

# COMMISSION OF THE EUROPEAN COMMUNITIES

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## GATT MINISTERIAL MEETING

Information note submitted by the Commission to the Council

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### Introduction

In its communication to the Council last July<sup>(1)</sup> the Commission undertook to make further reports on developments in the preparatory work for the GATT Ministerial Meeting in November, and to present new proposals as necessary. The Council's discussion took note of this approach.

Since then the Commission has remained in close consultation with the Member States, through the procedures of the 113 Committee, so that there have been regular exchanges of information and of views on the evolution of the discussions in Geneva.

The Commission transmits herewith a report on the developments in the major areas under discussion, together with some indications of the progress likely to occur in coming weeks. It has to be underlined, however, that the situation is now very fluid and uncertain; this report can only reflect the best possible assessment at the moment of its preparation.

The Commission intends to supplement the indications set out below by additional information and proposals on points for decision by the Council; but these proposals need to take into account as closely as possible the latest developments in Geneva.

### Recent Developments

The preparatory work among Delegations in Geneva led to the issue of a document by the Chairman of the Preparatory Committee at the end of July. This document was, however, incomplete in the sense that on several major issues it proved impossible to include specific texts on the decisions that Ministers might take in November, while on other matters the text included several different alternative possibilities. This illustrates a basic absence of consensus among GATT Members both on the substantive nature of decisions that might be taken and also on whether it would be appropriate to embark on a wide-ranging new work programme with elements such as services, trade-related investment issues, etc. or whether, in present circumstances, an approach limited to the most difficult current problems would be preferable.

A certain confusion on these central choices of approach has persisted in the further discussions during September and October. In effect, the developing countries have increasingly made plain that the objectives planned for the Ministerial Meeting set out in the July document did not meet their requirements. They have pointed out that the objectives pursued by developed countries - which include the principle that more advanced LDCs should assume greater GATT obligations (the "graduation" issue), which aim at improving the GATT Safeguard Clause to include selective action, and which seek an extension of GATT activity into areas such as trade in services - are contrary to their interests. This has been reflected in negative, even hostile attitudes from developing countries in the preparatory discussions, with strong emphasis on the negative impact of the current economic crisis on their trade which makes it urgent in their view for further efforts to liberalise barriers to their exports and to respect more fully GATT rules providing them with special treatment.<sup>(2)</sup>

There is still much to be done before the content of the political declaration to be adopted by the Ministers will be acceptable to them, which is an essential precondition to the success of the Conference.

#### Decisions to be taken by Ministers

In July the Commission communication envisaged that Ministers would receive a three-part document comprising a political declaration, together with texts of substantive or procedural decisions, which would in effect set up a new programme of work in GATT. In practice, the content of each part of the document has come to be seen as dependent on the development of discussions on the other parts: for example, the political declaration could not, in relation to the Safeguard Clause, contain commitments which go beyond what was agreed in the substantive discussions on this issue.

As the preparatory work has advanced it has become clearer that substantive decisions on many issues will be very difficult, if not impossible, at this time. This reflects the increasing reluctance of all countries to envisage substantial new commitments so soon after the agreements at the end of the Tokyo Round and when the international economic scene is so uncertain.

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(2) see section on page 9-10 below.

Against the background of continuing economic crisis, the original expectations of many participants as regards what could be achieved by the Ministerial Meeting are increasingly seen as unrealistic and exaggerated. In consequence, the thrust of present discussion is towards a more limited set of objectives, with more emphasis on the need to pursue a number of problems in the further work programme and less emphasis on specific substantive decisions in the immediate future. A further document is expected to be issued by the Preparatory Committee around 20 October.

In the rest of this report the Commission presents the principal proposals and issues under discussion, as well as the options at present being explored by the participants. The report is set out under the following headings:

1. The political declaration.
2. Issues related to the Safeguard Clause.
3. Agriculture.
4. Issues related to developing countries.
5. Dispute settlement procedures.
6. Other matters (in particular United States proposals for studies in areas new to the GATT).

#### The Political Declaration

The drafting of this text has progressed but is still the subject of intensive discussion, especially as regards the nature of the commitments that might be adopted by the Ministers as a means of giving specific expression to the general objective of reaffirming and strengthening the world trading system.<sup>(3)</sup>

In general, the Community attitude so far has been that there is a tendency to place an excessive emphasis on the shortcomings and failures in the functioning of the trade system as a major reason for current economic

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(3) See document "Interim Draft of Political Declaration" dated 1 October. Para. 5 sets out the proposed collective commitments in a generalised form.

difficulties. In effect, a more accurate and balanced presentation is necessary, acknowledging the relative capacity of the trading system to survive the pressures inherent in the present crisis, as well as underlining the importance of the instability of the international monetary and financial system, and of high interest rates and other macro-economic constraints as equal factors of uncertainty for world trade.

The analysis of the functioning of the GATT system is also a matter of some disagreement, especially in so far as it seems to indicate too strongly that it is essential to secure improvements in the rules governing trade in areas such as agriculture or textiles, or in the disciplines applied to safeguard measures.

As regards commitments to be adopted, the discussion has centred on whether these should be political in nature (as an example, the OECD Trade Pledge) or of a more contractual character which would be closer to the traditional GATT approach. In the latter case, it is clear that the commitments would need to be pitched at a realistic level which governments could accept and be reasonably expected to observe in present circumstances: it would not be advisable nor politically credible to announce new commitments going beyond such limits or immediately accompanied by qualifications. Indeed, a failure to live by the terms of any new pledge would be disastrous.

In this context concepts including a total standstill on protective measures taken outside GATT (e.g. autolimitation agreements), or of progressive phasing out of such measures, have been proposed; but these are difficult to define precisely and there seems to be growing awareness that such pledges could not be generally respected. Similarly, undertakings to achieve further trade liberalisation (i.e. by new negotiations) or to phase out the special rules for agriculture or textiles would be unlikely to gain general acceptance at present. However, a commitment to seek further expansion of trade might be more feasible.

Further drafting is in progress and new texts can be expected to emerge in coming weeks. The Community has so far been of the view that precise commitments will be less easy to accept than fairly general expressions of political will to reinforce and respect existing GATT rules and obligations.

A pledge to make renewed efforts to avoid actions which would have the effect of further unravelling the GATT system is one possibility, and a general commitment to resist protectionist pressures in formulating trade policies may also be appropriate.

#### Issues related to the Safeguard Clause

Two principal matters have been under discussion in the consultations on these issues:

- the question whether, and if so under what conditions, selective safeguard action could be authorised under GATT disciplines;
- the question whether such actions taken at present outside the GATT framework (e.g. voluntary restraint arrangements, bilateral arrangements) could be made subject to discipline and surveillance within GATT.

The consultations on these issues have enabled a degree of progress to be made. The existence of many measures of a selective character was strongly underlined in a recent GATT study, and this fact has led many countries to recognise the importance of the second question above even if substantial reservations still exist on the solutions to the first question.

The position reached is as follows:

- a draft decision incorporating improvements to the Safeguard Clause was issued to delegations on 30 August. This envisages selectivity only on a consensual basis where both parties agree; and explicitly prohibits selective action in other cases;
- this document has up to now been rejected by the developing countries as an unacceptable basis for negotiation. They insist that, on a number of aspects, the document must include stricter conditions and surveillance by a GATT Committee before even this form of selectivity is permitted;

- the Community, following Council negotiating directives from the Tokyo Round and in consultation with the 113 Committee, has been of the view that any new procedure providing for selectivity must be operational and practical and that it would be necessary, in the absence of bilateral agreement, to have a procedure whereby selective action would still be possible;
- in recent informal discussions these views have hardened further and selectivity in any form now seems to be rejected, largely due to past experience in the textiles sector. There is a basic lack of confidence that stricter criteria would be observed in practice by developed countries, even if the procedure envisaged the approval of selective actions by a new Committee;
- in consequence, the balance envisaged in COM(82)403, between a recognition of the right to take selective action, in certain limited circumstances, and greater transparency and discipline for "grey area measures", has not so far been achieved. While a willingness to accept some more transparency in this area might facilitate further negotiations, it does not appear at present that this would secure a solution going beyond consensual actions.

On present assessments the gap between all delegations on these issues remains very wide and it seems improbable that solutions could be found by November. The Community has suggested that more work be carried out to examine the GATT study, especially the "grey area measures" in it, as a means of making further progress.

There has been pressure, during the discussions on the political declaration, for a standstill and phasing-out of such grey area measures. Some of our partners are ready to consider this, on the hypothesis that a new safeguards decision would legitimise such actions, thus resulting in little change in practice. The Community has indicated that, in the absence of agreement on safeguards at this stage, the proposal cannot be considered as a realistic new commitment.

Agriculture

The discussions have centred on the following main proposals put forward by various trading partners :

- that the GATT should embark on a programme of work on agricultural trade with a view to preparing further negotiations on trade liberalisation and market access ;
- that a full review of the current rules relating to export subsidies in agriculture should be undertaken with a view to their improvement <sup>(1)</sup> ;
- that GATT rules for agriculture should progressively be brought into line with those applicable to other products.

It has been possible, so far, to avoid any open confrontation on these issues despite widely divergent points of view. As regards the first proposal, the Community has made it clear that any decision implying further negotiations on agriculture would be premature ; and a consensus appears to have developed that the third point is not likely to command general acceptance.

As regards the idea of a review of export subsidy rules, the Community has suggested that such an examination should take place in an appropriate body (an Agriculture Committee) and should not be limited to subsidies but extended to all forms of direct and indirect protection and support. The purpose of the review would not be, explicitly, to seek improved rules - this would not be acceptable so soon after the results of the Tokyo Round - but to consider all the various measures affecting access and competition in agricultural trade and the adequacy of the rules relating to such measures.

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(1) Australia has also been proposing a standstill on such subsidies, to be followed by a gradual "winding down" from current levels.

Following the recent discussions in the CG.18 on this subject, a consensus appears to be developing on a programme of work for agriculture including the following elements:

- a greater degree of transparency for agricultural measures
- examination, in the light of rights and obligations under the General Agreement, in particular its Part IV, of:
  - measures relating to access to markets;
  - export subsidies and all forms of export assistance;
  - national agricultural policies.

This examination would cover all measures which could be seriously prejudicial to the trade or interests of Contracting Parties.

- an examination of the balance of rights and obligations in this sector, including waivers and other exceptional measures
- development whenever necessary, of a common understanding of the scope of the provisions of the General Agreement
- the establishment of a committee to carry out the work and to report in about 2 years (1).

Whilst probably acceptable to the US and Australia, these two countries still seem to wish to put more emphasis on subsidies in general both industrial and agricultural, and have been proposing a general review on the lines of article XVI : 5 in a separate body. In addition Australia proposes that there should be an immediate and progressive reduction in the level of existing subsidies within a definite time period not to exceed 5 years. The Commission recalls that, for all products, there was a lengthy review of GATT rules during the Tokyo Round, and that for agricultural subsidies in particular a bilateral agreement was reached with the US (exchange of letters between Mr. Gundelach and Mr. Strauss) during the same negotiations.

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(1) There is no GATT committee at present with a mandate to discuss in a global manner all questions relating to agriculture, such matters being raised in a number of the committees established by the Tokyo Round agreements and arrangements in parallel with discussion relating to industrial products.

### Developing Countries

As mentioned in the introduction to this report, the mood of developing countries has been negative on several issues. Although there are signs of new efforts on their part to maintain a united front (perhaps because they sense that some current proposals would lead to greater differentiation among them) they have not been able to put a specific text forward incorporating common proposals. This may also be a tactical position, to avoid pressure for reciprocal bargaining.

Developing country desiderata (inter alia, for fuller implementation of Part IV of GATT, for action to liberalise access for tropical products, to reduce/eliminate quantitative restrictions and to eliminate/alleviate the effects of tariff escalation) have nevertheless been reiterated during discussions; and there is also substantial emphasis on the need for a return to free trade in the textiles sector.

Some exchanges have developed around ideas put forward informally by the United States and by Switzerland which envisage new tariff negotiations, especially with more advanced developing countries. In summary, such negotiations would consist in offering to these countries continuing (or in some cases, new) GSP benefits - possibly at special duty rates, less favourable than for other beneficiaries - in exchange for commitments by them on access to their markets. The developing countries have made it clear that such an approach is irrelevant and untimely in present economic conditions, and the Community view has been dubious if such an approach can be the basis for real improved access to such markets, and if the advantages offered would be, finally, acceptable to developing country partners.

Nevertheless, in consultation with the 113 Committee, an approach to this issue has been worked out which also includes the other matters of developing country interest. This consists of a three-point plan: first, it is proposed to agree upon a programme of possible measures in favour of the trade in least developed countries; second, to express continued support for the efforts being made by developing countries to develop preferential tariff

arrangements among themselves; and third the suggestion has been put forward - bearing in mind the substantial progress that has already been made in according duty and quota-free access for products of LDC export interest, and the difficulties of engaging in further wide-ranging negotiations in present economic circumstances - that a feasibility study should be undertaken in order to establish whether the basis exists for future negotiations, which would be on the basis of reciprocal concessions with those developing countries capable of making such commitments.

A new text from the GATT Secretariat to take account of these various ideas and proposals is expected shortly. This will have to be evaluated by the Community in due course and the Commission will make further proposals if necessary.

#### Dispute settlement

Consultations have taken place on the basis of a draft decision which would incorporate certain improvements to present GATT procedures in this area. These proposals include three principal suggestions:

- that more explicit provision be made for a "conciliation" phase in the procedure, so that the Director-General of GATT, for example, could intervene to encourage solutions and thus obviate the need for formal panel proceedings;
- that parties to a dispute should in all cases have an automatic right to the establishment of a panel (1);
- that, when panel reports are submitted, the CPs should be able to take consequential decisions by the consensus procedure, even if one or other party dissents from the report or disagrees with a proposed recommendation.

The discussions have shown that a wide degree of agreement is likely to be found on the first and third points and a Ministerial decision covering these matters may be agreed by the date of the Conference. In effect a strengthening of the initial phase of dispute, to encourage the chance of a settlement between parties, seems opportune; and the concept of decisions by consensus even when all parties do not approve is merely a confirmation of the traditional GATT practice. However, there is an increasing trend for panels to be asked to interpret GATT rules, and in these cases it would be normal GATT practice that proposed new interpretations which involve new obligations are not considered to be binding upon those Contracting Parties who disagree with the panel's views.

On the second point, however, the Community has defended the attitude already taken during the Tokyo Round that this proposal is an example of excessive codification of GATT practice which is undesirable in principle and which would, in this case, be dangerous, since all element of discretionary judgment in such situations would be denied to the CPs. It seems likely that the matter will not be pursued.

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(1) Under present GATT rules and practice, this is normally the result of a request for a panel; but the CPs have at least a theoretical right to decide otherwise.

Other Matters

The United States, in particular, has pursued its proposals for a GATT study of specific problems in trade in services, incorporating a phase in which information on difficulties would be collected and later a study of the applicability of GATT principles and rules to the service sector. A time-scale of 2-3 years is envisaged before further decisions would be taken.

The Community, despite some reservations (e.g. on whether GATT could or should deal with problems relating to rights of establishment), has hitherto given a certain degree of support to a GATT study without prejudging in any way what might be the outcome of such work. Its view has been that Trade in Services will continue to grow in importance in developed economies and that a certain degree of international discipline may be useful. Some other partners (Japan, the Nordic group and Canada) have taken a similar or even stronger line.

It has increasingly become apparent that this issue is considered of great political importance to the USA but there is strong opposition from developing countries who are not convinced that a move by GATT into a relatively new field is opportune at this time, in view of other urgent problems associated with the economic crisis, indebtedness and barriers to trade in goods ; and some of them have clearly been irritated by pressures brought to bear upon them in this context, which has led to a rapid polarisation of views (especially Brazil). The suggestion that GATT principles (e.g. MFN or national treatment) might be relevant in the services sector, is also strongly opposed : LDCs would prefer work on these issues should be undertaken in fora other than GATT.

As regards other proposals for future work, on matters such as domestic content or export performance requirements and on trade in high-technology products, the views of developing countries have been similarly negative. While the Community view has hitherto not been to oppose the first issue, it has been strongly opposed at this stage to any new studies in the high-technology area.