for addressing their interests in the trade field.

In conclusion, when weighing the pro's and con's of the results achieved, a realistic approach has to be adopted--the positive results of the negotiations have to be accepted so that they can be built upon by early and faithful implementation of the agreements and by making use of the review and adjustment procedures already foreseen to refine and extend them. While the Tokyo Round certainly has not solved all problems, it undoubtedly has provided useful tools for better mastering them in important areas.

Further, realistically the present far-reaching round of negotiations will not immediately or in the near future be followed by another comparably comprehensive effort. In today's economic environment there is a growing need for a process of common understanding, especially between developed and developing countries, to secure meaningful and constructive international cooperation. The agreements achieved in the trade field offer that chance, provided participants are willing to make full and faithful use of the opportunities.

ANNEX A

COUNTRIES PARTICIPATING IN TOKYO-ROUND OF TRADE NEGOTIATIONS 1/

*Algeria
Argentina
Australia
Austria
Bangladesh
Benin
*Bolivia
*Botswana
Brazil
*Bulgaria
Burma
Burundi
Cameroon
Canada
Chile
**Colombia
Congo
*Costa Rica
Cuba
Czechoslovakia
Dominican Republic
*Ecuador
Egypt
*El Salvador
*Ethiopia
European Communities
and Member States
Belgium
Denmark
France
Germany, Fed. Rep. of
Ireland
Italy
Luxembourg
Netherlands
United Kingdom of
Great Britain and
Northern Ireland
Finland
Gabon
Ghana
Greece
*Guatemala
Haiti
*Honduras
Hungary
Iceland
India
Indonesia
*Iran
*Iraq
Israel
Ivory Coast
Jamaica
Japan
Kenya
Korea, Rep. of
Madagascar
Malawi
Malaysia
*Mali
Malta
Mauritius
*Mexico
New Zealand
Nicaragua
Nigeria
Norway
Pakistan
*Panama
*Papua New Guinea
*Paraguay
Peru
**Philippines
Poland
Portugal
Romania
Senegal
Singapore
*Somalia
South Africa
Spain
Sri Lanka
*Sudan
*Swaziland
Sweden
Switzerland
Tanzania
*Thailand
Togo
*Tonga
Trinidad & Tobago
**Tunisia
Turkey
Uganda
United Kingdom (on behalf of
dependent territories)
United States of America
Uruguay
*Venezuela
*Viet-Nam
*Yemen, Democratic
Yugoslavia
Zaire
*Zambia

TOTAL 99

1/According to the list published by the GATT Secretariat.

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