

TRADE POLICY DEVELOPMENTS

THE URUGUAY ROUND RETURNS

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It appears that the Uruguay Round of multilateral trade negotiations under the *General Agreement on Tariffs and Trade (GATT)* is back on track following a six-month hiatus. Although the negotiations stalled last December because of an impasse over agriculture subsidies, world leaders have signalled their desire to conclude a successful agreement and have returned to the bargaining table. While most countries have expressed their hopes that the Round will conclude by the end of the year, the broad reforms and technical details that remain before the negotiations finish will likely delay the Round well into 1992.

The resumption of the Uruguay Round talks was contingent upon the occurrence of two events: the extension of fast track negotiating authority for President Bush and an indication from the European Community (EC) that it would be prepared to cut agriculture subsidies.

Fast Track

Under the Constitution of the United States, the President has authority to negotiate international agreements, but Congressional approval is required for necessary implementing legislation. Historically, the Congress' participation in trade agreements has involved amending agreements which would then require renegotiation by the President (e.g., the 1967 Kennedy Round). Fast track authority gives the President more credibility at the negotiating table by limiting Congress to a yes or no vote without the authority to change the deal negotiated by the President. The *GATT* negotiating parties were well aware that U.S. negotiators would be unable to make binding promises at the bargaining table

without fast track (which was set to expire in June). However, after much ado in May, Congress extended fast track for another two years, thus returning the United States to Geneva prepared to conclude the Round. The authority also permits bilateral and multilateral agreements such as the *North American Free Trade Agreement* and the *Multilateral Steel Agreement*.

Agriculture Reform

Upon the passage of fast track, all eyes turned toward Brussels for some indication that the EC would be willing to cut agriculture supports. That indication came in late May when the EC agriculture ministers agreed to reduce subsidies to eleven Common Agriculture Policy (CAP) programs including beef, dairy products and grains.

Throughout the Uruguay Round negotiations, the EC stood firmly behind its CAP program. The EC's agriculture proposal, submitted just prior to the impasse in the Round in December, would have reduced domestic subsidies to agriculture by thirty per cent over ten years and would not have touched export subsidies. Most countries, including Canada, the United States and Australia, sought much deeper reductions (ranging from seventy to ninety per cent) in both domestic and export subsidies.

In addition to the recent cuts, a CAP reform proposal is expected to be presented to EC member states in June. EC Agriculture Minister Ray MacSharry noted, however, that the proposed reforms are separate and distinct from the *GATT* negotiations and are based upon internal reasons including the fact that CAP has reached its budgetary guidelines, the need to deal with environmental problems caused by CAP and the problem of surplus production of certain goods. The EC has sent out mixed signals as to the extent that CAP will be reformed. MacSharry has stated

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that while there will be substantial reduction in prices, farmers would be fully compensated for their loss of income, which could lead to increased expenditures under CAP. However, EC External Affairs Commissioner Frans Andriessen publicly commented that the CAP was "no longer the solution for the problems that the EC is facing", GATT negotiators are hopeful that the EC will reform CAP broadly to bring its position on agriculture reform more in line with the views of most other countries.

The Round received a much needed breath of life at the meeting of the Organization for Economic Cooperation and Development (OECD) in early June. Ministers from the 24 member nations agreed that the Uruguay Round had the highest priority on the international economic agenda. They called for a "substantial and comprehensive" conclusion to the Round by the end of the year and agreed to achieve "specific and binding commitments" in the three areas of agricultural trade that stalled the Round: domestic subsidies, export subsidies and market access for farm products. The OECD meeting was reportedly held in a positive atmosphere and conciliatory tone, quite different from the air of failure in Brussels when the Round collapsed.

While the OECD ministers called for the Round to conclude by the end of the year, it is highly unlikely that the numerous technical details can be resolved in only six months. As the agriculture talks headed toward their December impasse, the other negotiating groups virtually ground to a halt while awaiting a resolution in agriculture. Very important issues remain to be resolved in the services, intellectual property, textiles and non-tariff barriers sectors. Furthermore, EC sources claim that the internal CAP reform package will be so extensive that it probably cannot be adopted before the end of the year. The success of the Round may well be tied to the result of the CAP reform. Difficult political decisions lie ahead and GATT sources still believe that government officials at the highest levels will need to be directly involved in the negotiations in order to overcome the broad differences that remain to be resolved.

CANADA-U.S. FREE TRADE AGREEMENT

Pork Extraordinary Challenge

The first Extraordinary Challenge Committee established under Chapter 19 of the *Canada-U.S. Free Trade Agreement (FTA)* affirmed the decision of the binational panel in the countervailing duty injury case against fresh, frozen and chilled pork from Canada. Stating that the allegation for extraordinary challenge failed to meet the narrow grounds for extraordinary challenges, the committee upheld the panel's second remand which led to the International Trade Commission finding of no injury or threat of injury to the U.S. domestic industry. The panel ruling lifts a countervailing duty order against imports of pork from Canada that would have collected approximately \$18 million (U.S.) in countervailing duties annually.

North American Free Trade Agreement Negotiations

On June 12, Canadian Trade Minister Michael Wilson, Mexican Secretary of Commerce Jaime Serra Puche and United States Trade Representative Carla Hills met in Toronto to launch the *North American Free Trade Agreement (NAFTA)* negotiations. The ministers established six negotiating groups (market access, trade rules, services, investment, intellectual property and dispute settlement) and 14 subgroups as the basis for negotiations. Trilateral meetings are set to begin in July and a follow-up ministerial meeting will be held on August 20 in Seattle.

UNITED STATES TRADE LAWS

Antidumping Investigation of Minivans from Japan

On May 31, General Motors Corp., Ford Motor Co. and Chrysler Corp. filed an antidumping duty petition against minivans from Japan. The petition alleges that Toyota and Mazda are selling minivans at less than fair value in the United States and that those sales injure the U.S. industry. Alleged dumping margins range from 5.4 per cent to 30.5

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per cent. The Department of Commerce initiated an investigation on June 20 and the International Trade Commission (ITC) will issue its preliminary injury determination by July 15.

Antidumping Investigation of Coated Groundwood Paper from Belgium, Finland, France, Germany and the United Kingdom

The International Trade Administration issued a preliminary determination that imports of coated groundwood paper from Belgium, Finland, France, Germany and the United Kingdom are being sold at less than fair value. The preliminary dumping margins are 41.67 per cent for Belgium, 27.58 per cent for Finland, 31.49 per cent for France, 31.74 per cent for Germany and 33.9 per cent for the United Kingdom. Commerce will issue its final determination by August 20, 1991.

Antidumping Investigation of Fans from China

The ITA has preliminarily determined that ceiling and oscillating fans from China are being sold at less than fair value. The dumping margins range from 4.16 per cent to 7.05 per cent. A final determination is expected on August 12, 1991.

Antidumping Duty Order on PET Film from Japan and Korea

The Department of Commerce has issued antidumping duty orders against imports of PET film from Japan and Korea following an ITC final determination that the imports materially injure the U.S. industry. The U.S. Customs Service will collect antidumping duties on all imports of PET film in the amount of 3.3 per cent to 14 per cent for Japan and 3.38 per cent to 4.88 per cent for Korea.

Antidumping Investigation of Sheet Piling from Canada

The ITC has issued a unanimous determination that imports of sheet piling from Canada do not injure the U.S. industry. The decision terminates the antidumping investigation and precludes the collection of antidumping duties on imports of Canadian sheet piling.

INTERNATIONAL TRADE LAW

The following articles are taken from "Update", a newsletter published by the International Bar Association's Business Law Section (Committee on Antitrust and International Trade Law.)

AUSTRALIA

Customs Tariff

The Australian government has announced an extension of the programme of phased reductions in general tariff rates which are to be reduced in stages to a general tariff ceiling of 5% by July 1, 1996.

Preferential tariffs on imports from Singapore, Taiwan, Hong Kong and the republic of Korea are to be removed in stages commencing in 1992. The tariffs that apply on July 1, 1992 will be maintained until the general reductions bring general tariff rates down to their levels; the general rate will then apply.

There are notable exceptions to the general tariff reductions. For the automotive industry the intention is to reduce rates by 2.5% on motor vehicles and original equipment and components, to a level of 15% on January 1, 2000. Tariffs on replacement components will be kept at 15% from 1992 to 2000. In the textile clothing and footwear industries, tariffs will also be reduced to rates varying between 10% and 25% by July 1, 2000.

Anti-Dumping Law

The government has announced immediate changes to anti-dumping procedures. It intends to speed up the processing of complaints so that provisional measures (security for duty) will be available to local industry complainants 40 days earlier than at present. Provisional measures (security for duty) will also be calculated on the basis of the provisionally assessed dumping margin rather than any calculated non-injurious FOB export price.

A Senate inquiry into anti-dumping laws and their impact is continuing, notwithstanding these changes.

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CANADA

Financial Services Annex

In early December 1990, Canada tabled at the GATT a draft Annex on Financial Services for inclusion in the proposed General Agreement on Trade and Services. The draft Annex is intended to stimulate the GATT Uruguay Round negotiations with respect to liberalization of trade in the financial services sector. Japan, Switzerland and Sweden supported the draft Annex, which is intended to serve as a structure for promoting effective nondiscriminatory treatment of providers of financial services such as banking and insurance, and increased liberalization of financial services markets.

North American Free Trade Agreement

A *North American Free Trade Agreement* (NAFTA) to establish a free trade arrangement involving Mexico-U.S.-Canada continues to move forward. Such a tripartite agreement would create the largest free-trade zone in the world (combined GNP of \$5.5 trillion), larger even than the European Community (combined GNP of \$4 trillion). In terms of market size, the three NAFTA countries represent a market with a population of more than 350 million as compared with an EC market of 324 million.

The scope of negotiations is expected to include general tariff reduction (rules of origin), dispute settlement, automobile and parts manufacturing, petrochemical production, technical barriers to trade, insurance, financial services, transportation and agriculture.

Conspicuously absent are the more sensitive issues of energy (which in Mexico involves ownership issues and constitutional issues in the Mexican Constitution) and labour mobility (an issue seen as an immigration issue, not a trade issue).

EUROPEAN COMMUNITY

Commission Procedure

Reform of the Commission's procedure has been called for by almost everyone concerned,

except the EEC Institutions. In this regard, two Court opinions should be noted: in the case concerning urea from Saudi-Arabia, Advocate General Darmon criticized the way in which the Commission is carrying out investigations. Complete refusal of access to confidential files to the parties and even their lawyers was said to be unsatisfactory. A suggestion to allow lawyers access under some restraining order (similar to the USA) may now be discussed. The Darmon opinion is in contrast to another opinion recently given by Advocate General Mischo, who considers that the denial to grant a consumers' association access to all even non-confidential files is justified. The judgments are expected shortly.

Disputes

For the first time, Japan faces an investigation under the New Commercial Policy Instrument with regard to its system of port charges, which are said to be discriminating against EC shipowners, and thus constitute an illicit trade practice.

Definitive anti-dumping duties have been imposed on barium chloride from China, certain soldered tubes of iron and steel from Turkey and Venezuela, and on EPROMs as well as on tungsten halogen lamps from Japan.

Procedures concerning ferro-chromium from Albania and USSR and salmon from Norway have been closed without measures. Procedures opened include imports of DRAMs from Korea, and thermal (fax) paper from Japan.

Provisional duties have been imposed on aspartame (sweetener) from Japan and the USA.

GATT

Council Meeting

The GATT Contracting Parties have engaged in intensive debate over a proposal by the EFTA countries to activate a Working Party to study the interlinkages between trade and the environment. Many members supported quick action on this subject at a March Council meeting while other members preferred to wait for the results of the 1992 UN Conference on Environment and

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Development. Also at that meeting, Brazil requested a panel to examine its accusation that the United States had violated the MFN principle by discriminating against Brazilian non-rubber footwear in the imposition of countervailing duties. The United States objected, saying that a panel in the Subsidies Committee had already found the U.S. action to be in conformity with the Subsidies Agreement. It was expected nonetheless that the Council would agree to the establishment of a panel at its April meeting.

Signatories in the Subsidies Committee established a panel during the March Council meeting to examine a U.S. complaint that a German exchange-rate insurance scheme for Airbus had violated the Subsidies Agreement. The EC had requested unsuccessfully that the dispute be heard by a panel under the Committee on Trade in Civil Aircraft and, later, that special terms of reference for the panel include reference to the Civil Aircraft Agreement.

MEXICO

Mexico is revising internal domestic legislation on intellectual property protection as a result of the current free trade talks between Canada and the United States.

The initiative presented to Congress by the President earlier this year now protects trade secrets. This inclusion is intended to give more security to foreign investors on their intellectual property rights. New developments in this field are expected during the coming months and may provide the same protection for intellectual property as is offered by developed countries. The initiative is expected to be approved sometime before the end of 1991 during ordinary sessions of the Congress.

UNITED STATES

Bilateral Trade Agreements

On January 23, 1991 the U.S. signed a bilateral trade agreement with the Mongolian People's

Republic, providing for MFN treatment, expansion of trade, protection of intellectual property rights, and other matters. The U.S. Congress must approve the agreement.

On April 22, 1991 the U.S. and Bulgaria signed a bilateral trade agreement providing for MFN treatment, intellectual property protection, and facilitation of business in Bulgaria. The U.S. Congress must approve the agreement.

On April 8, 1991 the U.S. signed a framework trade and investment agreement with Venezuela. This is another step in President Bush's Enterprise for the Americas Initiative, which could eventually produce a free trade agreement covering North, Central and South America.

U.S. Countervailing Duty Law

The U.S. Court of Appeals for the Federal Circuit upheld the practice of the Department of Commerce of imposing countervailing duties against foreign domestic subsidies only if they meet the "specificity test". Under the interpretation of U.S. law used by the Department, foreign domestic subsidies are not countervailable if they are generally available in law and in fact. In contrast, foreign export subsidies are countervailable regardless of their scope. The Court held that this is a reasonable interpretation of the U.S. countervailing duty statute, is not inconsistent with U.S. judicial precedent, and is in keeping with the Congressional intent to conform U.S. law to the GATT. The Court also upheld the Department's dual requirement under the specificity test that either the domestic subsidy is provided by its terms to a particular enterprise or group of enterprises, or, even if nominally generally available to all industries, the benefit nevertheless results in a subsidy only to specific enterprises or industries. In the specific case at hand, the Court upheld the Department's finding that the sale of natural gas at controlled prices by the Government of Mexico is generally available and therefore not countervailable.