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THE URUGUAY ROUND

OF

MULTILATERAL TRADE NEGOTIATIONS

A Situation Report

Multilateral Trade Negotiations Office

January, 1989

MULTILATERAL TRADE NEGOTIATIONS
NEGOCIATIONS COMMERCIALES MULTILATÉRALES
NEGOCIACIONES COMERCIALES MULTILATERALES
URUGUAY ROUND

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URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS (MTN)

A SITUATION REPORT

1. The Uruguay Round is now at a crossroads. At its Montreal Ministerial Meeting, December 5-9, 1988, the Trade Negotiations Committee (TNC) decided to put "on hold" the results of its various negotiating groups until the impasse which developed primarily over agriculture is resolved in April, 1989. This outcome has left a shadow over the significant achievements of the meeting in the areas of services, market access, trade rules, and GATT institutional reform. International Trade Minister Crosbie, who hosted the Montreal meeting, said that Canada was "disappointed but not discouraged" by the results.

2. Although the current difficulties are centered over the question of how ambitious the negotiations about the reduction of trade distorting agricultural subsidies should be, they also extend to the issues of intellectual property, textiles and safeguards. These difficulties are a reminder that the Uruguay Round will be an increasingly complex and difficult process to move through its detailed negotiating phase, given the unprecedented and ambitious scope of its agenda, which reaches into uncharted territory and confronts issues not raised or not effectively dealt with in previous GATT Rounds. There is also a much greater diversity amongst its active participants. Somewhat paradoxically, however, the MTN negotiating process as a global undertaking may benefit from the refusal of participants at Montreal to paper over fundamental differences simply to create an impression of progress.

3. Canada's commitment to the Uruguay Round and its stake in the future of the GATT as "the prime instrument" of international trade policy was the major theme of the welcoming message by the Prime Minister to the 103 countries participating in the Montreal Meeting. The Prime Minister expressed his belief that "we are on a threshold of a decade of historic challenges and choices in world trade. With Europe of 1992, the Canada-U.S.A. Free Trade Agreement, the Australia-New Zealand Agreement and closer ties in the Asia-Pacific region, world trade will either become more open or more restrictive". In this regard, he highlighted the Canada-U.S.A. Free Trade Agreement as a significant contribution to a policy of freer trade and as a possible model for the GATT in the areas of dispute settlement, investment and services.

4. The main Canadian objectives in the Uruguay Round were outlined by Minister Crosbie as including a substantial reduction of barriers facing Canadian exports of goods and services, stronger and more predictable GATT trade rules, and the development of agreements on services trade and intellectual property, and improved GATT institutional arrangements. In respect of agriculture, three basic considerations governing Canada's position were outlined: all countries must contribute to an equitable solution; there must be a substantial and balanced reduction of trade distorting subsidies and import barriers; and successful negotiations must benefit both producers and consumers.

5. An unprecedented number of Canadian Ministers were fully involved in the management of the Montreal meeting and in pursuing our specific interests under the multilateral track of Canada's overall trade strategy. Ministers Mazankowski and Mayer focussed particularly on agriculture; Minister de Cotret on trade in services; and Minister Hockin on market access and institutional issues which were dealt with during the Montreal meeting by a group of some 22 MTN participants chaired by Minister Crosbie.

6. The United States seemed to have come to the Montreal Meeting determined not to compromise on its approach that long-term agricultural trade reform must be based on the objective of eventually eliminating all trade distorting and restrictive measures. The U.S.A. also held firm on intellectual property matters. Thus the outgoing Administration effectively left some hard choices to the Bush Administration taking office later this month. Public reaction in Washington since the meeting has put emphasis on the achievements at Montreal particularly on services, dispute settlement and tropical products. It has downplayed the intractability of the agricultural issue or the hard-line maintained by a few developing countries with respect to intellectual property and to textiles.

7. The European Community similarly maintained a position on agricultural trade liberalization that did not provide sufficient flexibility and boldness to allow the gap with the U.S.A. and the Cairns Group to be bridged. It consistently refused to regard as realistic the elimination of distorting subsidies as the long-term goal of agricultural trade reform. The EC also pressed the case for consensus with developing countries in planning further MTN steps. Ironically in the wake of Montreal, the EC's own globality principle put forward so fervently through the early course of the Uruguay Round should add pressure to resolve the agriculture impasse in order to allow other areas of the negotiations, such as services, to move forward on the basis of the provisionally-agreed negotiating

frameworks. Like the U.S.A., the EC has publicly stressed the positive side, as well as the mid-term review nature, of the Montreal Meeting.

8. Japan's role at Montreal seemed to be consistent with its position to let the U.S.A. and the EC sort out their agricultural differences. Indeed, the agricultural impasse at Montreal meant that no real pressure was put on Japan's highly restrictive import regime. Japan did show, however, that it continued to attach priority to intellectual property and services issues. Its traditional concern over consensus as an operating mode for GATT, particularly in relation to the dispute settlement process and vis-à-vis developing countries, was also evidenced at Montreal.

9. With respect to the developing countries, the most noticeable development relates to Latin American participants. A regional bloc strategy centered on Argentina, Brazil, Uruguay, Colombia and Chile clearly emerged in Montreal. The strategy related to agriculture and the new issues. It involved some flexibility on services and, to a lesser extent, on intellectual property but a firm position on the need for long term agricultural reform and a meaningful tropical products package.

10. While the Director General of the GATT, Arthur Dunkel, in his capacity as Chairman of the Trade Negotiations Committee at the officials level, carries out his series of bilateral consultations over the next three months to resolve the impasse over agriculture, intellectual property, textiles and safeguards, work in the other negotiating areas is expected to continue. The results achieved at Montreal in these other areas will be effectively preserved in whole until a review of the entire package at the April TNC. A summary presentation of the main thrust and content of these frameworks and work plans, which indicate the significant progress made on the specifics of the negotiations agenda since the September Situation Report, is contained in Annex I to this Report.

11. Briefly, the state of play on individual issues may be highlighted as follows:

A) Market Access

. **Tariffs:** the overall target is a reduction by at least 35% to 40%, with gradual phasing and a substantial increase in tariff bindings.

. **Non-Tariff Measures:** procedural guidelines for reduction or elimination by all participants.

. **Natural Resource Based Products:** fullest possible liberalization consistent with progress in Groups on Tariffs and NTM's.

. **Textiles and Clothing:** one of four outstanding issues, a main focus being the future of the current Multifibre Agreement.

. **Tropical Products:** an initial package of tariff concessions for developing country exporters was agreed and is expected to be implemented in 1989 when the current impasse is overcome.

B) Agriculture

. at an impasse over the degree of trade liberalization to be achieved in long term reform; elements of the Report by the Chairman of the Agriculture Negotiating Group are an agreed basis for discussions.

C) Trade Rules on Goods

. **GATT Articles:** clarification of various Articles dealing inter alia with balance of payments, state trading and procedures for re-negotiations of tariff concessions are to proceed.

. **Tokyo Round Codes:** there is agreement that specific texts should be submitted to expedite the re-negotiation of the existing Agreements on Government Procurement, Licensing, Technical Barriers and Anti-dumping.

. **Safeguards:** this is one of four outstanding issues but the need for a comprehensive agreement was reiterated.

. **Subsidies and Countervail:** there is an agreed negotiating framework for a balanced and comprehensive review of the existing Code, covering prohibited subsidies, non-prohibited but actionable subsidies (including definition and calculation of subsidies), non-actionable subsidies (including definition of general availability and non-preferentiality), notification and surveillance, as well as dispute settlement.

D) Institutional Reform

. **Dispute Settlement:** an agreed set of streamlined procedures for the establishment of Panels, adoption of Panel reports, and tighter timeframes for different steps of the Panel process. This will be implemented on an initial trial basis after the April TNC.

. **Functioning of the GATT System:** agreement on a Trade Policy Review Mechanism, the need to have bi-annual GATT Ministerial meetings, and to examine the GATT/IMF/World Bank cooperation. These will also be implemented at as early a date as possible.

E) New Issues

. **Investment:** negotiations to proceed based on submissions of specific texts on trade restrictive and distorting investment measures.

. **Intellectual Property:** this remains one of the four outstanding issues at this point, primarily over whether the negotiations should cover the standards of intellectual property (e.g. patents, copyright, trademarks) protection.

. **Services:** there is an agreed negotiating framework for a services trade agreement, with progressive liberalization and coverage of sectors and factors of production to be as broad as possible, with possible specific sectoral elements.

F) Standstill and Rollback

. The July 1989 TNC meeting will evaluate the implementation of the original Punta del Este undertakings.

12. In terms of the organization of the Montreal Ministerial Meeting, we have received positive comments from many delegations with respect to both the facilities of the Palais des Congrès and the logistical arrangements. The collaboration of the GATT Secretariat was also excellent throughout. The provinces and private sector were pleased with the overall planning of events associated with the conference. All Provincial Trade Ministers and some twenty-two representatives of the International Trade Advisory Committee (ITAC) were associated with the Canadian Delegation with both bilateral consultation programs and regular briefings throughout the meeting itself. The Canadian media had an extensive and informed coverage of the Montreal Meeting, with considerable attention given to agricultural subsidies, the role of Canada in the multilateral trading system, and the MTN/FTA relationships.

13. Just prior to the Montreal Meeting, there was a meeting of Federal and Provincial designated Ministers on the MTN which was preceded by a meeting of Trade Deputy Ministers. During the autumn, there were also two meetings of the consultative Federal/Provincial Committee on the MTN (CMTN) and of its Working Group on Agricultural Trade. The

mutual flow of information and analysis on MTN matters between the federal government and the provinces is now fully operational.

14. Since the September 1988 Situation Report, there have been two meetings of the International Trade Advisory Committee with the MTN and the Montreal meeting as the principal focus. The Committee provided Minister Crosbie with its views on Canada's overall objectives and priorities in the MTN. ITAC members have also provided their views on the main elements of the reform of the GATT dispute settlement system. It also has established a Task Force on Intellectual Property which has produced a preliminary report and which now will examine Canadian interests in more detail, including a review of the positions of the European, Japanese and U.S.A. business communities based on the report these three groups produced together in June 1988. ITAC has now also set up geographic Task Forces (USA, Europe, Pacific and Asia). The SAGITs, as well, have had at least an initial overview of the MTN.

15. Annex II reproduces a Backgrounder that was publicly released prior to the Montreal Ministerial Meeting. The backgrounder covers: Canada and the Uruguay Round, Market Access, Agricultural Trade, Trade in Services, Strengthening of the GATT System, the GATT Dispute Settlement System, Subsidies and Countervailing Measures, Improving the Trade Rules, the Canada-USA FTA and the MTN, and the Uruguay Round and Europe 1992. A glossary of terms commonly used in the negotiations is also reproduced in Annex III.

16. The lead-up to the MTN Montreal Meeting witnessed an increasing number of public conferences in Canada with participation by Canadian Ministers, private sector leaders, academics, foreign embassies and senior members of the MTN Office. Among them were the meeting of the Canadian Exporters' Association in Calgary, a Seminar organized by the Conference Board in Toronto, a Symposium on the MTN and Europe by the Canadian Council on International Law in Ottawa, two seminars by the Institute for Research on Public Policy in Vancouver and in Toronto, a McGill University seminar on International Trade Law issues, and a session on the MTN and Canada's stakes in Montreal sponsored by the World Trade Centre during the Montreal Meeting itself.

ANNEX I

MAIN ELEMENTS OF NEGOTIATING FRAMEWORK FOR INDIVIDUAL NEGOTIATING GROUPS

A) MARKET ACCESS

This covers the negotiating groups on tariffs, non-tariff measures, natural resource-based products, textiles and tropical products.

Tariffs (Negotiating Group 1)

The agreement by Ministers includes the following points:

- substantive negotiations will begin no later than 1 July 1989, and detailed procedures, approaches and methods necessary for the negotiations will be established in the meantime;
- overall tariff results to be targetted by all countries would be at least as ambitious as that achieved by formula countries in the Tokyo Round (i.e., a trade weighted average reduction of between 35 and 40%);
- substantial reduction or elimination of high tariffs, tariff peaks, tariff escalation and low tariffs;
- substantial increases in the binding of tariff levels;
- phasing the results of the negotiations over appropriate periods to allow for adjustment;
- real improvements in market access (i.e., resolution of non-tariff barriers to trade) will be important in determining the extent to which tariff barriers could be reduced;
- developing countries will participate to the extent consistent with the level of their respective stages of economic development.

As an indication of the progress towards substantive tariff negotiations, the USA Government now has triggered the process mandated by domestic law to refer to the US International Trade Commission items for which tariff reduction or elimination might be considered in the Uruguay Round.

Non-Tariff Measures (Negotiating Group 2)

Ministers agreed that, in order to ensure effective trade liberalization, results from the negotiations of non-tariff measures should be substantial. The detailed negotiations are to be initiated by June 1989 on the basis of approaches (multilateral, formula, and request/offer) ensuring the widest possible participation and transparency in the process.

Natural Resource-Based Products (Negotiating Group 3)

Ministers agreed that the objectives set in the Punta del Este Declaration for the fullest liberalization, including the possible elimination of barriers on processed and semi-processed resource-based products, will proceed on the basis of negotiating techniques to deal with specific issues and problems in a manner consistent with other related Groups such as tariffs, NTB's, and subsidies/countervail. This Negotiating Group is focussing primarily on fisheries, non-ferrous metals and minerals, and forestry.

Textiles and Clothing (Negotiating Group 4)

In Montreal, the Ministerial discussions focussed on an examination of modalities and timeframe to bring about the eventual integration of trade in the textile and clothing sectors into a reformed GATT, an objective set out in the Punta del Este Ministerial Declaration. Although the textiles issue remains outstanding, there was a large degree of consensus over the importance of dealing with this issue as a central element of the Uruguay Round. It is also fairly clear that the outcome of the negotiations over the future of the current Multifibre Agreement (MFA) will be influenced by the developments in the areas of safeguards and intellectual property.

Tropical Products (Negotiating Group 6)

Agreement was reached at Montreal on a package of tariff concessions in favour of developing country exporters of tropical products covering some $20 billion in trade by all participant countries. Action to implement the main parts of the tropical products concessions are, however, being withheld until a solution is reached on the four outstanding issues, particularly agriculture. When our own offer is implemented, over 98% of Canada's $1.2 billion imports of tropical products from developing countries will enter either duty free or at a special preferential rate. It was also agreed at Montreal that tropical

products negotiations would continue during the MTN with the objective of identifying further concessions on tropical products of interest to developing countries. The results of both the preliminary package or of the further concessions will form an integral part of the overall results of the Uruguay Round at its conclusion.

B) AGRICULTURE (Negotiating Group 5)

Agriculture was the most contentious issue at Montreal and remains the issue with the greatest potential to seriously threaten the overall Uruguay Round results. The gap between the United States and the European Community (EC) over how far to liberalize agricultural trade in the long term was too large to bridge at Montreal.

The U.S. maintained its position that all trade distorting support and direct trade measures should be eliminated by some agreed date (having relaxed the initial position that this should occur by the year 2000). The EC also maintained its position that "elimination" is politically unacceptable and that substantial "reduction" of such measures should be the long term goal. In this situation, short term measures were not the subject of much attention at the meeting.

The most significant development on agriculture at Montreal was the determination of several Latin American food exporters to block agreement on other MTN issues if there was no agreement on agriculture. On the other hand, a group of food importing countries, led by Jamaica, is concerned that trade liberalization not prevent them from increasing domestic agricultural production. They also want some form of assistance to compensate for any increases in import prices arising from liberalization.

When it became clear that the EC/USA gap on the long term objective could not be bridged at Montreal, it was agreed that the report of the Chairman of the MTN Negotiating Group on Agriculture would provide a basis for the resumption of negotiations. The relevant part of this report is as follows:

"The Negotiating Group on Agriculture has made substantial progress in elaborating the elements of the negotiating proposals and submissions under the subsequent negotiating process. The stage has now been reached in this process where the general direction and procedures to be followed in the final phases of the negotiations need to be defined in operational terms so as to provide a framework

for liberalizing trade in agriculture and bringing all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines.

There is a broad measure of consensus that agricultural policies should be more responsive to international market signals in order to meet the objective of liberalization of international trade and that support and protection should be progressively reduced and provided in a less trade distorting manner.

Ministers should accordingly be invited to endorse a framework approach comprising the following interelated long- and short-term elements and arrangements on sanitary and phytosanitary regulations.

A. Long-term elements

Ministers should be invited to agree that the long-term objective of the agricultural negotiations is to establish the basis of a fair and market-oriented agricultural trading system and that a reform process should be initiated through the negotiation of commitments on support and protection and through the establishment of a strengthened GATT régime.

Basic options

(a) Ministers should be invited to decide:

- whether the ultimate goal should be the elimination or the substantial reduction of trade-distortive support and protection;

- whether this reduction or elimination should be realized through negotiations on specific policies and measures or through the negotiation of commitments on an aggregate measurement of support, the terms of which would have to be negotiated - or through a combination of these approaches.

Guidelines for reform

(b) Subject to such decisions as may be made under (a) above, Ministers should establish guidelines for a reform programme of concerted and progressive reduction/elimination in agricultural support and guidelines for a strengthened GATT régime for agriculture based on new and amended rules and disciplines:

(i) this reform programme should result in progressive reduction in all direct and indirect subsidies and import barriers which directly or indirectly affect trade in all agricultural products. This programme should be subject to surveillance and other procedures necessary to ensure full compliance with commitments and should be completed by a date to be negotiated and agreed before the end of the Round;

(ii) the strengthened GATT régime should encompass the incorporation under clear and enforceable reinforced GATT rules and disciplines of all measures affecting directly or indirectly import access and export competition:

Import access

- all measures maintained under waivers, protocols of accession or other derogations and exceptions should be eliminated or brought under the strengthened GATT régime;

- conditions should be established governing the maintenance, elimination or removal in favour of tariffs, of quantitative or other non-tariff access restrictions and of measures not explicitly provided for in the General Agreement, including specification of access levels.

Export competition

- conditions should be established under which direct budgetary assistance to exports and deficiency payments on products exported and other forms of export assistance should be progressively reduced or eliminated.

Internal support

- conditions should be established under which price and income support measures should be subject to disciplines in order to make such policies more responsive to international market signals.

(iii) non-economic factors shall be taken into account in the negotiations on the GATT rules and disciplines and related commitments.

(c) Negotiations under (i), (ii) and (iii) above shall begin in February 1989.

(d) Ministers recognize that:

- special and differential treatment to developing countries is an integral element of the negotiations in accordance with governing principles of negotiations as elaborated in section B of Part 1 of the Punta del Este Declaration, in particular parts IV-VII;

- government measures to encourage agricultural and rural development are an integral part of the development programmes of developing countries. Such measures may involve direct or indirect government support.

B. Short-term elements

(a) Ministers are invited to agree that during the next two years:

- participants undertake to implement a freeze on overall support and protection provided to their agricultural sectors at the levels prevailing in [ ] and to refrain from initiating new programmes that would undermine this commitment;

- to realize the long-term objective, as a first step, to reduce overall support and protection by (x) per cent by 1990;

- special attention should be given to the possible negative effects of short-term measures on net food-importing developing countries;

- an agreement on the terms and conditions of the freeze and reduction must be reached not later than 31 March 1989, including an agreement on measures coverage, commodity coverage, reference price.

(b) Basic options

Ministers should be invited to decide:

- whether a freeze and reduction should be expressed in terms of an aggregate measurement of support or in terms of specific policies and measures or a combination thereof;

- whether developing countries should be exempted from the short-term measures.

C. Sanitary and Phytosanitary Regulations

Ministers should be invited to endorse harmonization of national regulations as a long-term goal and a work programme embodying the following objectives:

(1) strengthen Article XX so that measures taken to protect human, animal or plant life or health are based on sound scientific evidence and recognize the principle of equivalency;

(2) review existing notification and counter-notification procedures to ensure the existence of an effective notification process for national regulations;

(3) develop a consultative process which allows opportunity for the bilateral resolution of disputes;

(4) establish an effective, multilateral dispute settlement process within the GATT which provides the necessary input of scientific expertise and judgement, relying inter alia on the Codex Alimentarius Commission, the International Office of Epizootics, and the International Plant Protection Convention;

(5) assess the possible effects on developing countries of the GATT rules and disciplines for sanitary and phytosanitary measures, and evaluate the need for technical assistance."

C) TRADE RULES ON GOODS

Virtually all international trade rules under the GATT are being overhauled in the Uruguay Round. There are four principal negotiating groups dealing with various issues related to trade rules.

GATT Articles (Negotiating Group 7)

At Montreal, Ministers directed that specific proposals be brought forward expeditiously to review existing GATT Articles. Work in the Negotiating Group is focussing on balance of payments (Articles XII and XVIII), state trading (Article XVII), regional groupings and territorial application (Article XXIV) and procedures for the modification of tariff concessions (Article XXVIII).

MTN Agreements and Arrangements (Negotiating Group 8)

The Montreal Meeting directed the pursuit of the negotiations to review existing GATT Codes (Procurement, Import Licensing, Technical Barriers and Anti-dumping). The report from this Group acknowledges the progress made to date in completing the initial phase of identifying negotiating issues, and encourages early submission of negotiating texts to expedite negotiations. The importance of wider membership and improvements to these Codes to a strengthened GATT system is also noted.

Safeguards (Negotiating Group 9)

Although tactical considerations by some developing countries like India resulted in safeguards being one of the four outstanding issues of Montreal, Ministers agreed that a comprehensive agreement on Safeguards is vital to the strengthening of the GATT system and to progress in the Uruguay Round. The Negotiating Group will be proceeding with a draft text of a comprehensive agreement dealing with elements such as coverage, injury, degressivity and adjustment. It is clear that any such agreement will need to deal with both traditional GATT Article XIX import safeguards measures and so-called grey areas such as export restraints. In this regard, the impasse on textiles and clothing has brought out the relationship between a future comprehensive safeguards agreement and the future of the Multifibre Agreement (MFA).

Subsidies and Countervailing Measures (Negotiating Group 10)

The Montreal meeting agreed on a balanced and comprehensive negotiating framework to improve GATT disciplines relating to subsidies and countervailing measures. Ministers called for the submission of specific drafting proposals to address the following issues in the framework for negotiations:

"Prohibited Subsidies

- Identification: normative criteria (e.g. export subsidies illustrative list); other criteria (e.g. quantitative).

- Remedies (countermeasures, compensation, conditions of application, multilateral surveillance).

Non-Prohibited but Countervailable or Otherwise Actionable Subsidies

- Conditions for countervailability or actionability: Definition (examples of issues to be considered: charge on the public account, preferentiality, specificity, so-called new practices) and calculation of the amount of a subsidy;

  Trade effects: in the market of the importing country (examples of issues to be considered: determination of injury including the question of cumulation and of minimum market share, causal link, definition of industry); in the market of the subsidizing country (examples of issues to be considered: nullification or impairment, other aspects of import substitution); in the third country market (examples of issues to be considered: displacement, serious prejudice).

- Remedies: Countervailing duties (examples of issues to be considered: standing of petitioners, initiation and conduct of investigation, imposition and duration of countervailing measures, undertakings, sunset clause, amount of duty, circumvention); Countermeasures and/or compensation (nature, conditions of application, multilateral mechanism).

Non-Countervailable, Non-Actionable Subsidies

- Conditions for non-countervailability, non-actionability: Definition (examples of issues to be considered: general availability, non-preferentiality, no trade effects); other conditions (e.g. specific purpose, strict time-limits).

- "Special safeguard" procedures

Notification and Surveillance
Dispute Settlement

D) INSTITUTIONAL REFORM

At Montreal, Ministers agreed on a set of streamlined procedures for the operation of GATT dispute settlement Panels to be implemented on a trial basis during the Uruguay Round. They also agreed on a new mechanism to monitor national trade policies, greater Ministerial involvement in the GATT, as well as to examine ways to strengthen the cooperation between international economic institutions. The relevant texts of these agreements subject to resolution of the four outstanding issues are as follows:

Dispute Settlement (Negotiating Group 13)

"A. General Provisions

1. Contracting parties recognize that the dispute settlement system of GATT serves to preserve the rights and obligations of contracting parties under the General Agreement and to clarify the existing provisions of the General Agreement. It is a central element in providing security and predictability to the multilateral trading system.

2. Contracting parties agree that all solutions to matters formally raised under the GATT dispute settlement system under Articles XXII, XXIII and arbitration awards shall be consistent with the General Agreement and shall not nullify or impair benefits accruing to any contracting party under the General Agreement, nor impede the attainment of any objective of the General Agreement.

3. Contracting parties agree that the existing rules and procedures of the GATT in the field of dispute settlement shall continue. It is further agreed that the improvements set out below, which aim to ensure prompt and effective resolution of disputes to the benefit of all contracting parties, shall be applied on a trial basis from 1 January 1989 to the end of the Uruguay Round in respect of complaints brought during that period under Article XXII or XXIII; it is also agreed to keep the application of these improvements under review during the remainder of the Round and to decide on their adoption before the end of the Round; to continue negotiations with the aim of further improving and strengthening the GATT dispute settlement system taking into account the experience gained in the application of these improvements.

4. All the points set out in this document shall be applied without prejudice to any provision on special and differential treatment for developing contracting parties in the existing instruments on dispute settlement including the CONTRACTING PARTIES' Decision of 5 April 1966.

B. Notification

Mutually agreed solutions to matters formally raised under GATT Articles XXII and XXIII, as well as arbitration awards within GATT, must be notified to the Council where any contracting party may raise any point relating thereto.

C. Consultations

1. If a request is made under Article XXII:1, the contracting party to which the request is made shall, unless otherwise mutually agreed, reply to the request within ten days after its receipt and shall enter into consultations in good faith within a period of no more than thirty days from the date of the request, with a view to reaching a mutually satisfactory solution. If the contracting party does not respond within ten days, or does not enter into consultations within a period of no more than thirty days, or a period otherwise mutually agreed, from the date of the request, then the contracting party that requested the holding of consultations may proceed directly to request the establishment of a panel or a working party.

2. If the consultations under Article XXII:1 fail to settle a dispute within sixty days after the request for consultations, the complaining party may request the establishment of a panel or a working party under Article XXIII:2. The complaining party may request a panel or a working party during the sixty day period if the parties jointly consider that consultations have failed to settle the dispute.

3. Requests for consultations under Article XXII:1 or XXIII:1 shall be notified to the GATT Council by the party which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request.

4. In casses of urgency, including those which concern perishable goods en route, parties shall enter into consultations within a period of no more than ten days from the date of the request. If the consultations have failed to settle the dispute within a period of thirty days after the request, the complaining party may request the establishment of a panel or a working party.

D. Good Offices, Conciliation, Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree. They may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once terminated, the complaining party can then proceed with a request for the establishment of a panel or a working party under Article XXIII:2. When good offices, conciliation or mediation are entered into within sixty days of a request for consultations, the complaining party must allow a period of sixty days from the date of the request for consultations before requesting the establishment of a panel or working party. The complaining

party may request a panel or a working party during the sixty days if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

2. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel or working party process proceeds.

3. The Director-General may, acting in an ex officio capacity, offer his good offices, conciliation or mediation with the view to assisting contracting parties to settle a dispute.

E. Arbitration

1. Expeditious arbitration within GATT as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.

2. Resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to all GATT contracting parties sufficiently in advance of the actual commencement of the arbitration process.

3. Other contracting parties may become party to an arbitration proceeding upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award.

F. Panel and Working Party Procedures

(a) Establishment of a Panel or a Working Party

The request for a panel or a working party shall be made in writing. It shall indicate whether consultations were held, and provide a brief summary of the factual and legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel or a working party with other than standard terms of reference, the written request shall include the proposed text of special terms of reference. If the complaining party so requests, a decision to establish a

panel or working party shall be taken at the latest at the Council meeting following that at which the request first appeared as an item on the Council's regular agenda, unless at that meeting the Council decides otherwise.*

(b) Standard Terms of Reference

1. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within twenty days from the establishment of the panel:

> "To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by (name of contracting party) in document L/... and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XIII:2".

2. In establishing a panel, the Council may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties subject to the provisions of the preceding paragraph. The terms of reference thus drawn up shall be circulated to all contracting parties. If other than standard terms of reference are agreed upon, any contracting party may raise any point relating thereto in the Council.

(c) Composition of Panels

1. Contracting parties shall undertake, as a general rule, to permit their representatives to serve as panel members.

2. Panels shall be composed of well-qualified governmental and/or non-governmental individuals.

3. The roster of non-governmental panelists shall be expanded and improved. To this end, contracting parties may nominate individuals to serve on panels and shall provide relevant information on their nominee's knowledge of international trade and of the GATT.

4. Panels shall be composed of three members unless the parties to the dispute agree, within ten days from the establishment of the panel, to a panel composed of five members.

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* Reference to the Council, made in this paragraph as well as in the following paragraphs, are without prejudice to the competence of the CONTRACTING PARTIES, for which the Council is empowered to act in accordance with norman GATT practice (BISD 26S/215)

5. If there is no agreement on the members within twenty days from the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the Council, shall form the panel by appointing the panelists whom he considers most appropriate, after consulting both parties. The Director-General shall inform the contracting parties of the composition of the panel thus formed no later than ten days from the date he receives such a request.

(d) Procedures for Multiple Complainants

1. Where more than one contracting party requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all parties concerned. A single panel should be established to examine such complaints whenever feasible.

2. The single panel will organize its examination and present its findings to the Council so that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel will submit separate reports on the dispute concerned. The written submissions by each of the complainants will be made available to the other complainants, and each complainant will have the right to be present when one of the other complainants presents its view to the panel.

3. If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

(e) Third Contracting Parties

1. The interests of the parties to a dispute and those of other contracting parties shall be fully taken into account during the panel process.

2. Any third contracting party having a substantial interest in a matter before a panel, and having notified this to the Council, shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

3. At the request of the third contracting party, the panel may grant the third contracting party access to the written submissions to the panel by those parties to the dispute which have agreed to the disclosure of their respective submission to the third contracting party.

(f) Time Devoted to Various Phases of a Panel

1. Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.

2. Panels shall follow the Suggested Working Procedures found in the July 1985 note of the Office of Legal Affairs unless the members of the panel agree otherwise after consulting the parties to the dispute. After consulting the parties, the panel members shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process at least until its first substantive meeting.

3. In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.

4. Each party to the dispute shall deposit its written submissions with the secretariat for immediate transmission to the panel and to the other party or parties to the dispute. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable referred to in the second paragraph of this section and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.

5. In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the time the composition and terms of reference of the panel have been agreed upon to the time when the final report is provided to the parties to the dispute, shall, as a general rule, not exceed six months. In cases of urgency, including those relating to perishable goods, the panel shall aim to provide its report to the parties within three months.

6. When the panel considers that it cannot provide its report within six months, or within three months in cases of urgency, it shall inform the Council in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case should the period from the establishment of the panel to the submission of the report to the contracting parties exceed nine months.

7. In the context of consultations involving a measure taken by a developing contracting party, the parties may agree to extend the periods established in paragraphs s 2 and 4 of Section C. If, after the relevant period has elapsed, the parties cannot agree that the consultations have concluded, the Chairman of the Council shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing contracting party, the panel shall accord sufficient time for the developing contracting party to prepare and present its argumentation. The provisions of paragraph 4 of Section G are not affected by any action pursuant to this paragraph.

G. Adoption of Panel Reports

1. In order to provide sufficient time for the members of the Council to consider panel reports, the reports shall not be considered for adoption by the Council until thirty days after they have been issued to the contracting parties.

2. Contracting parties having objections to panel reports shall give written reasons to explain their objections for circulation at least ten days prior to the Council meeting at which the panel report will be considered.

3. The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the Council, and their views shall be fully recorded. The practice of adopting panel reports by consensus shall be continued, without prejudice to the GATT provisions on decision-making which remain applicable. However, the delaying of the process of dispute settlement shall be avoided.

4. The period from the request under Article XXII:1 or Article XXIII:1 until the Council takes a decision on the panel report shall not, unless agreed to by the parties, exceed fifteen months. The provisions of this paragraph shall not affect the provisions of paragraph 6 of Section F(f).

H. Technical Assistance

1. While the secretariat assists contracting parties in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing contracting parties. To this end, the secretariat shall make available a qualified legal expert within the Technical

Co-operation Division to any developing contracting party which so requests. This expert shall assist the developing contracting party in a manner ensuring the continued impartiality of the secretariat.

2. The secretariat shall conduct special training courses for interested contracting parties concerning GATT dispute settlement procedures and practices so as to enable contracting parties' experts to be better informed in this regard.

I. Surveillance of Implementation of Recommendations and Rulings

1. Prompt compliance with recommendations or rulings of the CONTRACTING PARTIES under Article XXIII is essential in order to ensure effective resolution of disputes to the benefit of all contracting parties.

2. The contracting parties concerned shall inform the Council of its intentions in respect of implementation of the recommendations or rulings. If it is impracticable to comply immediately with the recommendations or rulings, the contracting party concerned shall have a reasonable period of time in which to do so.

3. The Council shall monitor the implementation of recommendations or rulings adopted under Article XXIII:2. The issue of implementation of the recommendations or rulings may be raised at the Council by any contracting party at any time following their adoption. Unless the Council decides otherwise, the issue of implementation of the recommendations or rulings shall be on the agenda of the Council meeting after six months following their adoption and shall remain on the Council's agenda until the issue is resolved. At least ten days prior to each Council meeting, the contracting party concerned shall provide the Council with a status report in writing of its progress in the implementation of the panel recommendations or rulings.

4. In cases brought by developing contracting parties, the Council shall consider what further action it might take which would be appropriate to the circumstances, in conformity with paragraphs 21 and 23 of the 1979 Understanding on Dispute Settlement.

Functioning of the GATT System (Negotiation Group 14)

1. "Ministers agree that:

(a) The decision to launch the Uruguay Round of multilateral trade negotiations was taken against a background of large external imbalances in the major industrial economies, instability in the

international monetary system, growing protectionist pressures, and acute debt servicing difficulties in a number of countries, particularly developing countries. In the process of redressing these imbalances, the significance of trade policy making, capable of contributing towards growth and development, needs greater political and institutional recognition.

(b) A solution to problems affecting the functioning of the world economy will require continuing and concerted efforts to improve the stability of the international economic environment and the flow of resources to developing countries. Efforts have been under way for some time and are continuing in international fora to improve the stability of the international economic environment and to deal with the debt problems of developing countries. Progress is being made but more needs to be done.

(c) Difficulties the origins of which lie outside the trade field cannot be redressed through measures taken in the trade field alone. Hence, the importance of efforts to improve other elements of global economic policy making to complement the effective implementation of the improved GATT rules and disciplines to be achieved in the Uruguay Round.

2. The following represent first steps in the three closely linked areas that constitute the particular responsibility of the Negotiating Group on Functioning of the GATT System. They are guided by three general orientations.

(a) First, the key contribution that GATT can make, through the Uruguay Round, towards greater coherence in global economic policy making will be to ensure a further expansion and liberalization of trade as well as a strengthened multilateral trading system which are of vital importance to all contracting parties and which are essential for the promotion of growth and development.

(b) Second, institutional relationships between the GATT and other international institutions responsible for monetary and financial matters can be developed so as to promote a dialogue, within the sphere of competence of each

institution, to facilitate policies and actions which enhance the complementarities that exist between them in order to improve the coherence of global economic policy making.

(c) Third, the institutional reinforcement of the GATT would help it to improve its role in contributing towards such greater coherence in global economic policy making.

3. The package of decisions set out below covering surveillance of trade policies of contracting parties, greater involvement of Ministers of GATT affairs, and cooperation with the international monetary and financial institutions will help to maintain the role of GATT in global economic policy making, and provide a basis for further work by the Negotiating Group in the second half of the Uruguay Round.

Trade Policy Review Mechanism

4. Ministers recommend that the contracting parties establish a trade policy review mechanism, as follows:

A. Objectives

(i) The purpose of the mechanism is to contribute to improved adherence by all contracting parties to GATT rules, disciplines and commitments, and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of contracting parties. Accordingly, the review mechanism will enable the regular collective appreciation and evaluation by the CONTRACTING PARTIES of the full range of individual contracting parties' trade policies and practices and their impact on the functioning of the multilateral trading system. It is not, however, intended to serve as a basis for the enforcement of specific GATT obligations or for dispute settlement procedures, or to impose new policy commitments on contracting parties.

(ii) The assessment to be carried out under the review mechanism will, to the extent relevant, take place against the background of the wider economic and development needs, policies and objectives of the contracting party concerned, as well as of its external environment. However, the function of the review mechanism is to examine the impact of a contracting party's trade policies and practices on the multilateral trading system.

B. Reporting

(i) In order to achieve the fullest possible degree of transparency, each contracting party shall report regularly to the CONTRACTING PARTIES. Initial full reports shall be submitted in the year when the contracting party is first subject to review: however, in no case shall the initial report be submitted later than four years after the introduction of the mechanism. Subsequently, full reports shall be provided in years when the contracting party is due for review. Full reports will describe the trade policies and practices pursued by the contracting party or parties concerned, based on an agreed format to be decided upon by the Council. This format may be revised by the Council in the light of experience. Between reviews, contracting parties will provide brief reports when there are any significant changes in their trade policies; an annual update of statistical information will be provided according to the agreed format. Particular account will be taken of difficulties presented to least-developed contracting parties in compiling their reports. The secretariat shall make available technical assistance on request to least-developed contracting parties, and in particular to the least-developed contracting parties. Information contained in country reports should to the greatest extent possible be coordinated with notifications made under GATT provisions.

C. Frequency of Review

(i) The trade policies and practices of all contracting parties will be subject to periodic review. Their impact on the functioning of the multilateral trading system, defined in terms of share of world trade in a recent representative period, will be the determining factor in deciding on the frequency of reviews. The first four trading entities so identified (counting the European Communities as one) will be subject to review every two years. The next sixteen will be reviewed every four years. Other contracting parties will be reviewed every six years, except that a longer period may be fixed for least-developed countries. It is understood that the review of entities having a common external policy covering more than one contracting party shall cover all components of policy affecting trade including relevant policies and practices

of the individual contracting parties. Exceptionally, in the event of changes in a contracting party's trade policies or practices which may have a significant impact on its trading partners, the contracting party concerned may be requested by the Council after consultation to bring forward its next review.

(ii) Contracting parties recognize the need to minimize the burden for governments also subject to full consultations under the GATT balance-of-payments provisions. To this end, the Chairman of the Council shall, in consultation with the contracting party or parties concerned, and with the Chairman of the Committee on Balance-of-Payments Restrictions, devise administrative arrangements which would harmonize the normal rhythm of the trade policy reviews with the time-table for balance-of-payments consultations but would not postpone the trade policy review by more than 12 months.

D. Review Body

(i) Trade policy reviews will be carried out by the GATT Council at periodic special meetings.

(ii) In the light of the objectives set out in A above, discussions in the meetings of the Council will, to the extent relevant, take place against the background of the wider economic and developmental needs, policies and objectives of the contracting party concerned, as well as of its external environment. The focus of these discussions will be on the contracting party's trade policies and practices which are the subject of the assessment under the review mechanism.

(iii) The Council will establish a basic plan for the conduct of the reviews. It may also discuss and take note of update reports from contracting parties. The Council will establish a programme of reviews for each year in consultation with the contracting parties directly concerned. In consultation with the contracting party or parties under review, the Chairman may choose discussants who, in their personal capacity, will introduce the discussions in the review body.

(iv) The Council will base its work on the following documentation:

(a) The full report, referred to in paragraph B(i) above, supplied by the contracting party or parties under review.

(b) A report, to be drawn up by the secretariat on its own responsibility, based on the information available to it and that provided by the contracting party or parties concerned. The secretariat should seek clarification from the contracting party or parties concerned of their trade policies and practices.

(v) The reports by the contracting party under review and by the secretariat, together with the summary record of the respective meeting of the Council, will be published promptly after the review.

(vi) These documents will be forwarded to the next regular Session of the CONTRACTING PARTIES, which will take note of them.

E. Implementation and Reappraisal of the Mechanism

The trade policy review mechanism will be implemented on a provisional basis from the date of the adoption of this Decision by the CONTRACTING PARTIES. In the light of the experience gained from its operation, the CONTRACTING PARTIES will review, and if necessary modify, these arrangements at the end of the Uruguay Round.

F. Overview of Developments in the International Trading Environment

Enhanced surveillance requires, in addition, an overview of developments in the international trading environment which are having an impact on the multilateral trading system. Such an overview should also be undertaken by the Council. It should be assisted by an annual report by the Director-General setting out major GATT activities and highlighting significant policy issues affecting the trading system. The enhanced surveillance thus provided would also strengthen the existing "early warning" aspect of the special meetings of the Council. It is understood that this overview by the Council, together with the trade policy review mechanism, would replace the existing reviews in special Council meetings established under paragraph 24 of the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance.

Greater Ministerial Involvement in the GATT

5. Ministers recommend that the CONTRACTING PARTIES decide to meet at Ministerial level at least once every two years, in order, inter alia:

(a) to make a fuller contribution to the direction and content of GATT work;

(b) to reinforce the commitment of governments to the GATT system;

(c) to give greater prominence to GATT in domestic political arenas;

(d) to assess trends in international trade and place these trends in their wider economic and political context;

(e) to enable the CONTRACTING PARTIES to contribute effectively to international discussion at the policy level of the international adjustment process; and by these means

(f) to increase the contribution of the GATT to greater coherence in global economic policy making.

Increasing the Contribution of the GATT to Achieving Greater Coherence in Global Economic Policy Making

6. Ministers recommend that the CONTRACTING PARTIES:

(a) invite the Director-General to approach the heads of the IMF and the World Bank, as a first step, to explore ways to achieve greater coherence in global economic policy making through strengthening the relationship of GATT with other relevant international organizations; and

(b) request him to report back by 1 September 1989, and, in his report, to take into account the views, issues and proposals raised in the context of the Negotiating Group."

E) NEW ISSUES

Negotiations on new trade rules on investment, intellectual property and services are generally regarded as the new issues on the agenda of the Uruguay Round. At Montreal, both Trade Related Intellectual Property Issues (TRIP's) and Trade in Services were major topics before GATT Ministers.

Trade Related Invest Measures (Negotiating Group 12)

Ministers agreed at Montreal to carry forward the negotiations on trade related investment measures (TRIM's) on the basis of the identification of those measures with trade restrictive or distorting effects with a view of elaborating new disciplines where existing GATT Articles may not cover them adequately. Specific negotiating proposals have been called for as soon as possible.

Intellectual Property (Negotiating Group 11)

There are four sets of major policy issues involved in the TRIP's negotiations. The first question concerns the appropriate standards of intellectual property protection in respect of patents, copyrights, trademarks, trade secrets and new technology protection. There are a number of international conventions under the WIPO on the subjects, but the issue arises where standards are either inadequate or non-existant. There is still no agreement as to whether the MTN should deal with these issues. Second, there is the issue of enforcement of intellectual property standards, including whether unilateral and discriminatory enforcement should be permitted, as in the case of S. 337 under USA trade law. There is the whole issue of how to fight counterfeiting goods; and there is the question of ensuring timely and effective dispute resolution which does not exist under existing international intellectual property protection.

At Montreal, progress was made on the elaboration of a negotiating framework for TRIP's, but this issue remains at an impasse primarily over whether the MTN should attempt to deal with the question of intellectual property standards. If this issue is not resolved when agriculture comes back to the TNC in April, the MTN participants may well have to decide whether negotiations should proceed without those countries continuing to resist an appropriate MTN mandate on the matter.

Trade in Services (Group on Services - GNS)

At the time of the official launch of the Uruguay Round in 1986, the question of whether to include trade in services within the ambit of the negotiations was such a major contentious issue that it almost aborted the whole launch. At Montreal, Ministers were able to register substantial progress since the Punta del Este meeting in terms of the analysis and understanding of the issues and the stakes involved. They also reached agreement on detailed guidelines for the negotiations to develop a framework of principles and rules to govern trade in services in a manner analogous to the GATT for trade in goods. The integral text of the Ministerial agreement on services is as follows:

1. "Ministers reaffirm the objectives for negotiations on trade in services agreed at Punta del Este. Ministers agree that substantial progress has been achieved in pursuit of these objectives.

2. Ministers take note of the report of the GNS to the TNC contained in MTN.GNS/21 which they consider an important basis for further work directed towards the achievement of these negotiating objectives. This work should proceed in a parallel and interrelated fashion.

3. Ministers note the understanding reached on statistics and on existing international arrangements and disciplines as set out in paragraphs 7 and 8 of the GNS report.

4. Work on definition should proceed on the basis that the multilateral framework may include trade in services involving cross-border movement of services, cross-border movement of consumers, and cross-border movement of factors of production where such movement is essential to suppliers. However, this should be examined further in the light of, inter alia, the following:

(a) Cross-border movement of service and payment.
(b) Specificity of purpose.
(c) Discreteness of transactions.
(d) Limited duration.

5. Ministers agree that work would proceed, without excluding any sector of trade in services on a priori basis, with a view to reaching agreement on the sectoral coverage under the multilateral framework in accordance, inter alia, with the considerations that coverage should permit a balance of interests for all participants, that sectors of

export interest to developing countries should be included, that certain sectors could be excluded in whole or in part for certain overriding considerations, and that the framework should provide for the broadest possible coverage of sectors of interest to participants.

6. Ministers agree that, before the concepts, principles and rules which comprise a multilateral framework for trade in services are finally agreed, these concepts, principles and rules will have to be examined with regard to their applicability and the implications of their application to individual sectors and the types of transactions to be covered by the multilateral framework.

7. Ministers agree that negotiations on the elaboration of a multilateral framework of principles and rules for trade in services should proceed expeditiously. To this end, the following concepts, principles and rules are considered relevant:

(a) Transparency

Provisions should ensure information with respect to all laws, regulations and administrative guidelines as well as international agreements relating to services trade to which the signatories are parties through adequate provisions regarding their availability. Agreement should be reached with respect to any outstanding issues in this regard.

(b) Progressive Liberalization

The negotiations should establish rules, modalities and procedures in the multilateral framework agreement that provide for progressive liberalization of trade in services with due respect for national policy objectives including provisions that allow for the application of principles to sectors and measures. Provisions should also be established for further negotiations after the Uruguay Round. Specific procedures may be required for the liberalization of particular sectors.

The aim of these rules, modalities and procedures should be to achieve, in this round and future negotiations, a progressively higher level of liberalization taking due account of the level of development of individual signatories. To this end the adverse effects of all laws, regulations and administrative guidelines should be reduced as part of the process to provide effective market access, including national treatment.

The rules, modalities and procedures for progressive liberalization should provide appropriate flexibility for individual developing countries for opening fewer sectors or liberalizing fewer types of transactions or in progressively extending market access in line with their development situation.

(c) National Treatment

When accorded in conformity with other provisions of the multilateral framework, it is understood that national treatment means that the services exports and/or exporters of any signatory are accorded in the market of any other signatory, in respect of all laws, regulations and administrative practices, treatment "no less favourable" than that accorded domestic services or services providers in the same market.

(d) Most-Favoured-Nation/Non-Discrimination

The multilateral framework shall contain a provision on m.f.n./non-discrimination.

(e) Market Access

When market access is made available to signatories it should be on the basis that consistent with the other provisions of the multilateral framework and in accordance with the definition of trade in services, foreign services may be supplied according to the preferred mode of delivery.

(f) Increasing Participation of Developing Countries

The framework should provide for the increasing participation of developing countries in world trade and for the expansion of their service exports, including inter alia through the strengthening of their domestic services capacity and its efficiency and competitiveness.

Provisions should facilitate effective market access for services exports of developing countries through, inter alia, improved access to distribution channels and information networks. These provisions should facilitate liberalization of market access in sectors of export interest to developing countries.

Autonomous liberalization of market access in favour of services exports of developing countries should be allowed.

Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated commitments in view of their special economic situation and their development, trade and financial needs.

(g) Safeguards and Exceptions

Further negotiations will be necessary on provisions for safeguards, e.g. for balance-of-payments reasons, and exceptions, e.g. based on security and cultural policy objectives.

(h) Regulatory Situation

It is recognized that governments regulate services sectors, e.g. by granting exclusive rights in certain sectors, by attaching conditions to the operations of enterprises within their markets for consumer protection pruposes and in pursuance of macro-economic policies. Asymmetries exist with respect to the degree of development of services regulations in different countries. Consequently, the right of countries, in particular of developing countries, to introduce new regulations is recognized. This should be consistent with commitments under the framework.

8. Other elements mentioned in MTN.GNS/21, as well as new ideas and concepts participants may wish to put forward, will also be considered.

9. It is understood that the acceptability of the multilateral framework will be dependent on the initial level of negotiated commitments of signatories.

Future Work

10. Future work should provide for:

(a) The compilation by the secretariat of a reference list of sectors by February 1989. This process could be assisted by submissions by participants.

(b) Invitation to participants to submit indicative lists of sectors of interest to them with a target date of May 1989.

(c) The process of examining the implications and applicability of concepts, principles and rules for particular sectors and specific transactions should begin as lists become available.

(d) Further-work as necessary on the role of international disciplines and arrangements and on the question of definition and statistics.

11. The GNS should endeavour, by the end of 1989, to assemble the necessary elements for a draft which would permit negotiations to take place for the completion of all parts of the multilateral framework and its entry into force by the end of the Uruguay Round."

ANNEX II

MONTREAL MINISTERIAL MEETING

BACKGROUNDERS

MMM BACKGROUNDERS

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CANADA AND THE URUGUAY ROUND

The General Agreement on Tariffs and Trade (GATT) is the cornerstone of the world trading system and of Canada's international trade policy. Canada was one of the 23 founding members of the GATT in 1947 and has played a leading role in the development of the GATT system ever since.

The eighth major round of multilateral trade negotiations (MTN), known as the Uruguay Round, was launched in Punta del Este, Uruguay in September 1986. This Round is expected to conclude in 1990.

The Montreal Ministerial Meeting, beginning December 5, 1988, will bring together trade, finance and agriculture ministers from the 105 countries and international organizations participating in the Uruguay Round. The purpose of this meeting is to review developments to date at the mid-point of the MTN and to provide political impetus and direction to the various negotiating groups for the final two years of negotiations.

The future growth and prosperity of Canada's economy depends on a fair and open world trading system. Canada's top priority in the Uruguay Round is to expand and secure access to world markets for Canadian exports.

Canada's overall objectives in the MTN are as follows:

- to improve market access for Canadian exports by reducing or eliminating, where possible, tariff and non-tariff barriers to trade, especially for agricultural and natural resource-based products;

- to seek clearer and more effective GATT rules for agricultural products to open up world markets to Canadian agri-food exports and to reduce export subsidization, especially by the United States and the European Community, which is harming Canadian farmers;

- to develop new trade rules in important areas not previously covered in the GATT, such as trade in services, trade-related intellectual property and trade-related investment;

- to improve existing GATT trade rules relating to subsidies and the use of countervailing duty and safeguard measures by national governments; and

- to reform and revitalize GATT institutions, specifically, to improve its dispute settlement mechanisms, to enhance multilateral surveillance of national trade policy developments and to encourage closer relations between the GATT and other major international organizations, specifically the International Monetary Fund and World Bank.

MARKET ACCESS

When the GATT was signed in 1947, the main objective of the founding parties was to reduce tariffs on goods and thus improve access to world markets. Market access continued to be the principal focus in the succeeding six rounds of multilateral trade negotiations.

Reducing tariff and non-tariff barriers to goods is also an important objective in the current Uruguay Round. In the Punta del Este Declaration, which formally launched the Uruguay Round, the GATT Contracting Parties agreed to work together to reduce or eliminate tariffs and non-tariff barriers as well as to liberalize trade in natural resource-based products.

Several successful rounds of GATT negotiations have substantially reduced tariffs to the extent that, for some goods, they no longer represent a major impediment to world trade -- at least among developed countries. This is not true for developing countries, where both tariff and non-tariff barriers remain high, and where significant potential markets for Canadian exports are to be found.

Despite low average tariff levels, most industrialized nations continue to maintain high tariffs in certain sectors. A further concern, especially for Canadian resource industries, is the issue of tariff escalation, where higher tariffs are imposed on processed products.

As average tariff levels have been reduced, the use of non-tariff measures has become a more significant barrier to world trade. These measures include import quotas, licensing requirements, discriminatory product standards, technical regulations, subsidies, countervailing duties and government procurement preferences.

In the Uruguay Round, Canada is seeking the greatest possible reduction in tariff and non-tariff restrictions, particularly those affecting Canadian exports of resource-based products such as fish, forest products, petrochemicals, metals and minerals. To ensure security of access and to

reduce the risk of tariff escalation, Canada is also seeking to increase the volume of world trade that is subject to tariff bindings.

Canada recognizes that access to export markets for our advanced-technology industries is critical to our future economic prosperity. In the Uruguay Round, Canada is also working to liberalize rules pertaining to government procurement, to reduce technical barriers to trade and to improve disciplines on unfair competition. Progress on these issues will open up new markets for Canadian high-technology products and services.

AGRICULTURAL TRADE

Canada believes that there is an urgent need for agricultural trade reform. The international trade environment facing Canadian agriculture has never been in a such a state of disarray.

Fair and open agricultural trade is of vital importance to Canadian farmers. Approximately one half of Canadian farm cash receipts come from exports. Canada exported $8.9 billion in agricultural products in 1987.

Although the United States is an important customer for our agricultural exports, two-thirds of our farm exports go to other markets around the world. For instance, 80 per cent of our grain and oilseed exports go to other markets. In these other markets, our agricultural exports face strong competition from heavily subsidized products of the U.S. and the European Community.

For the first time in GATT history, agriculture is at the heart of the multilateral trade negotiations.

One of Canada's principal objectives in the Uruguay Round is to bring agricultural trade under more effective and more equitable rules which apply to all GATT countries.

Canada is working to reduce trade-distorting subsidies, particularly export subsidies, which are causing real difficulty for our farmers. These problems are global and require global solutions. This country is also trying to improve and secure access to foreign markets for our exports.

Canada is aware of the need to reduce conventional trade barriers, such as tariffs and import quotas, as well as to ensure that technical regulations, such as health and sanitary measures, are not used as disguised barriers to trade.

Canada is a member of the Cairns Group of agricultural exporters along with Australia, New Zealand, Argentina, Brazil, Uruguay, Chile, Colombia,

Thailand, the Philippines, Indonesia, Malaysia and Hungary. Together, these countries account for 25 per cent of world agricultural exports and represent 500 million people.

The Cairns Group, which was formed just before the Uruguay Round was launched in September 1986, has proved to be an effective bargaining coalition. In July, the Group tabled a proposal in the GATT, recommending both short-term and longer-term measures to reduce restrictions to trade.

Success in dealing with these issues is critical to the Uruguay Round. Canada has brought international attention to the need for agricultural trade reform at meetings of the Cairns Group; at the Economic Summits in Tokyo, Venice and Toronto; at meetings of the Organization for Economic Co-operation and Development (OECD); and at every other international trade forum in which Canadian ministers and officials have participated.

Canada will only accept commitments which take into account the specific needs of the Canadian agricultural sector and which are fair and equivalent to those accepted by other major participants. These commitments would not prevent participants from supporting their agricultural sectors so long as such support does not distort trade.

The livelihood of Canadian farmers depends on multilateral solutions to the pressing problems of international trade in agricultural products. Canada is working hard to achieve these solutions in the Uruguay Round.

CANADA AND TRADE IN SERVICES

Trade in services -- such as transportation, telecommunications, consulting, financial and professional services -- is becoming an increasingly important feature of the world economy. Estimates are that trade in services now represents about 20 per cent of world trade.

In Canada, services account for over 70 per cent of Gross Domestic Product and more than 8.8 million jobs. The service sector is the fastest-growing source of employment growth.

In the Uruguay Round, Canada is working to develop a new framework of multilateral rules for trade in services, a framework comparable to the GATT rules for trade in goods. Furthermore, Canada believes that any agreement on services must contain mechanisms for avoiding and settling disputes. Canada also seeks to reduce existing restrictions on our exports of services to foreign markets.

Basic GATT principles -- such as market access, non-discrimination, national treatment and transparency -- need to be applied to trade in services in the multilateral trade negotiations.

The Uruguay Round gives the international trading community an opportunity to establish basic rules for trade in services before they become the subject of increasing international confrontations. A multilateral agreement would also help to stem unilateral retaliatory measures taken by national governments against foreign suppliers of services.

Any effort to establish multilateral rules for trade in services is made particularly difficult by the fact that national governments employ a wide range of different measures in regulating domestic provision of services.

Services are traded in a variety of ways through the movement of information, people, capital or goods. Many services, including computer services, are transported along telecommunications networks. Professional

services, such as consulting and architectural services, require the movement of people among countries.

Other services, including tourism, involve the movement of the consumer to the country providing the service. Still others can only be provided if there is direct and continuing contact between the buyer and seller. In these circumstances, the supplier must have a presence in the country where the service is being provided.

Many services are incorporated in, or are integrally related to, trade in goods. Some services, like software and data on computer disks, are contained in goods. Other services, including installation, training and after-sales service, are sold together with goods. Transportation, insurance and financial services are often related to, and essential to, the sale of certain goods.

Canada's future economic growth depends on securing enhanced access to world markets for our service exports. A general reduction in trade restrictions will lead to increased demand for Canadian goods and services. This will mean even greater employment opportunities in service industries than we have witnessed over the past decade.

Industry will benefit from a greater selection of internationally competitive Canadian and foreign services. Consumers will also benefit from lower prices, greater choice and higher quality.

STRENGTHENING THE GATT SYSTEM

The impetus for the Uruguay Round can be explained very simply. Notwithstanding the trade expansion resulting from previous GATT rounds, the rules and institutions of the GATT were not keeping pace with the rapid changes in the world trading system. The rise of the "new protectionism," characterized by the proliferation of non-tariff measures, increasing use of unilateral trade actions and greater propensity toward regional groupings and voluntary export restraint agreements, contributed to the perception held by many that the very credibility of the GATT system itself was being undermined.

In addition to improving the rules of the game, therefore, the GATT ministers at Punta del Este set the following objectives for the improvement of the GATT system in the Uruguay Round:

- strengthening the role of the GATT;
- increasing the responsiveness of the GATT system to the changing international economic environment;
- enhancing the relationship of the GATT with the other relevant international financial organizations, including the International Monetary Fund and the World Bank; and
- fostering greater co-operation at the national and international levels to strengthen the inter-relationships between trade policies and other policies affecting growth and development.

Canada views the improvement of GATT dispute settlement procedures and the strengthening of the GATT system as important priorities in the Uruguay Round. To this end, Canada together with 12 other countries (the so-called de la Paix Group) has introduced comprehensive proposals

designed to streamline dispute settlement procedures and to better equip the GATT system to deal with the changes of the 1990s and beyond. (See separate background note.)

With respect to the GATT system generally, Canada supports the following improvements:

- establishment of a Trade Policy Review Mechanism within the GATT to conduct periodic reviews of the domestic trade policies of GATT Contracting Parties;

- increased involvement of national trade ministers in the GATT, including ministerial level meetings every two years; and

- strengthening the GATT's relationship with the other international monetary and financial institutions, specifically the International Monetary Fund and the World Bank, to ensure greater coherence in global economic policies.

Canada believes that a strengthened and improved GATT system is essential to maintain the momentum of trade liberalization achieved by the GATT in the last seven rounds of multilateral trade negotiations. Also, a strong and vital GATT system will make it easier for national governments to resist protectionist forces and provide a stable foundation for trade expansion and economic growth in the world trading system.

GATT DISPUTE SETTLEMENT SYSTEM

The GATT's dispute settlement mechanism is an important element in managing trade relations between countries. It has been used by many, including Canada, to help resolve problems, especially those resulting from one country believing that another was not living up to its international commitments in the GATT. While increasing use has been made of the GATT dispute settlement provisions in recent years, weaknesses of process and procedure, including access to the panel system and the speed and willingness of member countries to implement panel findings, have demonstrated the need to strengthen and streamline the system.

Ministers agreed in 1986, when they launched the current Uruguay Round at Punta del Este, that a stronger dispute settlement mechanism as part of a revitalized, modernized GATT would be a major objective of the negotiations. Reliable procedures, equally accessible to all Contracting Parties, are especially in the interest of the smaller and medium-sized Contracting Parties. Canada has traditionally been active in promoting improvements in this area. The larger trading entities also need a better system for different reasons -- because it helps them to resist protectionist forces at home and it helps them deal with trade frictions involving other large partners.

A dispute settlement mechanism can only be as effective as the rules that it is charged with administering. In fact, about one-half of the problem cases of the last few years have been related to agricultural trade and subsidies disputes. These are areas where the rules of the GATT are clearly inadequate and where the Uruguay Round will need to make real progress on substantive policy issues if dispute resolution is to be more effective in the future.

Further, the GATT's dispute avoidance procedures, involving notification and bilateral consultation procedures aimed at keeping pressure on disputants to reach mutually satisfactory solutions, will need to be utilized on a continuing basis to enhance the effectiveness of the GATT system. It is

important for the integrity of the system, however, that these bilateral solutions be consistent with the international rules.

Contracting Parties to the GATT have been making increasing resort to the dispute settlement mechanism. More cases (24) were considered in the period from the end of the Tokyo Round (1979) to 1986 than in the entire period from the establishment of the GATT to the Tokyo Round. In the last 22 months alone, 20 GATT dispute settlement panels have been established. This has given rise to the need to streamline the process, to make it speedier and to limit bottlenecks in the system, including those exploited by one or more of the disputants.

It is hoped that tangible progress will be registered at the Montreal Ministerial Meeting that will provide the basis for improved, streamlined procedures in the GATT dispute settlement system. The thrust of these improved procedures should involve:

- greater certainty of access to the panel procedure (usually within 30 days of request);

- expanded procedures for use of good offices, conciliation, mediation and voluntary binding arbitration techniques;

- stricter time frames: the operative stages of the panel process, including the consultative stage, are to be limited to a period of 15 months (extended consultations were often used to delay the establishment of panels); various stages within the overall process are also limited (e.g. six months from the setting of the panel and terms of reference to the circulation of the report -- in recent experience, this stage averaged over 10 months);

- provision for standard terms of reference and time limits on the selection of panels, areas where the process have been delayed in the past;

- special provision to speed multiple complaints on the same issue (in the past, each complaint required the full process to be repeated);

- reduced possibilities for blockage of adoption of panel reports; and

- greater surveillance of the implementation of panel report recommendations.

The benefits to be derived from such improvements would include greater predictability and a better guarantee that the rights of all Contracting Parties, big and small, will be respected.

SUBSIDIES AND COUNTERVAILING MEASURES

Many of the current trade irritants and disputes affecting world trade stem from disagreements in the area of subsidies and countervailing measures. Improving and clarifying GATT rights and obligations with respect to subsidies as well as countervailing measures and improving the dispute settlement process are important elements in the Uruguay Round agenda.

Under the Canada-U.S. Free Trade Agreement (FTA), a bilateral Working Group will address the issue of subsidies and countervailing measures over the next five to seven years with a view to developing an agreed substitute system of rules and disciplines. Of course, the Canada-U.S. discussions will take as their starting point the existing GATT rules relating to subsidies and countervailing measures.

The multilateral trade negotiations (MTN) will also seek to bring about greater clarity and certainty in trade rules and their application, particularly in terms of trade-distorting subsidies. The MTN will proceed in parallel with the Canada-U.S. Working Group but may have an earlier time horizon. Until a new bilateral regime of rules has been successfully negotiated and implemented, GATT rules will apply to Canada-U.S. trade.

Since its inception, GATT has recognized the potential harm that undisciplined subsidization can do to the proper functioning of the international trade system. A prohibition was established early on for export subsidies on non-primary products. But the GATT has been much less successful in developing agreed disciplines on other trade-distorting subsidies, particularly in relation to primary sectors. The current agricultural crisis is testimony to this. In this situation, heavy reliance has been placed on an importing country's right to take countervailing duty action. The injury test on countervail negotiated in the Tokyo Round was a positive but insufficient improvement to prevent harassment to legitimate trade.

At the same time, subsidies are recognized in the GATT as legitimate instruments to promote important national policy objectives such as

facilitating regional and economic development or structural adjustment. The GATT must now go on to better define the circumstances and form in which subsidies can be regarded as neutral and non-trade-distorting and therefore not countervailable. The absence of clear rules and definitions of subsidies which are trade-distorting, and those which are not, has contributed to the unilateral expansion in the application of countervail.

Canada has faced both sides of this issue. As a major trader, we have suffered from the disruption which undisciplined subsidization causes in our market and for our exports in foreign markets. We have applied countervail to protect our industry from the adverse impact of unfair subsidies and we have faced such protection in our export markets. We have been involved in a number of disputes with our trading partners both as a result of their actions against our exports and because of import measures we have imposed.

The issues of discipline on trade-distorting subsidies and countervailing duties and dispute settlement are very much interwoven. This needs to be reflected in the negotiating agenda and in the proposals brought forward. We are working toward a negotiating framework in this area which is balanced and comprehensive and which avoids dealing with one side of the equation to the exclusion of the other. If such a negotiating framework emerges from the Montreal Meeting, it could be an important contribution toward finding better international rules in an area of importance to Canada.

IMPROVING THE TRADE RULES

More secure and predictable access to foreign markets is crucial to Canadian businesses interested in expanding their trade and investment opportunities.

The benefits of trade liberalization achieved in previous GATT rounds can be seriously undermined by the use of contingency protection measures, such as anti-dumping or countervailing duties and safeguard measures, applied to both fair and unfair trade.

An important objective in the Uruguay Round is to improve GATT rules relating to subsidies and countervailing duty measures that affect international trade. Canada is seeking clearer, more effective disciplines on the use of trade-distorting subsidies. For this reason, we are working to achieve multilateral agreement on the definition and measurement of subsidies and to clarify the rules, procedures and conditions that govern national administration of countervailing duty laws.

A related goal is to develop more effective multilateral rules on the use of "safeguard measures," such as emergency import relief measures under GATT Article XIX, voluntary export restraints and orderly marketing arrangements. GATT Contracting Parties are also discussing the impact of safeguard measures on the structural adjustment of industries affected by changing trade patterns.

Canada is working hard in the Uruguay Round to develop framework agreements with clearer, more equitable and more effective rules in these areas. Achieving such agreements is essential if we are to stem the tide of increasing unilateralism in the application of contingency protection measures against our exports.

THE CANADA-U.S. FREE TRADE AGREEMENT AND THE MULTILATERAL TRADE NEGOTIATIONS

The General Agreement on Tariffs and Trade (GATT) is not only the cornerstone of Canadian international trade policy, it is also the international framework upon which the future growth and prosperity of the Canadian economy depends.

Canadian trade policy pursues trade liberalization along two integrally-related tracks. First, Canada is pursuing further trade liberalization in the Uruguay Round with our partners in the GATT. Second, Canada has negotiated a Free Trade Agreement (FTA) with our principal trading partner, the United States.

The FTA was negotiated under Article XXIV of the GATT, which allows for the creation of free-trade areas and customs unions. Such agreements must meet a number of criteria contained in this Article. For example, they must cover substantially all the trade between the parties involved, and they must not erect new trade barriers against third countries. The FTA is fully consistent with the criteria specified in Article XXIV.

By pursuing a two-track trade policy approach, Canada is working to ensure the greatest possible export opportunities for our industries. There are several important inter-relationships between the FTA and the Uruguay Round of multilateral trade negotiations (MTN).

By expanding access to U.S. markets for Canadian firms, the FTA will enhance the efficiency of domestic industries and enable them to compete more effectively both in global markets and at home. As the impact of the FTA begins to be felt, Canadian enterprises will begin looking for new markets for their goods and services. A major Canadian objective in the Uruguay Round is to expand and secure access to other world markets for Canadian exports by working toward the reduction or elimination of tariffs and non-tariff restrictions, especially for agricultural, natural resource-based and high-technology products.

Under the FTA, Canada and the United States will retain their own tariff and customs regimes. Having reduced tariffs and other non-tariff barriers with our largest trading partner, Canada will be in a better position in the MTN to focus on trading relationships with other countries.

The Uruguay Round provides a unique opportunity for Canada to maximize the industrial benefits from the FTA by reducing tariff levels vis-à-vis third countries, thereby encouraging investment and creation of jobs in Canada.

Many of the issues at the heart of the free trade negotiations also dominate the MTN. Both require trading partners to face the new realities of world trade, including trade in services, trade-related intellectual property and trade-related investment issues.

In the traditional goods-related areas -- including tariffs, import and export restrictions, product standards and technical regulations, government procurement and dispute settlement -- the FTA affirms and builds on existing GATT rules. In the vital area of trade in services, the FTA could serve as a model for GATT Contracting Parties in the Uruguay Round.

In some areas, such as agricultural subsidies, trade-related intellectual property, government procurement and trade-related investment, Canada and the U.S. recognized in their negotiations that these were global problems that required global solutions. For this reason, the FTA contains a commitment on the part of both countries to work in the MTN to forge new international agreements in these areas.

From a Canadian point of view, implementation of the FTA and successful conclusion of the Uruguay Round would combine to generate domestic growth and trade expansion. Greater access to the U.S. market will increase our industrial efficiency and make Canadian firms stronger competitors in global markets.

Lower world trade barriers resulting from the Uruguay Round and a more efficient Canadian economy stemming from the FTA will work together to give Canadian firms the secure market access and competitive opportunities necessary for Canada's future economic prosperity.

THE URUGUAY ROUND AND EUROPE 1992

As GATT ministers meet in Montreal in December to provide political momentum to the multilateral trade negotiations (MTN), there are increasing concerns about whether the European Community (EC) is becoming more protectionist as it approaches the completion of the integration of its internal market by 1992.

Regional and Multilateral Trading Arrangements Can Go Hand in Hand

At the Toronto Economic Summit, world leaders acknowledged their belief that developments, such as the completion of the EC's internal market by 1992 and the Canada-U.S. Free Trade Agreement, "should support the open, multilateral trade system and catalyze the liberalizing impact of the Uruguay Round". A successful Uruguay Round, they declared, would assure the integrity of the world trading system by enhancing the role of clear trade rules, trade expansion and economic growth.

Each step in European integration, from the formation of the Common Market in the 1950s through its expansion to include the United Kingdom, Ireland and Denmark and, more recently, Spain, Portugal and Greece, has been accompanied by increased undertakings to liberalize trade globally within the GATT. That has been the experience of the Dillon, Kennedy and Tokyo Rounds of multilateral trade negotiations during the 1960s and 1970s.

The commitment of the EC to a successful Uruguay Round is fundamental to ensuring that the completion of its internal market contributes to the further expansion of international trade and to resisting protectionism.

Enhancing Canada's Trade with Europe in the MTN

In areas, such as agriculture, resource products and manufacturing, where the EC has, to a great extent, already adopted integrated common commercial policies vis-à-vis third countries, Canada will be working in the Uruguay Round to enhance trade and investment opportunities for Canadian producers and exporters. Canada will be seeking substantial reduction of EC tariffs and non-tariff barriers, such as restrictive government procurement practices, so that Canadians will have more equal competitive opportunities in the large European market on the basis of mutual advantage on both sides of the Atlantic.

In newer areas, such as trade in services and movement of capital, where the EC is still in the process of developing its common policies and regulations by 1992, Canada will join with other MTN participants in the Uruguay Round to develop new multilateral frameworks of rules. These new rules will build on the GATT principles of national treatment, non-discrimination, transparency and dispute settlement as they apply at present to trade in goods. Achieving such frameworks will strengthen our capacity to resist the threats of more protectionist concepts, such as sectoral reciprocity, being voiced by certain groups within the EC. Canada will also be seeking the extension of the GATT Code on Government Procurement to service sectors, such as telecommunications, which are not now covered by multilateral rules.

Preserving Canada's Rights under the GATT

Canada will closely monitor developments in the integration of the EC's internal market to ensure that the existing GATT rules and the various GATT agreements are fully respected. This will include, in particular, monitoring the harmonization of product standards and technical regulations within the EC. The existing GATT Agreement on Technical Barriers to Trade provides for the application of national treatment to foreign products and suppliers in the development of new technical

regulations as well as testing and certification requirements. The EC also has an obligation to encourage the development of international product standards and to avoid the use of technical regulations for the purpose of creating obstacles to trade. The GATT national treatment principle is designed to ensure that Canadian exports will be treated no less favourably than EC products within the European Community under any taxation or other domestic laws.

Maintaining Full Awareness of EC Developments

In order to ensure that Canadian industries will be fully informed of developments in the EC over the next few years, the Department of External Affairs has initiated an extensive program to analyze the implications for Canada of Europe 1992. Awareness of potential problems will assist our MTN negotiators to resist European developments that may adversely affect Canadian trade and investment interests in Europe. Informing Canadian firms of the challenges ahead will also assist them in seeking competitive opportunities in the expanded and unified European market.

ANNEX III

GLOSSARY OF FREQUENTLY USED TERMS AND ACRONYMS IN THE MULTILATERAL TRADE NEGOTIATIONS

GLOSSARY OF FREQUENTLY USED TERMS AND ACRONYMS IN THE MULTILATERAL TRADE NEGOTIATIONS

TERMS

AD VALOREM TARIFF

A tariff calculated as a percentage of the value of goods cleared through Customs, e.g. 15 per cent ad valorem means 15 percent of the customs value. The customs value itself may be determined in different ways.

AGGREGATE MEASURE OF SUPPORT (AMS)

A term being used in the Uruguay Round agricultural negotiations to narrow the producer subsidy equivalent methodology eliminating measures such as research and development funds that do not significantly distort trade in order that if be more acceptable and useful as a negotiating tool.

ANTIDUMPING CODE (ADC)

A code of conduct negotiated under the auspices of GATT during the Kennedy Round and revised during the Tokyo Round that established substantive and procedural standards for antidumping proceedings.

ANTIDUMPING DUTIES

Additional duties imposed by an importing country in circumstances where imports are priced at less than the "normal" price charged in the exporter's domestic market and cause or threaten to cause material injury to a domestic industry in the importing country.

BALANCE OF PAYMENTS (BOPs)

A tabulation of a country's credit and debit transactions with other countries and international institutions.

CAIRNS GROUP

A coalition of 13 agricultural exporting countries (Australia, New Zealand, Argentina, Brazil, Uruguay, Chile, Colombia, Thailand, Philippines, Indonesia, Malaysia and Hungary, including Canada,) developing proposals on agriculture during the Uruguay Round.

CANADIAN CUSTOMS TARIFF

The legal framework for the collection of customs duties.

CODE OF CONDUCT

Codes negotiated during the Kennedy and Tokyo Rounds to reduce non-tariff barriers or domestic measures that impede trade. These include product standards, antidumping and government procurement amongst others. Countries that are not contracting parties to GATT may be signatories to these codes. Not all contracting parties to the GATT are signatories to each code.

COMPENSATION

A new and equivalent concession given by one country to other countries to compensate for a new border measure such as a tariff increase, decrease in quota level, temporary surtax, etc. taken by the first country.

CONCESSION

In GATT terms, the granting of improved access to a country's market in return for better access in export markets.

CONSUMER SUBSIDY EQUIVALENT

The level of subsidy, in terms of a direct income payment, that would be required to compensate consumers of agricultural and food products for the removal of current government programs.

CONTRACTING PARTY (CP)

A country which is a member of the GATT.

CONTRACTING PARTIES (CP's)

All contracting parties of GATT acting in concert.

COUNTERTRADE

The exchange of goods without using currency,e.g. barter deals. Usually resorted to by countries with balance-of-payments problems or currency restrictions.

COUNTERVAILING DUTIES (CVD)

Additional duties imposed by an importing country to offset government subsidies in an exporting country when subsidized

imports cause or threaten to cause material injury to a domestic industry in the importing country.

CUSTOMS VALUATION

The appraisal of the value of imported goods by customs officials for the purpose of determining the amount of duty payable. The GATT Customs Valuation Code obligates signatory governments to use the "transaction value" (the price actually paid or payable) of imported goods as the principal basis for valuing the goods for customs purposes. Countries have an option of e.g. including or excluding freight and insurance charges (i.e. C.I.F. or F.O.B.).

DEGRESSIVITY

The gradual phasing out of those border measures previously taken to deal with problems of serious injury due to rapid increases in imports.

de la PAIX GROUP

A loose coalition of countries from different regions that work closely together on various issues in different MTN negotiating groups in Geneva. These countries share a common interest in influencing the USA, EC and Japan in particular by putting forward ideas to advance the negotiations. Members of this group are Canada, Australia, New Zealand, Sweden, Switzerland, Hungary, Pakistan, Zaire, Uruguay, Columbia, Korea, Hong Kong and Singapore.

DEVELOPED COUNTRIES (DCs)

Refers to the industrialized nations, particularly all members of the Organization for Economic Cooperation and Development (OECD) countries.

DEVELOPING COUNTRIES (or less developed countries) (LDC's)

A broad range of countries that generally lack a high degree of industrialization, infrastructure, and other capital investment, or advanced living standards among their populations as a whole. The poorest of such countries are referred to as the least developed or LLDC's.

DISPUTE SETTLEMENT

Those provisions in an international trade agreement which provide the means by which differences between the parties can be avoided or settled.

DUMPING

The sale of an imported good at a price lower than that at which it is sold within the exporting country and which causes injury in the importing country. Article VI of GATT and the Antidumping Code permit the imposition of antidumping duties against "dumped" goods equal to the difference between their export price and their normal value in the exporting country if the dumped goods are causing material injury in the importing country.

ESTABLISHMENT, Right of

Foreign investors having the right to establish new businesses or to acquire existing ones on the same basis as nationals.

EXPORT RESTRAINTS (VER's)

Quantitative restrictions imposed by exporting countries, usually outside of the GATT rules, to limit exports to specified foreign markets, usually pursuant to a formal or informal agreement concluded at the request of importing countries. They often take the form of an Orderly Marketing Arrangement (OMA) or of a Voluntary Restraint Arrangement (VRA).

EXPORT SUBSIDIES

Payments or other financial benefits provided by government to domestic producers or exporters contingent on a commitment to export. GATT Article XVI recognizes that subsidies in general, and especially export subsidies, may have trade-distorting effects. Article XVI and the Agreement on Subsidies and Countervailing Duties (the "Subsidies Code") negotiated during the Tokyo Round include an outright prohibition of export subsidies by developed countries for manufactured and semi-manufactured products.

FORMULA APPROACH

Method of negotiating tariffs across the board usually summarizied as a percentage tariff reduction.

FREE TRADE

Trade unfettered by government-imposed trade restrictions or distortions.

FREE TRADE AREA (FTA)

An arrangement authorized under Article XXIV of the GATT among two or more countries that agree to remove

substantially all tariff and non-tariff barriers to trade with each other, each maintaining its own schedule of tariffs and customs measures vis-à-vis all other nations.

GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT)

A multilateral trade treaty, subscribed to by almost 100 countries, to liberalize world trade and to place it on a more secure basis through agreed international rules.

GATT BINDING

Countries agree as part of their GATT commitments not to increase the level of their tariffs on imports of a product without going through negotiation to compensate for any increase.

GATT BOUND RATE

Rate of custom duty/tariff bound in the GATT against increase.

GATT SCHEDULES

Detailed listing of concessions negotiated over the years since 1947 under the GATT such as lower tariffs or less restrictive non-tariff measures.

GATT SECRETARIAT

The Geneva-based staff that services the GATT contracting parties in the administration of the GATT, its codes, disputes and negotiations.

GENERALIZED SYSTEM OF PREFERENCES (GSP)

Special tariff treatment accorded by developed countries to encourage the expansion of manufactured and semi-manufactured exports from developing countries by making those goods more competitive in developed country markets through tariff preferences.

GOVERNMENT PROCUREMENT

Purchases of goods by official government agencies.

GOVERNMENT PROCUREMENT CODE

A code of conduct negotiated under the auspices of the GATT during the Tokyo Round that established substantive qualification and procedural standards for tendering and awarding of government contracts for certain Code-covered federal government departments and agencies.

GRADUATION

Concept used to denote a country whose economic development has advanced to the stage where it can assume greater obligations under the GATT.

GREY-AREA MEASURES

Actions to restrict imports taken outside the GATT framework, e.g. voluntary restraint arrangements. (VRA's)

HARMONIZED COMMODITY CODING AND DESCRIPTION SYSTEM (HS)

The current system for classifying goods for customs duty and statistical purposes. Canada adopted the HS as its system for customs classification effective January 1, 1988.

INJURY

The effect on domestic producers resulting from import competition of a decline in output, lost sales, decline in market share, reduced profits and return on investment, reduced capacity utilization, etc. A distinction is often made between "serious" injury (required for emergency safeguard measures") and "material" injury (required for antidumping and countervailing duties).

LEAST DEVELOPED COUNTRIES (LLDC's)

Some 36 of the world's poorest countries as defined by the United Nations.

LIBERALIZATION

Reductions in barriers to international trade, involving both tariffs and non-tariff measures.

MARKET ACCESS

Openess of a national market to products and services from other countries, i.e., degree of a government's willingness to permit imports to compete with similar domestically-produced goods or services.

MINIMUM IMPORT PRICE (MIP)

Regulated price below which imports are not permitted.

MOST-FAVOURED-NATION TREATMENT (MFN)

A commitment that a country will extend to another country the best conditions to its home market that it applies to any third country. The MFN principle, Article I of the GATT, has been the foundation of the world trading system since the end of World War II.

MULTI-FIBRE ARRANGEMENT REGARDING TRADE IN TEXTILES (MFA)

An international agreement under GATT that allows an importing country to apply quantitative restrictions on textiles and clothing when it considers them necessary to prevent disruption in the domestic market. It seeks to regulate a balance between the interests of textile exporting (normally LDC) and importing (normally developed) countries.

MULTILATERAL TRADE NEGOTIATIONS (MTN)

A series of intensive bargaining sessions among the participating countries. The current Uruguay Round is the eighth such Round.

MTN AGREEMENTS AND ARRANGEMENTS

Generally relates to existing GATT Codes, i.e. Technical Barriers to Trade (standards), Import Licensing, Anti-dumping, Subsidies/Countervail, Government Procurement and Customs Valuation.

MTN CODES OF CONDUCT

Codes/Agreements negotiated in the Kennedy and Tokyo Rounds of negotiation which form part of the GATT system of trade agreements.

NATIONAL TREATMENT

The extension to imported goods and services of treatment no less favourable than that accorded to domestic goods and services with respect to internal taxes, laws, regulations and other requirements.

NEWLY INDUSTRIALIZED COUNTRIES (NICs) or Newly Industrialized Economies (NIEs)

Advanced developing countries whose exports and per capita incomes have grown rapidly in recent years. Examples include Brazil, Hong Kong, Korea, Mexico, Singapore, and Taiwan.

NON-TARIFF BARRIERS (NTB'S)

Government measures or policies other than tariffs which restrict or distort international trade. Examples include import quotas, discriminatory government procurement practices, and discriminatory product standards.

ORDERLY MARKETING ARRANGEMENTS (OMAs) or Voluntary Export Restraints (VERs)

Two (or more) countries agree on the level of import penetration or on export volumes that will be allowed with respect to a specific product.

PRODUCER SUBSIDY EQUIVALENT (PSE)

Tthe level of subsidy, in terms of a direct income payment, that would be required to compensate agricultural producers for the removal of current government programs.

PROTECTIONISM

The use or encouragement of restrictions on imports to shelter domestic producers from the full effects of international competition.

PUNTA DEL ESTE DECLARATION

Agreement reached by Ministers at Punta del Este, Uruguay, in September 1986 to begin ay Round of global trade negotiations.

QUADRILATERAL PARTNERS (QUAD)

Group consisting of the four large trading partners (EC, USA, Japan and Canada) which meets informally, generally twice a year, at Ministerial level to discuss international trade policy developments and issues.

QUANTITATIVE RESTRICTIONS (QR's)

Limit/amount of a particular product that may be imported or exported into a country either from a particular source or globally.

REQUEST/OFFER APPROACH

Method of negotiating tariff and NTB reductions whereby each country identifies its particular interests (i.e. requests) in other countries' markets. Countries thus respond to these requests with offers which form the basis for negotiation, and indicate what they would liberalize in exchange.

RETALIATION

Action taken by a country to restrain imports from a country that had increased a tariff or imposed other measures that adversely affect the first country's exports. The retaliation is usually tailored to maintain a balance of GATT concessions and aims at related products.

RULES OF ORIGIN

A set of rules used to differentiate between goods originating in one country from those originating in another for the purpose of application of trade measures such as tariffs. Such rules are very important for countries which are members of a free-trade area to ensure that only goods originating in one or all of the member countries will receive preferential tariff treatment.

SAFEGUARDS

Refers mainly to emergency actions under Article XIX of the GATT in the form of additional duties or import quotas applied to fairly traded imports which cause or threaten serious injury to domestic producers.

SEASONAL TARIFF

The application of different tariffs on products depending on the season in which they are imported, e.g. higher tariffs on imports during the importing country's growing season for agricultural products.

SELECTIVITY

Targeting border measures in safeguards cases to particular supplying countries rather than applying the measures to all GATT members.

SPECIFIC TARIFF

Rate of customs duty specified as amount payable per unit of quantity rather than as a percentage of the value of the import.

STANDSTILL/ROLLBACK

Undertaking by the Uruguay Round participants at the Ministerial meeting in Punta del Este not to introduce new protectionist measures during the negotiations and to rollback/reduce existing GATT inconsistent measures where possible.

SUBSIDY

A financial benefit granted by a government to producers of goods often to strengthen their competitive position. The subsidy may be direct (e.g. a cash grant) or indirect (e.g. low-interest export credits guaranteed by a government agency).

SUBSIDIES/COUNTERVAIL CODE (S/CV)

A code of conduct negotiated during the Tokyo Round that expanded on Article VI by establishing both substantive and procedural standards for domestic countervailing duty proceedings as well as expanding on Article XVI and the multilateral obligations regarding notification and dispute settlement in the area of subsidy practices.

SURVEILLANCE BODY

A group established during the Uruguay Round to oversee implementation of the commitment to standstill and rollback.

TARIFF

A tax levied upon goods imported from one country or customs area into another.

TARIFF CUTTING FORMULA

A mathematical formula (normally involving a percentage) which is applied to reduce tariffs on a uniform basis by all participants.

TARIFF ESCALATION

A situation in which tariffs on manufactured goods are relatively high, tariffs on semi-processed goods are moderate, and tariffs on raw materials are nonexistent or very low.

TARIFF PREFERENCE

One or more countries provide lower rates of import duties to products imported from one or more specified countries.

TARIFF RATE QUOTAS (TRQ)

Tier of successively higher tariff rates that are applied as imports under the tariff items exceed quantitative thresholds.

TECHNICAL BARRIERS TO TRADE (TBT)

A code of conduct negotiated during the Tokyo Round that established substantive rules for the imposition of technical or product standards and for procedures for product testing and certification. Often referred to as the Standards Codes.

TRADE DISTORTION EQUIVALENT (TDE)

The name suggested by Canada for an adaptation (to be agreed) of the OECD producer subsidy equivalent methodology to make it a more accurate measure of trade distortion rather than of income support.

TRANSFER OF TECHNOLOGY

The movement of scientific or technical knowledge, know-how, or methods of production or distribution from one enterprise, institution or country to another.

TRANSPARENCY

Visibility and clarity of laws, regulations and other government-enacted rules and practices that are relevant to trade.

UNFAIR TRADE

Trade in dumped, subsidized or counterfeit goods; the use of the term has steadily widened as U.S. trade remedy laws have defined new practices that are considered to harm the export and import interests of U.S. companies.

URUGUAY ROUND

Eighth in a series of multilateral trade negotiations held under the auspices of GATT. This Round was launched at a Ministerial meeting in Punta del Este, Uruguay, in September 1986 and is scheduled to be completed by the end of 1990.

ACRONYMS

ADC	Anti-dumping Code.
AMS	Aggregate Measure of Support.
BOPs	Balance of Payments.
CAP	EC's Common Agricultural Policy.
CER	Closer Economic Relations agreement between Australia and New Zealand.
CPs	GATT Contracting Parties.
CVD	Countervailing Duties.
DCs	Developed Countries.
EC	European Communities, comprising, as of January 1, 1986, France, Italy, Belgium, Germany (FR), Netherlands, Luxembourg, Denmark, UK, Ireland, Greece, Spain and Portugal.
EFTA	European Free Trade Area, comprising Austria, Switzerland, Finland, Iceland, Norway and Sweden.
FOGS	Functioning of the GATT System - negotiating group concerned with improving the functioning and effectiveness of the GATT.
FTA	Free Trade Agreement between Canada and USA or, in GATT terms, Free Trade Area.
GATT	General Agreement on Tariffs and Trade. Legal framework for international trade with almost 100 Contracting Parties (member states). Secretariat located in Geneva.
GNG	Group on Negotiations on Goods.
GNS	Group on Negotiations on Services.
GSP	Generalized system of tariff preferences for goods originating in specified developing countries. Sometimes referred to as GPT.
GPT	Generalized Preferential Tariff.
IP	Intellectual Property.

ITAC	International Trade Advisory Committee. A committee of senior private sector representatives that advises the Canadian government on trade negotiations, bilateral and multilateral, and on other trade-related issues. See also SAGIT.
LDCs	Less Developed Countries.
LLDCs	Least Developed Countries.
MFA	Multi-fibre Arrangement.
MFN	Most Favoured Nation.
MMM	GATT Montreal Ministerial Meeting, December 1988.
MTN	Multilateral Trade Negotiations.
NIES	Newly Industrializing Economies. Sometimes referred to as NIC's.
NRBP	Natural Resource Based Products Negotiating Group.
NTB	Non-tariff Barriers (e.g. quotas).
NTM	Non-tariff Measures (e.g. Rules of Origin).
OECD	Organization for Economic Cooperation and Development based in Paris.
OMA	Orderly Marketing Arrangements.
PSE	Producer Subsidy Equivalent.
SAGIT	Sectoral Advisory Groups on International Trade. Thirteen such groups have been established to provide the Canadian government with advice on trade negotiations and on trade-related matters from a sectoral perspective. See also ITAC.
S/CV	Subsidies/Countervail.
TBT	Agreement on Technical Barriers to Trade.
TDE	Trade Distortion Equivalent.
TNC	Trade Negotiations Committee (overview group of the Uruguay Round).
TPRM	Trade Policy Review Mechanism.
TRIM'S	Trade-Related Investment Measures (MTN Negotiating Group).

TRIP'S	Trade-Related Intellectual Property (MTN Negotiating Group).
VER	Voluntary Export Restraint.
VRA	Voluntary Restraint Arrangement.
XR's	Export Restraints.

External Affairs and International Trade Canada
Affaires extérieures et Commerce extérieur Canada

THE URUGUAY ROUND

OF

MULTILATERAL TRADE NEGOTIATIONS

A Situation Report

OFFICE FOR MULTILATERAL TRADE NEGOTIATIONS

JANUARY 1990

URUGUAY ROUND

January 1990

Uruguay Round of Multilateral Trade Negotiations (MTN)

A SITUATION REPORT

1. The Uruguay Round is entering 1990 with less than a year to go for its successful conclusion. When Ministers from countries participating in the MTN meet in Brussels next December, their decisions will be crucial for the future of the open multilateral trading system and for sustained global growth of trade and investment flows into, and beyond, the 1990's.

2. It is in 1990 that MTN participants will seek to determine the concrete shape of agricultural trade reform; the depth and scope of the global reduction of tariff and non-tariff barriers (NTB's); the equity and effectiveness of new GATT rules on fair and unfair trade practices, as well as of dispute settlement procedures; the content and the sectoral application of a new GATT type framework for traded services; and the extent to which the GATT system should be extended to cover trade-related intellectual property and investment matters.

3. In the meantime, global trade bargaining will be intensified across the 15 different negotiating groups in Geneva and through a complex network of bilateral and plurilateral consultations and negotiations between negotiating teams as well as at the ministerial level. So far, the basic objectives, priorities and interests of all MTN participants have been staked out fairly clearly as a result of the circulation last autumn (by both developed and developing countries) of negotiating proposals, including several in agriculture. Some further proposals are expected early this year.

4. The MTN negotiating process will now begin to identify the areas of common ground in drafting specific solutions. It will also begin to identify how consensus can be forged in major areas where there continues to be important differences of views and approaches. One area that will have to be ironed out quickly concerns the specific methods and procedures for achieving the market access liberalization objectives set out at the Montreal Mid-Term Review. In view of the short time left to complete the overall negotiations, overcoming the current impasse concerning traditional tariff issues between the USA and Europe is necessary for maintaining the prospects of a balanced overall MTN outcome.

5. In recent months, there has been continuing active ministerial involvement in pushing the MTN process forward. In addition to bilateral MTN discussions with the USA, EC, Japan,

Germany and France, International Trade Minister Crosbie attended four meetings in the Asia-Pacific region last November. A new agricultural reform proposal was agreed at a meeting of Cairns Group Ministers in Chiangmai, Thailand. When Quadrilateral trade ministers from the USA, the EC, Japan and Canada met in Hakone, Japan, and subsequently in Tokyo with Ministers from some 23 other developed and developing countries, their attention focussed on the management of the MTN process and on the essential elements for a comprehensive package of results that would be balanced and equitable for all MTN participants. They emphasized their commitment to seeking a large MTN result and to having the negotiations completed as scheduled next December.

6. In this regard, the United States Trade Representative clearly indicated that the Administration had made the MTN the highest priority on its trade policy agenda. The USA is determined to complete the MTN in December because, under its current trade negotiating authority, it needs to notify Congress by March 1991 of its intention to enter into new trade agreements. It also needs to submit all the MTN legal agreements, together with the detailed legislative implementation package, to Congress no later than June 1991. For its part, the European Community, with its 1992 single market integration program underway and its focus on developments in Eastern Europe, continues to indicate its full commitment to the Uruguay Round and to the GATT as the primary vehicle with respect to its trade relationship with third countries (see Annex I). A Canadian perspective on the MTN and the Atlantic Rim in the global trading environment is also provided in Annex II.

7. The MTN ministerial activities in Japan and Thailand were preceded by the Canberra meeting on Asia-Pacific Economic Cooperation (APEC) where the important contribution of a substantial MTN result for enhanced trade and investment opportunities in the region was emphasized. Participants at the Canberra meeting (Australia, New Zealand, Japan, Korea, Indonesia, Malaysia, Philippines, Singapore, Thailand, the USA, and Canada) accepted Canada's suggestion to maintain a strong Asia-Pacific focus during the final year of the MTN by having APEC ministers in charge of the trade negotiations meet next September as well as just prior to the concluding Brussels MTN conference next December. Canada's proposal to arrange regular consultations in Geneva between MTN delegations of APEC countries to support this APEC Ministerial process was also agreed. A first such meeting was chaired by Canada on the occasion of the last Trade Negotiations Committee (TNC) meeting in Geneva in late December.

8. Since the last Situation Report in August 1989, Canada has submitted proposals on market access, intellectual property standards and enforcement, agriculture, balance of payments and anti-dumping issues. Their main thrusts are:

- Market access: Canada has proposed an integrated approach to deal with both tariffs and NTB's, involving a tariff formula reduction of approximately one-third with some "harmonization" elements and minimum possible exceptions, supplemented by request and offer lists to go beyond the tariff formula and to deal with specific NTB's. The approach encompasses all market access negotiating groups. The text of the proposal, which has served as a catalyst for discussions in Geneva, is in Annex III. Although the definitive MTN approach to market access remains outstanding at this time, many elements of the Canadian proposal will likely end up as part of the approach.

- Intellectual Property (TRIP's): Canada has proposed a comprehensive approach to improve intellectual property rights (patents, trademarks, geographical appellations, copyright, neighbouring rights, integrated circuits, industrial designs and trade secrets) in a manner that is balanced between the protection of the interests of owners and reasonable access by users. It aims at the encouragement of innovation and creation, research and development, and the commercial transfer of technology. Canada's proposal is in Annex IV.

  With respect to enforcement of intellectual property rights, Canada has proposed a number of principles that would ensure fair, effective and non-discriminatory enforcement, involving national treatment in the administration of intellectual property systems and of border trade remedy measures as in the case of alleged patent infringements (e.g. Section 337 of USA trade legislation). Canada's proposal in Annex V seeks to strike an appropriate balance among the commercial and other economic interests of the various private sector parties concerned. Work in the TRIP's Negotiating Group now is turning to the development of an integrated draft agreement.

- Agriculture: Canada has continued to work actively within the Cairns Group. In November 1989, a comprehensive blueprint to bring agriculture fully within the GATT and to achieve agricultural trade liberalization on the basis of the objectives and the elements contained in the April 1989 Mid Term Review was submitted by the Cairns Group. The proposal (Annex VI) seeks, in essence, the elimination of export subsidies; greater discipline on countervailing duties; the classification of domestic support measures in three categories (non-countervailable, countervailable or prohibited along the lines of Canada's previous general proposal on subsidies/countervail described in the August 1989 Situation Report), with a substantial reduction of trade distorting or countervailable support; and a substantial reduction of market access barriers, with conversion into tariff equivalents of those non-tariff measures not in conformity with the new GATT rules.

  Canada has clearly indicated in the Agriculture Negotiating Group in Geneva that the so-called "tariffication" approach would not apply to import quotas legitimately imposed under GATT rules in support of effective production control programs. It also indicated that as part of the Montreal Mid-Term Review framework to bring agriculture under "operationally effective" GATT rules, Canada would present its own proposal early in 1990 to clarify and strengthen GATT Article XI related to supply management. Other major agricultural proposals include those from the USA, Japan, the Nordics and the EC.

- Balance of Payments: Canada and the United States have submitted a joint proposal aimed at strengthening the multilateral surveillance of trade measures taken for balance of payments purposes. In particular, the proposal (Annex VII) seeks to ensure that balance of payments measures taken by developing countries under GATT Article XVIII are not misused for trade protective purposes for individual sectors and are not maintained long after the balance of payments problems have effectively disappeared. The recent disinvoking of GATT Article XVIII by Korea is a positive example of the direction envisaged in restoring a greater overall balance in GATT rights and obligations and in increasing the security of access to those markets.

- Anti-dumping: Canada has circulated a proposal to review and to improve the existing GATT Anti-dumping Code in respect of both the investigation procedures and the standards for applying anti-dumping duties when dumped imports are injurious to domestic producers. The text is set out in Annex VIII. Increasing attention is being given to anti-dumping issues in the MTN as reflected by proposals also submitted by the USA, the EC, Japan and other Asia-Pacific countries. It should be noted that, as in the case of countervailing duties, the basic rules of the GATT Code continue to apply between Canada and the USA, subject to the Chapter 19 dispute settlement procedures of the FTA and pending the development of an alternative bilateral regime.

9. During the autumn, the negotiations on subsidies and countervail have been seriously engaged on the basis of Canada's comprehensive proposal of last June. (See the August 1989 Situation Report for the main elements of the negotiating framework). Many new proposals, including by the USA, have been submitted. In addition, the USA bilateral agreements with countries other than Canada with respect to "trade distorting practices in the steel sector" envisages the incorporation into the MTN agreement of obligations and disciplines to eliminate and prohibit such subsidies.

10. Developments in other areas relating to trade rules over recent months included further detailed discussions of the main elements of a new comprehensive safeguards arrangement; exploration of possible ways to re-integrate textiles and clothing trade under new and strengthened GATT rules; greater focus on a review of GATT Article XVII concerning state trading practices; review of procedures under GATT Article XXVIII regarding re-negotiation of tariff bindings; and the clarification and strengthening of existing GATT rules and disciplines applicable to distortive trade-related investment measures (TRIM's).

11. The process to develop the framework elements for a General Agreement on Trade in Services (GATS) has continued to advance. In September, the Group on Negotiations of Services (GNS) completed the sectoral testing of relevant principles and concepts such as national treatment, MFN, transparency, access, establishment, trade remedies, dispute settlement and development. It has also pulled together the main elements of a new framework agreement on international trade in services, although the precise structure and the coverage of a GATS as well as the degree and nature of liberalization commitments by sectors and transactions realistically achievable within the

Uruguay Round remain unresolved. Developing countries have been active and constructive participants in the GNS activities.

12. The Trade Policy Review Mechanism (TPRM) established at the Montreal Mid-Term Review has begun its review and assessment of national trade policies, trends and developments, beginning with Australia, Morocco, and the USA. This TPRM process is intended to increase transparency in trade policy formulation and to strengthen global trade liberalization forces. It therefore focusses on those areas where GATT members may have policies inconsistent with the basic tenets of an open, predictable and a non-discriminatory multilateral trading system. The trade policy review process has not been designed as a substitute for the dispute resolution system under the GATT. Canada will be reviewed during the course of 1990.

13. The private sector advisory committees to the Minister for International Trade have maintained a major focus on the MTN. The ITAC has focussed on Europe and the Asia-Pacific region, while providing its views on trade-related intellectual property, dispute settlement, subsidies/countervail, anti-dumping, and safeguards issues. It has initiated an examination of questions related to fair labour standards in international trade. For their part, the SAGITS have provided detailed inputs on Canada's market access interests and priorities, in addition to the elements of the agricultural trade reform and of a new international framework for trade in services.

14. In late November, 1989, Federal and Provincial Trade Ministers reviewed the overall MTN state of play as well as implementation of the FTA and the Global Trade Strategy. There were also four meetings of the Federal-Provincial Committee on the MTN (CMTN), with detailed consultations on market access issues, agriculture, subsidies/countervail, anti-dumping, services and TRIP's.

15. In October, 1989, the Government appointed Mr. G.E. Shannon as Ambassador for the MTN and Chief Negotiator. Mr. Shannon, who was previously Deputy Minister for International Trade, will be based in Geneva but will return to Canada periodically for consultations.

ANNEXES

U.S.-E.C. RELATIONS/ TRADE

TOWARD HEALTHY AND OPEN WORLD MARKETS

TRADE REGULATION IN THE E.C. AND THE U.S. SHOULD BE BASED ON THE INSTRUMENTS PROVIDED BY THE G.A.T.T.

HORST KRENZLER

The openness of our trading systems is, perhaps, one of the great values that the E.C. and the United States share: the principles of consumer choice, of freedom of establishment and, most important of all, of an independent and uncorrupted legal system.

This is equally valid in international trade. Because of the relative openness of their markets, the E.C. and the United States together account for more than a third of total world trade, which makes them indisputably the most important markets in the world.

It follows that the health of the world economy depends more than ever on our markets remaining open. Our experience after 40 years of open trade is that observance of common commitments is fundamental to the survival of the system. If we were to depart from the rule of law and began to follow policies not based on the common advantage, markets would inevitably begin to close. We would risk turning our backs on the very open trading system that has served us so well since the war, and that has led to a period of continued growth the world has probably never seen before.

When I speak of shared values and the rule of law in international trade, I mean above all the General Agreement on Tariffs and Trade (GATT). Essentially, new principles in world trade should not be adopted if they have not been negotiated between the contracting parties, in any area to which GATT applies. We believe that our trade policy instruments are completely compatible with our international and regional obligations.

With all this in mind, it is strange and disturbing to realize that, as we move into the 1990s, the United States seems to have increasing doubts about the multilateral approach and the effectiveness of the multilateral system. We might well ask ourselves why this is so, when the U.S. economy is growing at about the same rate as the Community's (this coming on top of years of sustained growth) and when the United States has a comparable rate of inflation, and substantially lower unemployment than we do?

The introduction of the 1988 Omnibus Trade Act brought a new factor into international trade. For the first time, a GATT member has taken it upon itself not only to pursue bilateral negotiations with trading partners whenever it perceives export barriers (to which it is entitled within the GATT mechanisms), but also to take action to force corrections in other countries' practices. In other words, the U.S. Congress has appointed the U.S. Administration prosecutor, judge, jury, and bailiff—a strange legal construction.

Our concerns on Section 301 have not diminished since we expressed them last year. It is true that the Bush Administration has been making more encouraging noises than its predecessor. President Bush and U.S. Trade Representative Carla Hills have clearly and publicly announced that top priority is being given to the Uruguay Round, and that negotiations under Section 301 are complementary to the Round. Nevertheless, the imposition of specific deadlines in bilateral trade disputes—on an arbitrary basis and with the threat of unilateral measures if solutions are not found—is incompatible with the Uruguay Round process and international disciplines in trade.

The U.S. Administration and Congress cannot expect their partners to stand aside as this legislation is implemented. The United States has often claimed to us that the objective is to open third country markets and not to add to protectionist measures, and that retaliation would be only a last resort of exercising leverage. But the reality is quite different: Trading partners are given no choice but to negotiate on the basis of an agenda set by the United States, on the basis of U.S. judgments, U.S. perceptions, U.S. timetables, and indeed U.S. domestic legislation. All this is a departure from the rule of international law.

The construction of the single market will be a huge stimulus to the liberalization of world trade. The convergence of European economies and the legal constraints of E.C. membership make the protectionist option a non-starter: also, many member states are far more dependent for their livelihood on trade than the United States or even Japan.

The Europeans therefore must face the challenge offered by the single market, which is not and cannot be, a backward step toward protectionism. Within the space of a few years, we are aiming for a 5-percent increase in our gross national product. This will become possible because goods and services can be sold in the 12 member states without going through 12 separate administrative procedures, or satisfying 12 differing standards. At the same time, there will be more cohesiveness in the Community, and less local particularism. In short, the single market will be *larger*, more *unified*, more *open*, *simpler* to enter, and more competitive than ever before.

Construction of the single market has not led to any change in the ground rules for commercial policy. The GATT, the OECD, and the traditional instruments of commercial policy provided for in the GATT will still be the bedrock of trade regulation. Moreover, the new principles of trade legislation will be developed in Geneva, not in the European Community.

We are also fully aware that whenever there are major changes in the way in which a large market is regulated, inter-

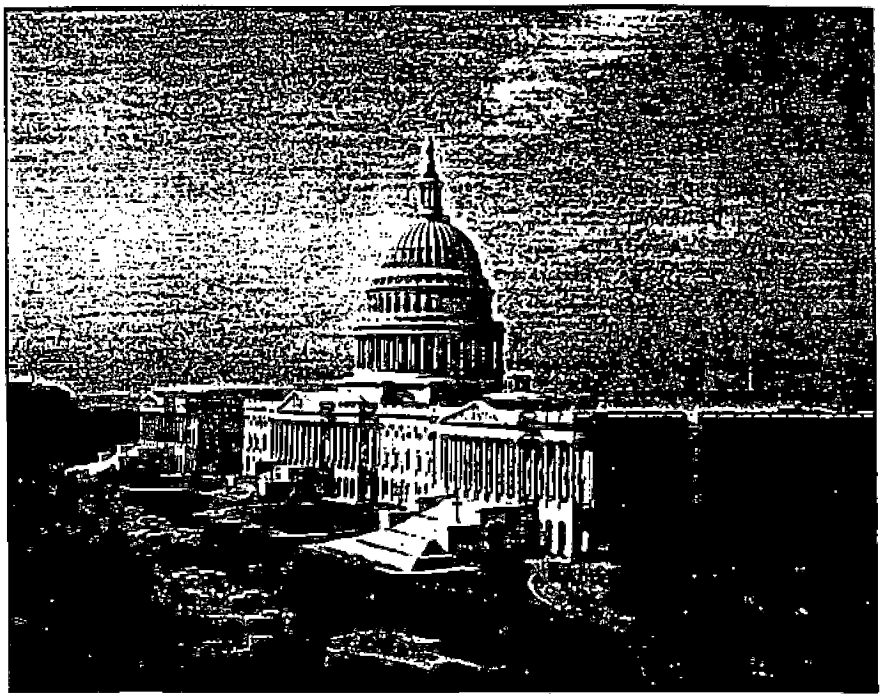
nally, there will be important consequences for business. This will inevitably result in some friction with our partners, but should be restricted to areas where common international obligations have not yet been agreed. The solutions to such disputes should preferably be multilateral: that is, the more internal trade rules can be internationalized, the fewer problems of principle there will be.

As concerns both the external effects of "1992" and E.C.-U.S. relations, it is thus clear that the single market will be open, both in terms of visible and invisible trade, including investment and services and in the GATT sense—that is, open to those partners who subscribe to a mutual balance of rights and obligations. This is what that often abused word, reciprocity, means in its overall sense.

We are therefore *not* demanding impossible bilateral concessions from our partners by inviting them to introduce mirror legislation, or sectoral reciprocity by asking them to balance their sectoral trade with us. Instead, we want the market to be as open as we can sensibly make it, through negotiation.

As the world shrinks, business is becoming increasingly multinational. For the Community, with double the unemployment rate of the United States, such an interest can only be welcome. Sales of U.S. multinationals' affiliate companies in the E.C. are already six times higher than direct U.S. exports to the Community. The E.C. also accounts for one-quarter of total U.S. exports. Growth in the Community and the success of American companies in our market are mutually reinforcing.

The relationship between the single market and the Uruguay Round is a fundamental one. Ever since the inception of the Community, the creation of a single market has been a priority. Thus, it is not a new invention, and the task of handling its effects on external trade has become a way of life. The Community is essentially outward looking, and its political energies are not expended on the internal process at the expense of external considerations. Indeed, the two march hand in hand. The Uruguay Round offers an unparalleled opportunity to extend the advantages offered by the single market, providing that it is on a basis of mutual advantage and by mutual consent. And the advantages our member states obtain in other markets must be real, verifiable, and unconditional.



The E.C. wants the Uruguay Round of multilateral trading negotiations to take precedence over unilateral actions, such as Section 301 of the U.S.' 1988 Omnibus Trade Act. Above: The U.S. Capitol.

It may be useful to point out that, if the Community's legislative process inevitably causes friction with our partners, we ourselves have problems, often fundamental, with their legislation. This year has seen a number of Bills and draft regulations in the United States that would restrict inward investment into the United States in the name of the national interest and could even affect the acquisitions made by long-standing investors in the United States. A number of measures introduced in 1989 tended to reinforce the extraterritorial application of U.S. legislation. Above all, the United States has tried to use the Trade Act to force partners into negotiation—in the Community's case notably in telecommunications. It is impossible to separate the issues in such discussions from those that will form the center of Uruguay Round negotiations. Therefore, however real and serious the trade problems the United States is seeking to overcome, these initiatives must be pursued in harmony with the Uruguay Round negotiations.

Sovereign states have the right to *regulate* their own domestic affairs, but in this interdependent world there surely needs to be a shared will not to *disrupt* each others' affairs. It is only natural that we should pay more and more attention to each others' legislation. The level of overseas interest in Community directives is very high, for example, as is the concern expressed by America's trading partners over legislative developments in Washington.

Nevertheless, despite the many trade irritations that have made life difficult for all of us, the E.C.'s relations with the U.S. Administration today are closer than ever. And one cannot help reflect that with the Uruguay Round in mid-negotiation, with the realization of the single market, with the opening up of Eastern Europe, and with the impressive growth of the East Asian economies, not to mention the continued vitality of the U.S. economy itself, this is not the time for trade confrontation. The opportunities before us should lead to a common interest in open trade and to a resurgence of the cooperation that led to the GATT in the first place. Indeed, broadened and more binding GATT disciplines should lead to a further convergence of trade legislation.

If we can achieve such convergence—and there is no economic reason why we should not—the United States will not need to use those parts of its Trade Act that concern its partners. We now need to see how best to promote the multilateral framework and carry the Geneva negotiations to a successful conclusion. The Community is prepared to shoulder its responsibilities: It has offered to host the concluding conference of the Uruguay Round in Brussels. €

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External Affairs and International Trade Canada
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GATT 1990

THE ATLANTIC RIM IN THE GLOBAL TRADING ENVIRONMENT

NOTES FOR PRESENTATION
BY
G.A. DENIS
ASSISTANT DEPUTY MINISTER
OFFICE FOR MULTILATERAL TRADE NEGOTIATIONS

BEFORE

THE FINANCIAL POST CONFERENCE
HALIFAX
OCTOBER 11, 1989

The Atlantic Rim in the Global Trading Environment: GATT 1990

1. I am pleased to address this Conference on "The Atlantic Rim: Trading in a Global Environment". With the Canada/USA free trade agreement in place and the European Community 1992 single market program, it is timely to look at developments in the Atlantic Rim in the context of what is going on in world markets and in the GATT.

2. The Uruguay Round presently underway under GATT auspices is the link between regional and global developments in North America, Europe and the Pacific. As you know, the GATT is the contractual framework for Europe's trade relations with the United States, Canada, Japan and other countries in the Pacific Rim and Latin America. For that reason, the future of the GATT rules of competition in global markets will significantly influence the shape of the trade and investment relationships across the Atlantic Rim at least to the year 2000.

The Europe 1992 Debate: Trade Liberalization or Protectionism

3. There are at present powerful conflicting trade liberalization and protectionist forces at work in Europe. These inward and outward looking forces are manifesting themselves vividly in the context of the initiative by the European Community to complete its single internal market by 1992.

4. CANADA HAS EXPERIENCED OVER THE THREE DECADES SINCE THE INITIAL ROME TREATY SOME FRUSTRATIONS AND DISAPPOINTMENTS WITH EC EXTERNAL TRADE POLICIES. THIS HAS PERHAPS BEST BEEN ILLUSTRATED BY THE FAILURE OF THE KENNEDY ROUND AND TOKYO ROUND OF GATT TRADE NEGOTIATIONS IN THE 60'S AND 70'S TO PRODUCE MAJOR TRADE LIBERALIZATION RESULTS IN AGRICULTURE AND BY THE COSTLY SUBSIDIZED COMPETITION ON WORLD MARKETS, PARTICULARLY FOR GRAINS AND OILSEEDS PRODUCTS.

5. IN THAT PERIOD, CANADIAN EXPORTS OF AGRICULTURAL, RESOURCE-BASED AND MANUFACTURED PRODUCTS HAVE MOVED FROM A PREFERENTIAL POSITION IN THE UNITED KINGDOM AND IRELAND UNDER THE OLD COMMONWEALTH TARIFF ARRANGEMENTS TO A POSITION WHERE THEY HAD TO OVERCOME THE NEW COMMON EXTERNAL TARIFFS AND THE COMMON AGRICULTURAL POLICY. IN ADDITION, CANADIAN EXPORTERS OF FISHERIES, FOREST PRODUCTS AND METALS AND MINERALS HAVE BEEN FACED WITH SIGNIFICANT REVERSE PREFERENTIAL TREATMENT WHICH THE COMMUNITY EXTENDS TO SCANDINAVIAN PRODUCTS UNDER ITS EFTA TRADE ARRANGEMENTS. THE COMBINATION OF THESE DEVELOPMENTS AND THE PULL OF STRONGER GROWTH IN THE USA AND THE PACIFIC REGION HAVE MEANT THAT CANADA'S TRADE WITH EUROPE HAS NOT KEPT PACE WITH THAT OF THE REST OF THE WORLD. IT CERTAINLY HAS NOT BEEN UP TO ITS FULL POTENTIAL.

6. In the Europe 1992 debate, Canadian apprehensions about Europe introducing restrictive product standards, extending discriminatory buy national procurement policies on a Community wide basis, imposing local content in a range of manufacturing sectors or imposing narrow reciprocity requirements in some areas of services trade sectors, have arisen not because of concerns about Canada being singled out but about being caught up in measures directed primarily at the United States, Japan and other countries in the Asia-Pacific region.

7. These concerns, of course, require that we strongly resist such developments and monitor closely the Europe 1992 Program to ensure that the new Europe will be shaped in a manner that is compatible with its obligations under GATT and its major responsibility of helping to maintain a strong and open global trading system. It is useful, however, to remind ourselves that the primary impulse behind European leaders who initiated the 1992 exercise was to seek to combat what some have described as the syndrome of "Eurosclerocism" or "Europessimism".

8. It was a reaction to the fact that European economies were no longer dynamic growth centers or keeping up in the technological race with the USA and Japan; Europe was becoming defensive in the face of emerging competitive forces on world markets. Thus

A MAJOR AIM OF EUROPE 1992 IS TO CREATE A MORE COMPETITIVE ECONOMY IN THE FACE OF THE GLOBAL CHALLENGES COMING FROM JAPAN, NORTH AMERICA AND NEWLY-INDUSTRIALIZED COUNTRIES. HOWEVER EUROPE 1992 WAS LAUNCHED WITHOUT SUFFICIENT ATTENTION BEING DEVOTED TO THE IMPLICATIONS FOR THE COMMUNITY'S TRADING PARTNERS, THE EC'S OWN EXTERNAL TRADE POLICY OR THE URUGUAY ROUND OF GATT NEGOTIATIONS NOW WELL-BEYOND ITS HALFWAY POINT.

9. SIGNALS OF ALARM AND CONCERN ABOUT THE PATH EUROPE SAW FOR ITSELF WHICH HAVE THUS EMERGED ON THE PART OF EUROPE'S TRADING PARTNERS SHOULD NOT HAVE SURPRISED ANYONE. AFTER ALL, THE EC:

I) IS THE WORLD'S LARGEST EXPORTER OF GOODS AND SERVICES, ACCOUNTING FOR ONE-FIFTH OF WORLD TRADE;

II) IS THE WORLD'S SECOND LARGEST IMPORTER, CONDUCTING ABOUT ONE-THIRD OF ITS TOTAL TRADE WITH COUNTRIES OUTSIDE OF EUROPE;

III) HAS ABOUT THE SAME SHARE OF ITS GNP ACCOUNTED FOR BY NON-INTRA EUROPEAN TRADE AS IS THE CASE OF THE USA IN RESPECT OF ITS TOTAL FOREIGN TRADE; AND

IV) REMAINS A MAJOR FORCE ON WORLD'S CAPITAL MARKETS.

10. THE BENEFITS OF MAINTAINING AN OPEN AND COMPETITIVE EUROPE AND THE MAJOR RESPONSIBILITY OF THE EC IN BRINGING THE CURRENT ROUND OF GATT NEGOTIATIONS TO A SUBSTANTIAL AND SUCCESSFUL RESULT HAS FORCED EUROPE TO SEEK TO REASSURE THE REST OF THE WORLD THAT EUROPE 1992 WILL BE AN OPEN "WORLD PARTNER". THIS HAS LED THE EC TO RECOGNIZE WITHIN THE PAST YEAR OR SO TWO POINTS OF IMPORTANCE FOR THE ATLANTIC RIM AND THE GLOBAL TRADING SYSTEM.

11. FIRST, EUROPE 1992 MUST TAKE PLACE IN CONFORMITY WITH THE COMMUNITY'S EXISTING INTERNATIONAL OBLIGATIONS, PRINCIPALLY THOSE IN THE GATT. SECOND, AS FOR OTHER STEPS IN THE EUROPEAN CONSTRUCTION, THE COMMUNITY'S INTEGRATION MUST BE ACCOMPANIED BY A MOVE TO GREATER LIBERALIZATION INTERNATIONALLY THROUGH THE CURRENT URUGUAY ROUND. THIS IS WHY THE GATT 1990 WILL BE A REAL TEST OF THE WILLINGNESS OF A STRONGER AND MORE CONFIDENT EUROPE TO BE AN OUTWARD LOOKING TRADING AND INVESTMENT PARTNER.

<u>WHERE DOES THE MTN STAND?</u>

12. AT THEIR LAST SUMMIT MEETING IN PARIS IN JULY, WESTERN ECONOMIC LEADERS STATED THEIR INTENTION TO ENSURE THAT THE EUROPEAN COMMUNITY'S 1992 SINGLE MARKET PROGRAM, THE CLOSER ECONOMIC RELATIONS BETWEEN THE EC AND EFTA COUNTRIES (INCLUDING SCANDINAVIA) AS WELL AS THE CANADA/USA FTA BE "TRADE CREATING

AND COMPLEMENTARY TO THE MULTILATERAL LIBERALIZATION PROCESS". THUS, THE WESTERN LEADERS HAVE DECIDED TO MAKE THE CURRENT GATT NEGOTIATION A TEST TO THE CAPACITY OF BOTH SIDES OF THE ATLANTIC RIM TO JOIN THE REST OF THE WORLD TO ACHIEVE A FURTHER SUBSTANTIAL LIBERALIZATION OF GLOBAL MARKETS, TO REFORM MULTILATERAL RULES OF FAIR AND UNFAIR COMPETITION, AND TO BRING SECTORS SUCH AS AGRICULTURE AND SERVICES UNDER THE DISCIPLINE OF THE GLOBAL TRADING SYSTEM.

13. THE PARTICIPANTS TO THE URUGUAY ROUND HAVE SINCE DECIDED TO COMPLETE THE CURRENT MTN AT THE END OF NEXT YEAR. SO THE GATT 1990 TEST OF THE FUTURE OF THE ATLANTIC TRADING RELATIONSHIP WILL COME TO A HEAD AT A MINISTERIAL MEETING IN BRUSSELS IN DECEMBER 1990. IN THE MEANTIME, THE USA HAS CLEARLY DECIDED TO GIVE A MAJOR PRIORITY TO THE MTN IN MANAGING ITS OWN RELATIONS WITH EUROPE.

14. WE ARE NOW MOVING INTO THE CRUCIAL AND SUBSTANTIVE PHASE OF THE MTN IN A RELATIVELY POSITIVE AND FAVOURABLE GLOBAL ENVIRONMENT. IN ITS RECENT ANNUAL REPORT ON INTERNATIONAL TRADE, THE GATT SECRETARIAT DESCRIBED THIS ENVIRONMENT AS ONE OF CONTINUING STRONG TRADE GROWTH INTERNATIONALLY, AGAINST THE BACKGROUND OF MORE OPEN MARKETS AND OF SIGNIFICANT STRUCTURAL CHANGE.

15. THE GATT SECRETARIAT ATTRIBUTED THIS PERFORMANCE TO DIFFERENT FACTORS, INCLUDING:

- TECHNOLOGICAL INNOVATIONS WHICH ARE BROADENING THE SCOPE OF BOTH GOODS AND SERVICES TRADED INTERNATIONALLY;

- THE INCREASING SHARE OF MANUFACTURES IN WORLD TRADE WHICH NOW ACCOUNT FOR ABOUT ONE HALF OF THE EXPORTS OF THE DEVELOPING COUNTRIES;

- INTERNATIONAL JOINT VENTURES AND MERGERS WHICH ARE GROWING ALONGSIDE THE RAPIDLY EXPANDING INTERDEPENDENCE OF NATIONAL FINANCIAL MARKETS;

- IMPROVEMENTS TO THE FUNCTIONING OF MARKETS THROUGH DEREGULATION AND DENATIONALIZATION AS WELL AS THE FURTHER LIBERALIZATION OF CAPITAL FLOWS; AND

- THE CONTINUED CONFIDENCE IN THE ABILITY OF MONETARY AUTHORITIES TO PREVENT A RETURN OF HIGH INFLATION.

16. THE GATT REPORT ADDED TO THIS IMPRESSIVE LIST OF ECONOMIC AND BUSINESS FACTORS CONTRIBUTING TO THE SUSTAINED EXPANSION OF WORLD TRADE THE IMPORTANT POINT CONCERNING THE "COMMITMENT TO TRADE POLICY REFORM AND LIBERALIZATION THROUGH THE URUGUAY ROUND AS WELL AS THROUGH MORE LIMITED REGIONAL OR BILATERAL ARRANGEMENTS".

THE MTN AS A VEHICLE TO RESPOND TO EUROPE 1992

17. FROM THE POINT OF VIEW OF HOW DEVELOPMENTS IN EUROPE FIT WITH DEVELOPMENTS WORLD-WIDE, IT SEEMS TO ME THAT THE MTN IS THE MOST REALISTIC AND EFFECTIVE INITIATIVE AVAILABLE TO CANADA TO ENSURE THAT EUROPE 1992 WILL NOT ONLY CREATE A MORE DYNAMIC AND COMPETITIVE MARKET FOR EUROPEANS BUT ALSO WILL BENEFIT CANADIAN EXPORTERS AND INVESTORS ALIKE. IT IS CLEARLY IN CANADA'S INTERESTS TO ENSURE THAT, WHERE NO GATT INTERNATIONAL OBLIGATIONS NOW EXIST OR WHERE THEY ARE DEFICIENT, WE WORK WITH EUROPE AND OTHERS TO NEGOTIATE NEW AND FAIRER TRADE AGREEMENTS AS WELL AS GREATER LIBERALIZATION OF TRADE..

18. THIS OPPORTUNITY IS WITH US BECAUSE THE MTN HAS NOW REACHED A POINT WHERE ALL THE SPECIFIC NEGOTIATING PROPOSALS ARE TO BE ADVANCED BY ITS PARTICIPANTS BEFORE THE END OF THIS YEAR. INDEED IT MAY BE USEFUL TO BRIEFLY REVIEW THE MAIN AREAS WHERE A SUCCESSFUL MTN COULD HELP ADVANCE SPECIFIC CANADIAN TRADE AND INVESTMENT INTERESTS ACROSS THE ATLANTIC.

19. I SHOULD FIRST MENTION AGRICULTURAL TRADE. THIS IS A CENTRAL ISSUE ON THE MTN AGENDA AND OBVIOUSLY AT THE TOP OF CANADA'S PRIORITIES VIS-À-VIS EUROPE. THE NEGOTIATING FRAMEWORK AGREED LAST SPRING IN THE AFTERMATH OF THE MONTREAL MINISTERIAL MEETING PROVIDES A SOLID BASIS FOR A SUBSTANTIAL MTN OUTCOME IN TERMS OF

TRADE LIBERALIZATION, THE ELIMINATION OF TRADE DISTORTING SUBSIDIES, AND THE ESTABLISHMENT OF NEW TRADE RULES THAT WOULD BE EQUALLY APPLICABLE TO EUROPE, THE USA AND THE OTHERS. THIS MEANS THAT THE COMMON AGRICULTURAL POLICY, INCLUDING ITS VARIABLE LEVIES AND EXPORT RESTITUTION SCHEMES, SHOULD IN THE FUTURE OPERATE WITHIN MULTILATERALLY AGREED RULES - JUST LIKE THE USA GATT AGRICULTURAL WAIVER SHOULD BE TERMINATED.

20. WE HAVE FOR THE FIRST TIME IN GATT HISTORY A REALISTIC PROSPECT OF BRINGING AGRICULTURAL TRADE AND PRODUCTION WITHIN NEW GATT RULES. THESE WILL BE DIFFICULT AND SENSITIVE NEGOTIATIONS FOR ALL PARTICIPANTS AND SOME IMPASSES AND CRISES MAY WELL DEVELOP BEFORE THEY SUCCEED. HOWEVER, WE WOULD BE WELL ADVISED TO MAKE EVERY EFFORT POSSIBLE TO TEST EUROPE'S APPARENT WILLINGNESS TO ACCEPT A GREATER ROLE FOR MARKET SIGNALS IN THE OPERATION OF ITS POLICIES AND TO NEGOTIATE CUTTING BACK ON ITS EXCESSIVE RELIANCE ON PUBLIC TREASURIES FOR PURSUING WORLD MARKET SHARES. BEFORE THE END OF THIS YEAR, THE EUROPEAN COMMUNITY, THE USA, JAPAN, CANADA AND ITS CAIRNS GROUP PARTNERS WILL ALL HAVE DETAILED NEGOTIATING PROPOSALS IN PLAY IN GENEVA.

21. SECOND, CANADIAN RESOURCE INDUSTRIES, FOR WHICH EUROPE CONTINUES TO BE A MAJOR EXPORT MARKET, WILL BENEFIT FROM A SUCCESSFUL MTN OUTCOME. FISH PRODUCTS, PULP AND PAPER, WOOD PRODUCTS, NON-FERROUS METALS AND PETROCHEMICALS STILL FACE SIGNIFICANT

TARIFFS (IN THE RANGE OF 5 TO 15%) AND NON-TARIFF BARRIERS INTO THE EC. IN ADDITION, THEY FACE SIGNIFICANT PREFERENTIAL TARIFF MARGINS WHICH FAVOUR THEIR SCANDINAVIAN COMPETITORS. CANADA RECENTLY SUBMITTED A PROPOSAL TO THE MARKET ACCESS NEGOTIATING GROUPS IN THE MTN CHALLENGING OUR EUROPEAN PARTNERS TO GO AS FAR AS POSSIBLE TOWARDS ESTABLISHING GLOBAL FREE TRADE CONDITIONS, PARTICULARLY FOR RESOURCE BASED SECTORS. CANADA HAS PROPOSED THE ADOPTION OF AN INTEGRATED APPROACH TO DEAL WITH BOTH TARIFFS AND NTB'S. IT HAS SUGGESTED A COMBINATION OF A GENERAL TARIFF-CUTTING FORMULA AND A BILATERAL REQUEST AND OFFER NEGOTIATION TO GO BEYOND THIS TARIFF FORMULA IN PARTICULAR AREAS AND TO REMOVE PARTICULAR NTB'S.

22. THIRDLY, THERE IS A RANGE OF ADVANCED TECHNOLOGY SECTORS SUCH AS TELECOMMUNICATIONS, POWER GENERATING AND TRANSPORT EQUIPMENT STILL LARGELY CLOSED TO FOREIGN COMPETITION IN EUROPE, PRINCIPALLY BECAUSE OF RESTRICTIVE AND DISCRIMINATORY NATIONAL GOVERNMENT PROCUREMENT REGIMES. WE ALL KNOW THAT THE OPENING UP OF THESE MARKETS EVEN TO COMPETITION WITHIN EUROPE HAS NOT LED TO MAJOR BREAKTHROUGHS SO FAR. HOWEVER, IN THE CONTEXT OF THE 1992 SINGLE MARKET INITIATIVE, PROGRESS IS BEING MADE TO OPEN UP THOSE MARKETS BETWEEN EUROPEAN SUPPLIERS.

23. WITH THE MARKET POWER OF OUR OTHER TRADING PARTNERS, ESPECIALLY THE USA, THERE IS NOW A REASONABLE PROSPECT TO SEE AN EXTENSION OF THE COVERAGE OF THE EXISTING GATT AGREEMENT ON GOVERNMENT

PROCUREMENT TO INCLUDE THESE SECTORS AND TO SUBJECT THEM TO OPEN INTERNATIONAL COMPETITION. IF THE MTN SUCCEEDS IN THIS ENDEAVOUR, IT WILL CREATE AN OPPORTUNITY TO FURTHER OUR TRADE INTERESTS IN THE USA MARKET AS WELL, SINCE WE AGREED IN THE FTA TO PURSUE GOVERNMENT PROCUREMENT LIBERALIZATION MULTILATERALLY BEFORE REVISITING THE ISSUE BILATERALLY.

24. FOURTH, WITH TECHNICAL BARRIERS TO TRADE BEING A SOURCE OF SIGNIFICANT PREOCCUPATION ABOUT THE RISKS THAT EC 1992 MAY RESULT IN DISCRIMINATION AGAINST CANADIAN PRODUCTS BECAUSE OF REGIONAL HARMONIZATION OF STANDARDS OR OF MUTUAL RECOGNITION OF PRODUCT TESTING AND CERTIFICATION ARRANGEMENTS, THE MTN PROVIDES AN OPPORTUNITY TO STRENGTHEN THE EXISTING GATT AGREEMENT. THE MAIN FOCUS OF THESE NEGOTIATIONS IS ON PROCESS STANDARDS, MUTUAL RECOGNITION REQUIREMENTS, AND AGRICULTURAL HEALTH AND PHYTOSANITARY REGULATIONS. THIS WILL HELP TO PROTECT OUR EXPORTERS AGAINST THE MISUSE OF TECHNICAL REGULATIONS AND STANDARDS AS BARRIERS TO TRADE WITH EUROPE.

25. FIFTH, CANADA HAS TAKEN THE LEADERSHIP IN THE MTN TO NEGOTIATE THE REFORM OF THE EXISTING GATT AGREEMENT ON SUBSIDIES AND COUNTERVAILING DUTIES. WE HAVE PROPOSED A FRAMEWORK FOR BALANCED AND COMPREHENSIVE DISCIPLINES ON TRADE DISTORTING AND COUNTERVAILING MEASURES AS WELL AS A STRENGTHENED MULTILATERAL DISPUTE SETTLEMENT SYSTEM. AT THE SAME TIME, WE ARE ALSO

SEEKING AN UNDERSTANDING ON THE CONDITIONS UNDER WHICH R & D AND REGIONAL DEVELOPMENT WOULD NOT BE REGARDED AS TRADE DISTORTING PRACTICES. THE CANADIAN PROPOSAL HAS RECEIVED A POSITIVE RESPONSE FROM OUR MTN PARTNERS, AND WE HAVE IMPORTANT COMMON INTERESTS WITH BOTH THE AMERICANS AND THE EUROPEANS IN THIS AREA. BOTH THE USA AND THE EC ARE EXPECTED TO SUBMIT PROPOSALS BEFORE THE END OF THIS YEAR.

26. SIXTH, IT IS WELL KNOWN THAT EUROPE IS FINDING IT DIFFICULT TO AGREE ON A COMMON POLICY IN RESPECT OF THE TREATMENT OF A RANGE OF ADVANCED TECHNOLOGY PRODUCTS FROM ASIA INCLUDING AUTOMOTIVE PRODUCTS FROM JAPAN. THESE DIFFERENCES RISK SPILLING OVER ON TO THIRD COUNTRY INTERESTS IF EXISTING BILATERAL RESTRICTIONS WERE TO BE EXTENDED ON A COMMUNITY WIDE BASIS OR IF VARIOUS FORMS OF RESTRICTIVE LOCAL CONTENT OR RULES OF ORIGIN WERE INTRODUCED IN THE TOUGH INTERNAL BARGAINING NOW UNDERWAY WITHIN THE EC.

27. IT IS NOT CLEAR WHETHER THE MORE PROTECTIONIST TRADE POLICY COURSE WILL BE REJECTED BY EUROPE. THUS WE SEE THE OPPORTUNITY OFFERED BY THE MTN TO ESTABLISH SOME REASONABLE RULES ON TRADE-RELATED INVESTMENT MEASURES, RULES OF ORIGIN AS WELL AS SAFEGUARDS. BETTER MARKET ACCESS IN ADVANCED TECHNOLOGY SECTORS AND JOINT CORPORATE INVESTMENT AND TECHNOLOGY ARRANGEMENTS ALL GO HAND IN HAND. THEY ARE COMPLEMENTARY STRATEGIES NOT SUBSTITUTES FOR BETTER MARKET ACCESS FOR EXPORTS FROM CANADA:

OTHERWISE WE WOULD IN EFFECT BE ACCEPTING THE INEVITABILITY OF THE PROTECTIONIST "FORTRESS EUROPE" SCENARIO, THUS FOREGOING THE ECONOMIC BENEFITS OF EXPORTING TO EUROPE FROM CANADIAN PRODUCTION FACILITIES.

28. SEVENTH, IN RESPECT OF TRADE IN SERVICES, THE EC AS THE WORLD'S LARGEST EXPORTER IS ACTING AS A POSITIVE AND CONSTRUCTIVE VOICE IN THE MTN. INDEED, AFTER SOME TEMPTATION TO ADOPT RESTRICTIVE AND NARROW CONCEPTS OF RECIPROCITY IN THE AREAS OF FINANCIAL SERVICES AND TELECOMMUNICATIONS, THE EC SEEMS TO BE FIRMLY ENGAGED IN THE GATT NEGOTIATIONS TO DEVELOP A BROADLY-BASED MULTILATERAL AGREEMENT. THE DEVELOPMENT OF A NEW GATT FOR TRADE IN SERVICES, BASED ON PRINCIPLES SUCH AS NATIONAL TREATMENT, NON-DISCRIMINATION AND TRANSPARENCY OF REGULATORY REGIMES IS A HIGH PRIORITY FOR BOTH SIDES OF THE ATLANTIC RIM.

29. WHILE IT IS STILL TOO EARLY TO SEE WHETHER AND HOW VARIOUS SERVICES SECTORS WILL BE TREATED, IT IS SOMEWHAT IRONIC THAT THE EC IS NOW PRESSING FOR THE INCLUSION OF FINANCIAL SERVICES IN THE MTN AGREEMENT BUT THAT JAPAN AND, TO A LESSER EXTENT, THE USA SEEM TO BE THE RELUCTANT PARTNERS. A GOOD GATT TYPE AGREEMENT WITH AS BROAD A SECTOR COVERAGE AS POSSIBLE WOULD HELP TO PROTECT CANADIAN SERVICES EXPORT INTERESTS IN EUROPE AGAINST RESTRICTIVE OR DISCRIMINATORY PRACTICES. IN THIS REGARD, WE ARE SEEKING TO BUILD UPON OUR FTA EXPERIENCE.

Conclusions

30. This is how I see the regional and the global negotiation agendas fitting together. This is how the current GATT talks with all major trading partners across the Atlantic, across the Pacific and from the Southern Hemisphere offer the most effective and realistic opportunity to keep Europe open to foreign competition and to compete on fairer terms on world markets.

31. This is not a time for retrenchment. This is a time for trade policy reform and for further global liberalization both to take advantage of growth of world markets and to sustain that growth in the years to come. Both sides of the Atlantic Rim are well on the road to globalization of economic activities building upon stronger regional markets and on enhanced international competitiveness.

32. This globalization is not accomplished in a vacuum but through dynamic corporate strategies. It is also accomplished through more trade liberalization initiatives and through a stronger and a more effective GATT system. It is that multilateral system, enlarged to include trade in services, investment and intellectual property issues, that can provide the framework for managing our relationship in the Atlantic Rim for the 1990's.

THAT RELATIONSHIP IS NO LONGER ONLY BILATERAL; IT HAS TO BE UNDERSTOOD IN THE CONTEXT OF THE NEW REALITIES OF THE GLOBAL TRADING ENVIRONMENT.

33. WE HAVE A RENDEZ-VOUS WITH EUROPE TO COMPLETE THE URUGUAY ROUND IN BRUSSELS IN DECEMBER 1990, AFTER THE CANADIAN RENDEZ-VOUS IN MONTREAL LAST DECEMBER.

MTN.GNG/NG1/W/26
MTN.GNG/NG2/W/42
MTN.GNG/NG3/W/27
MTN.GNG/NG4/W/27
MTN.GNG/NG5/W/105
MTN.GNG/NG6/W/37
25 September 1989
Special Distribution

MULTILATERAL TRADE NEGOTIATIONS

THE URUGUAY ROUND

Group of Negotiations on Goods (GATT)

Original: English/French

Negotiating Group on Tariffs
Negotiating Group on Non-Tariff Measures
Negotiating Group on National Resource-Based Products
Negotiation Group on Textiles and Clothing
Negotiating Group on Agriculture
Negotiating Group on Tropical Products

URUGUAY ROUND - MARKET ACCESS

Submission by Canada

1. This submission contains Canada's proposal on the modalities to engage in the detailed MTN Market Access Negotiations. It is put forward on the basis that all GATT members will participate in the overall multilateral trade liberalization negotiations, that NTB's will be satisfactorily dealt with, that all product sectors will be covered and that a mutually satisfactory balance of advantages overall will be achieved.

2. Canada's proposal is aimed at achieving the overall trade liberalization set in the Montreal negotiating frameworks on market access issues (both tariffs and NTB's) for the Uruguay Round, in particular:

   (a) substantial reduction or, as appropriate, elimination of tariffs by all participants with a view to achieving lower and more uniform rates, including the reduction or elimination of high tariffs, tariffs peaks, tariff escalation and low tariffs, with a target amount for overall reductions at least as ambitious as that achieved by the formula participants in the Tokyo Round;

   (b) substantial reduction or elimination of non-tariff barriers by all participants, resulting in real improvements in conditions of market access;

   (c) phasing of tariff reductions over appropriate periods to be negotiated;

   (d) substantial increase in the scope of bindings and the need for an approach to be elaborated to give credit for bindings; and

   (e) participation by developing countries in accordance with the general principles in the Punta del Este Declaration.

3. Canada proposes an approach based on a combination of both a tariff formula and requests and offers along the following lines:

(a) Tariff formula:

The first step would involve applying the following formula:

$$R = 32 + \frac{D}{5}$$

where R is the rate of reduction and D is the base rate. In performing the calculation "D over 5" the result would be rounded down to the next full number. The maximum figure for R would be 38 per cent. The second step would involve eliminating rates which fall below 3 percent after applying the above formula.

While the above formula would apply to all sectors, it is recognized that solutions to market access in some sectors (eg. agriculture) will need to take account of developments in the MTN as a whole in the final result. As well, each participant would make every effort to minimize the number of exceptions to this tariff formula reduction.

(b) Requests and Offers:

A request and offer approach would supplement the tariff reduction formula approach with a view to providing the maximum possible reduction or elimination of both tariffs and NTB's and ensuring a mutual balance of advantages at the highest possible level. Accordingly, Canada proposes that requests for greater than formula reductions, including tariff elimination on selected items with rates of 3 per cent and above after applying the formula, as well as for the elimination of NTB's not otherwise covered by general rules and disciplines, be exchanged by all participants as soon as possible with a view to engaging in a mutual exchange of tariff and NTB offers by January 31, 1990.

4. The results of the tariff and NTB negotiations would be bound under the GATT. Appropriate credit would be given for the binding of previously unbound rates and for reductions in base rates.

5. Developed country participants and newly industrialised economies would make every effort to meet the needs of the least developed countries by, inter alia, proposing greater than formula tariff reductions and accelerated tariff reductions on goods of particular interest to LLDC's.

6. Proposed tariff concessions would, as a general rule, be phased out in equal annual steps over a period to be negotiated. In order to minimize partial or total exceptions from the formula, participants would be encouraged to negotiate longer phasing for sensitive products. Longer phasing would also be encouraged to assist developing countries to reduce their tariffs on the basis of the common formula.

7. Participants should seek also to simplify both the market access negotiations and their results. The detailed tariff negotiations should therefore proceed on the basis of the following:

(a) participants would make every effort in the negotiations to minimize the number of tariff items at the eight digit level and to aim for the eventual elimination of dutiable items beyond eight digits;

(b) where, in a six-digit sub-heading of each participants HS tariff, there are dutiable items whose proposed tariff concessions are within a one percentage point spread, those items would be collapsed to form a single item taking the lowest of the concessions rates;

(c) proposed tariff concessions would be expressed in ad valorem terms wherever possible;

(d) proposed tariff concessions would be rounded down to the nearest one half percentage point.

8. Having regard to continuing differences of views between MTN participants concerning the specific product coverage and negotiating responsibilities of different Groups, this proposal is being tabled in all relevant negotiating Groups, to ensure maximum possible negotiating flexibility consistent with the aim of achieving the largest possible overall result in all aspects of the Uruguay Round. This includes the Groups on Tariffs, Non Tariff Measures, Agriculture, Natural Resource Based Products, Textiles and Clothing and Tropical Products.

ANNEX

$R = 32 + \frac{D}{5}$ Where

R = Rate of reduction
D = Base rate
D/5 is rounded down to the next whole number
R has a maximum value of 38%
Revised rates less than 3.0% are eliminated
Revised rates are rounded down to the next 0.5

Base rate %	Rate of reduction %	Revised rate % (rates below 3% go to 0)		Rounded rate %
0.50	32.00	(0.34)	0.00	0.0
1.00	32.00	(0.68)	0.00	0.0
1.50	32.00	(1.02)	0.00	0.0
2.00	32.00	(1.36)	0.00	0.0
2.50	32.00	(1.70)	0.00	0.0
3.00	32.00	(2.04)	0.00	0.0
3.50	32.00	(2.38)	0.00	0.0
4.00	32.00	(2.72)	0.00	0.0
4.50	32.00		3.06	3.0
5.00	33.00		3.35	3.0
5.50	33.00		3.69	3.5
6.00	33.00		4.02	4.0
6.50	33.00		4.36	4.0
7.00	33.00		4.69	4.5
7.50	33.00		5.03	5.0
7.60	33.00		5.09	5.0
8.00	33.00		5.36	5.0
8.50	33.00		5.70	5.5
9.00	33.00		6.03	6.0
9.50	33.00		6.37	6.0
10.00	34.00		6.60	6.5
10.50	34.00		6.93	6.5
11.00	34.00		7.26	7.0
11.50	34.00		7.59	7.5
12.00	34.00		7.92	7.5
12.50	34.00		8.25	8.0
13.00	34.00		8.58	8.5
13.50	34.00		8.91	8.5
14.00	34.00		9.24	9.0
14.50	34.00		9.57	9.5
15.00	35.00		9.75	9.5
15.50	35.00		10.08	10.0

Base rate %	Rate of reduction %	Revised rate % (rates below 3% go to 0)	Rounded rate %
16.00	35.00	10.40	10.0
16.50	35.00	10.73	10.5
17.00	35.00	11.05	11.0
17.50	35.00	11.38	11.0
18.00	35.00	11.70	11.5
18.50	35.00	12.03	12.0
19.00	35.00	12.35	12.0
19.50	35.00	12.68	12.5
20.00	36.00	12.80	12.5
20.50	36.00	13.12	13.0
21.00	36.00	13.44	13.0
21.50	36.00	13.76	13.5
22.00	36.00	14.08	14.0
22.50	36.00	14.40	14.0
23.00	36.00	14.72	14.5
23.50	36.00	15.04	15.0
24.00	36.00	15.36	15.0
24.50	36.00	15.68	15.5
25.00	37.00	15.75	15.5
25.50	37.00	16.07	16.0
26.00	37.00	16.38	16.0
26.50	37.00	16.70	16.5
27.00	37.00	17.01	17.0
27.50	37.00	17.33	17.0
28.00	37.00	17.64	17.5
28.50	37.00	17.96	17.5
29.00	37.00	18.27	18.0
29.50	37.00	18.59	18.5
30.00	38.00	18.60	18.5
30.50	38.00	18.91	18.5
31.00	38.00	19.22	19.0
31.50	38.00	19.53	19.5
32.00	38.00	19.84	19.5
32.50	38.00	20.15	20.0
33.00	38.00	20.46	20.0
33.50	38.00	20.77	20.5
34.00	38.00	21.08	21.0
34.50	38.00	21.39	21.0
35.00	38.00	21.70	21.5
35.50	38.00	22.01	22.0
36.00	38.00	22.32	22.0
36.50	38.00	22.63	22.5
37.00	38.00	22.94	22.5
37.50	38.00	23.25	23.0

Base rate %	Rate of reduction %	Revised rate % (rates below 3% go to 0)	Rounded rate %
38.00	38.00	23.56	23.5
38.50	38.00	23.87	23.5
39.00	38.00	24.18	24.0
39.50	38.00	24.49	24.0
40.00	38.00	24.80	24.5
40.50	38.00	25.11	25.0
41.00	38.00	25.42	25.0
41.50	38.00	25.73	25.5
42.00	38.00	26.04	26.0
42.50	38.00	26.35	26.0
43.00	38.00	26.66	26.5
43.50	38.00	26.97	26.5
44.00	38.00	27.28	27.0
44.50	38.00	27.59	27.5
45.00	38.00	27.90	27.5
45.50	38.00	28.21	28.0
46.00	38.00	28.52	28.5
46.50	38.00	28.83	28.5
47.00	38.00	29.14	29.0
47.50	38.00	29.45	29.0
48.00	38.00	29.76	29.5
48.50	38.00	30.07	30.0
49.00	38.00	30.38	30.0
49.50	38.00	30.69	30.5
50.00	38.00	31.00	31.0
50.50	38.00	31.31	31.0
51.00	38.00	31.62	31.5
51.50	38.00	31.93	31.5
52.00	38.00	32.24	32.0
52.50	38.00	32.55	32.5
53.00	38.00	32.86	32.5
53.50	38.00	33.17	33.0
54.00	38.00	33.48	33.0
54.50	38.00	33.79	33.5
55.00	38.00	34.10	34.0
55.50	38.00	34.41	34.0
56.00	38.00	34.72	34.5
56.50	38.00	35.03	35.0
57.00	38.00	35.34	35.0
57.50	38.00	35.65	35.5
58.00	38.00	35.96	35.5
58.50	38.00	36.27	36.0
59.00	38.00	36.58	36.5
59.50	38.00	36.89	36.5

Base rate %	Rate of reduction %	Revised rate % (rates below 3% go to 0)	Rounded rate %
60.00	38.00	37.20	37.0
60.50	38.00	37.51	37.5
61.00	38.00	37.82	37.5
61.50	38.00	38.13	38.0
62.00	38.00	38.44	38.0
62.50	38.00	38.75	38.5
63.00	38.00	39.06	39.0
63.50	38.00	39.37	39.0
64.00	38.00	39.68	39.5
64.50	38.00	39.99	39.5
65.00	38.00	40.30	40.0
65.50	38.00	40.61	40.5
66.00	38.00	40.92	40.5
66.50	38.00	41.23	41.0
67.00	38.00	41.54	41.5
67.50	38.00	41.85	41.5
68.00	38.00	42.16	42.0
68.50	38.00	42.47	42.0
69.00	38.00	42.78	42.5
69.50	38.00	43.09	43.0
70.00	38.00	43.40	43.0
70.50	38.00	43.71	43.5
71.00	38.00	44.02	44.0
71.50	38.00	44.33	44.0
72.00	38.00	44.64	44.5
72.50	38.00	44.95	44.5
73.00	38.00	45.26	45.0
73.50	38.00	45.57	45.5
74.00	38.00	45.88	45.5
74.50	38.00	46.19	46.0
75.00	38.00	46.50	46.5
75.50	38.00	46.81	46.5
76.00	38.00	47.12	47.0
76.50	38.00	47.43	47.0
77.00	38.00	47.74	47.5
77.50	38.00	48.05	48.0
78.00	38.00	48.36	48.0
78.50	38.00	48.67	48.5
79.00	38.00	48.98	48.5
79.50	38.00	49.29	49.0
80.00	38.00	49.60	49.5
80.50	38.00	49.91	49.5
81.00	38.00	50.22	50.0
81.50	38.00	50.53	50.5

Base rate %	Rate of reduction %	Revised rate % (rates below 3% go to 0)	Rounded rate %
82.00	38.00	50.84	50.5
82.50	38.00	51.15	51.0
83.00	38.00	51.46	51.0
83.50	38.00	51.77	51.5
84.00	38.00	52.08	52.0
84.50	38.00	52.39	52.0
85.00	38.00	52.70	52.5
82.50	38.00	53.01	53.0
86.00	38.00	53.32	53.0
86.50	38.00	53.63	53.5
87.00	38.00	53.94	53.5
87.50	38.00	54.25	54.0
88.00	38.00	54.56	54.5
88.50	38.00	54.87	54.5
89.00	38.00	55.18	55.0
89.50	38.00	55.49	55.0
90.00	38.00	55.80	55.5
90.50	38.00	56.11	56.0
91.00	38.00	56.42	56.0
91.50	38.00	56.73	56.5
92.00	38.00	57.04	57.0
92.50	38.00	57.35	57.0
93.00	38.00	57.66	57.5
93.50	38.00	57.97	57.5
94.00	38.00	58.28	58.0
94.50	38.00	58.95	58.5
95.00	38.00	58.90	58.5
95.50	38.00	59.21	59.0
96.00	38.00	59.52	59.5
96.50	38.00	59.83	59.5
97.00	38.00	60.14	60.0
97.50	38.00	60.45	60.0
98.00	38.00	60.76	60.5
98.50	38.00	61.07	61.0
99.00	38.00	61.38	61.0
99.50	38.00	61.69	61.5
100.00	38.00	62.00	62.0

MTN.GNG/NG1/W/26/Corr.1
MTN.GNG/NG2/W/42/Corr.1
MTN.GNG/NG3/W/27/Corr.1
MTN.GNG/NG4/W/27/Corr.1
MTN.GNG/NG5/W/105/Corr.1
MTN.GNG/NG6/W/37/Corr.1
29 septembre 1989

Distribution spéciale

NEGOCIATIONS COMMERCIALES MULTILATERALES

NEGOCIATIONS D'URUGUAY

Groupe de négociation sur les marchandises (GATT)

Groupe de négociation sur les droits de douane
Groupe de négociation sur les mesures non-tarifaires
Groupe de négociation sur les produits provenant des ressources naturelles
Groupe de négociation sur les textiles et les vêtements
Groupe de négociation sur l'agriculture
Groupe de négociation sur les produits tropicaux

NEGOCIATIONS D'URUGUAY - ACCES AUX MARCHES

Présentation du Canada

Corrigendum[1]

Le libellé du paragraphe 5 doit se lire comme suit:

5. Les participants des pays développés et les économies nouvellement industrialisées feraient tous les efforts pour répondre aux besoins des pays les moins avancés, notamment en proposant des réductions plus importantes que celles prévues par la formule et une accélération des réductions tarifaires applicables à des produits qui intéressent tout particulièrement les PMA.

[1] Français seulement.

Government of Canada / Gouvernement du Canada

news release

Date 26 September 1989. No. 223

For release

CANADA CALLS FOR SUBSTANTIAL CUTS IN GLOBAL TARIFFS AND NON-TARIFF BARRIERS

International Trade Minister John C. Crosbie and Finance Minister Michael Wilson today announced that Canada has tabled in Geneva a proposal for the reduction of tariffs and non-tariff barriers in the Multilateral Trade Negotiations under the General Agreement on Tariffs and Trade (GATT). The proposal was developed following consultations with the private sector and provincial governments.

"Canada has proposed an integrated approach which attacks both the non-tariff barriers and the tariffs that inhibit Canadian exports to world markets," Mr. Crosbie said.

Mr. Crosbie emphasized that improved terms of access to foreign markets will be of particular benefit to Canadian resource-based industries, including fisheries, metals and minerals, forest products, petrochemicals and agriculture.

"Canada's proposal builds on the consensus reached by Ministers in Montreal last December during the mid-term review of the Uruguay Round, calling for a one-third reduction in global tariffs. We're proposing to achieve that goal through a combination of both a tariff formula and bilateral 'request and offer' negotiations," Mr. Crosbie said.

Mr. Wilson said: "Canada's approach should provide common ground for the major participants in the negotiations, and should help lead to substantial, reciprocal and balanced benefits for Canadian industries. We are fully committed to global trade liberalization because it will help Canadian industry to be more internationally competitive and able to grow."

The Ministers said that a freer world trading environment will help Canada capitalize on its enhanced competitiveness arising from the Canada-U.S. Free Trade Agreement. In particular, Canada is seeking improved access to markets in Europe, Japan and the Newly Industrialized Countries in the Pacific and Latin America. In those markets, Canada faces an array of trade barriers, including restrictive government procurement practices.

Mr. Crosbie recalled that in the Free Trade negotiations, Canada and the U.S. agreed to pursue the question of liberalization of government procurement in the Uruguay Round.

.../2

By early next year, Canada and other countries participating in the GATT negotiations are expected to table their offers for reducing specific trade barriers as well as possible total or partial exceptions to the general approach to the objectives agreed to in Montreal.

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MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

MTN.GNG/NG11/W/47
25 October 1989
Special Distribution

Group of Negotiations on Goods (GATT)

Original: English

Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods

STANDARDS FOR TRADE-RELATED INTELLECTUAL PROPERTY RIGHTS

Submission from Canada

The following submission has been received from the delegation of Canada with the request that it be submitted to members of the Negotiating Group.

INTRODUCTION

1. Canada considers a substantial result on intellectual property standards to be a key element of a TRIPS agreement in the Uruguay Round. In September, 1989, Canada submitted its proposals on the development of fair, effective and non-discriminatory international rules and disciplines to enforce intellectual property rights. But enforcement provisions mean little if there are no, or inadequate, standards to enforce. Therefore, adequate standards are equally necessary to reduce distortions and impediments to international trade. Such standards, however, should not be excessive, and should not themselves become barriers to legitimate trade.

2. This submission provides Canada's views on the relationship between intellectual property standards and international trade. It identifies Canada's objectives for a satisfactory TRIPS agreement in the MTN and sets out Canada's ideas on the key intellectual property standards issues which should be addressed in negotiating the substantive provisions of such an agreement. Detailed proposals on each of the major subject matters of intellectual property are set out in the Annex. This paper should be read in conjunction with Canada's submission on the enforcement of intellectual property rights (NG 11/W/42).

GATT SECRETARIAT
IIR-89-0323

INTELLECTUAL PROPERTY STANDARDS AND INTERNATIONAL TRADE

3. Many countries provide inadequate protection for the innovators/creators of intellectual property. As a result, when the legitimate intellectual property owner exports his goods or services under such conditions, the intellectual property component may be copied, expropriated, or stolen, sometimes with little or no redress. Producers and owners of IP may then become reluctant to trade with that country, or may attempt through their governments to impose unilateral trade sanctions against it.

4. But the trade dimension to the problem does not stop here, because the infringing producer, counterfeiter, or pirate may also export his product to third country markets, constraining the legitimate IP owner's ability to sell his invention/creation into those markets. This constraint on trade is increasingly important, because of the larger volume of trade linked to new technological products and also to the growing international dissemination of technology, consumer goods and services. Accordingly, an adequate level of IP protection is needed in each country in order to facilitate the effective international transfer of technology and the worldwide dissemination of goods and services. No country can afford to condone the expropriation or theft of internationally traded technologies, goods and services, as it would increasingly find itself on the periphery of international trade expansion.

5. International trade can be affected in other ways by intellectual property standards:

* Inadequate IP standards can result in less innovation, creativity and commitment to research and development, and, therefore, reduce the range of new, high quality technologies, products and services available to the international market.

* Sharp differences in IP standards and use provisions among countries distort trade and investment decisions because products legally available in one country cannot be sold into another.

* Excessive levels of protection in a country can also cause distortions, by denying legitimate traders opportunities to sell into that market.

6. Canada believes that for the GATT to become more effective as the central international institution to regulate international trade problems, it must adapt to these emerging trends. A TRIPS agreement should also facilitate trade in technology among parties to the agreement at all levels of economic development. Canada believes that such international technology trade is best facilitated through licensing agreements between private parties which are to the mutual advantage of both the licensor and the licensee. Restrictions which limit the ability of private parties to

conclude mutually advantageous agreements will raise the cost of technology, reduce international technology flows, and distort both trade and investment. Canada, therefore, considers it important that countries not impose unreasonable or discriminatory conditions on firms negotiating voluntary licences, while recognizing that strong competition policy is also relevant.

STANDARDS: OBJECTIVES OF AN AGREEMENT

7. The GATT standards for the protection of intellectual property should facilitate and encourage legitimate, non-infringing trade. They should, in particular,

* reduce distortions and impediments to international trade;

* be adequate, both in balancing relevant interests and in their degree of detail;

* not serve as barriers to legitimate trade;

* facilitate the contribution of trade to innovation, research and development and the transfer and use of technology in and among parties to the agreement.

In order to provide adequate protection of intellectual property in its territory each party should update all laws, regulations, procedures and practices of its intellectual property regime in line with the standards in the agreement.

GENERAL CONSIDERATIONS RELATING TO AVAILABILITY, SCOPE AND USE OF TRADE RELATED INTELLECTUAL PROPERTY RIGHTS

8. Scope of an Agreement - In Canada's view, the GATT TRIPS negotiations should be comprehensive, addressing all eight major IP subject matters (patents, trade marks, geographical indications, copyright, neighbouring rights, integrated circuits, industrial designs and trade secrets). This is necessary because trade distortions and impediments can arise in relation to each. While it may be argued that the trade problems are largely concentrated on goods and services protected by patents, trade marks or copyright, there are already problems occurring across a wide range of IP products.

9. New GATT Standards vs. Existing Conventions - Standards of IP protection differ significantly from country to country. While international IP conventions do exist for most subject matters of IP, these conventions have significant deficiencies because:

* many countries are not signatories;

* countries have signed at different obligation levels;

* many conventions have very low required levels of explicit protection;

* many conventions have gaps in the scope of rights provided;

* many conventions do not require protection for some categories of work, within the ambit of the general subject matter of the conventions;

* some subject matters for protection (i.e. trade secrets, some new technologies) are not covered by the existing conventions.

As a result, not only is adequate IP protection not available at all in some countries, but even across countries that provide some level of IP protection it is a patchwork quilt of extreme variability. The consequence for creators/innovators is a series of increasing tensions, frictions and constraints in trying to export their technologies, products and services to other countries.

10. Enhanced Effective Level of Intellectual Property Standards - In considering these factors, Canada suggests that the TRIPS Negotiating Group should work towards a final outcome which provides an enhanced effective level of intellectual property standards internationally. This concept implies movement by all countries towards a common adequate standard of protection but not necessarily detailed harmonization.

11. As a first step in moving towards an "enhanced effective level" of intellectual property standards worldwide, Canada believes that as a basic component of a TRIPs agreement, parties should be required to comply with the substantive obligations of the Stockholm text of the Paris Convention for the Protection of Industrial Property and the Paris text of the Berne Convention for the Protection of Literary and Artistic Works, because these Conventions have high acceptance internationally. As outlined later, however, gaps in these Conventions will have to be addressed by the Negotiating Group.

12. Adequacy of Protection - In Canada's view, levels of IP protection should be sufficient to induce innovation/creation by individuals and businesses, recognize their ownership of the products of their creative efforts, and provide an adequate basis for them to achieve a reasonable commercial return on the sale of their products in both domestic and foreign markets, recognizing that product markets are now virtually global.

13. However, such a legal foundation or framework for the innovator/creator to seek reasonable compensation for the novel product of his efforts should not be excessive or without limits. It must be balanced against the rights of the public-at-large to reasonable access to the innovation/creation at reasonable prices and to legitimate access for such purposes as research and education. Such a balancing in the public interest reflects the fact that the rights granted to the creator/innovator come from the government, representing the broad interests of the public-at-large.

14. A second dimension to the issue of the "adequacy" of IP standards which the Negotiating Group must continue to address for each type of intellectual property is the necessary level of detail required for a TRIPS agreement. If the agreed standards are too general, they may be unenforceable in practice or may be unpredictable in their interpretation and application by a panel, with the result they are ineffective in minimizing trade disputes. If, however, an attempt is made to develop standards which are too detailed, GATT would run the risk of assuming responsibility for the harmonization of national IP laws. But such detailed harmonization of IPR standards is a separate exercise which is on the agenda of the World Intellectual Property Organization (WIPO). Canada is active in and strongly supports this work.

15. Application of Basic Principles - The standards provided under a TRIPS agreement should be based upon the principles of national treatment, most-favoured-nation treatment, transparency, and dispute settlement.

* National treatment and MFN should apply equally to all persons, goods and services covered by an agreement. Incorporation of these fundamental principles will ensure that all persons, companies and institutions of parties to this agreement are given the same IP rights regardless of nationality, ensuring equal opportunity for all those trading in international IP markets.

* The incorporation of the principle of transparency is important in order to give IPR owners, users and traders greater knowledge and certainty regarding their rights.

* Finally, effective dispute prevention and settlement measures are essential in order to ensure that countries meet their standards obligations. Moreover, such measures remove the risk of countries taking unilateral action against trading partners who they feel are not providing adequate IPR standards. The criteria for dispute settlement on standards issues would include these basic principles as well as the more detailed IPR standards relating to each of the major IP areas covered by the agreement.

16. Development and Technological Objectives - Canada believes that effective intellectual property protection within a country produces a significant range of benefits to the economy. First, it gives a clear signal to the innovators, creators, researchers, scientists and institutions within that country that creative efforts by its citizens will be protected and rewarded. Without such protection and incentives, some of these key creative individuals could decide to leave their home country to work in another country where originality and innovation are given stronger encouragement. Secondly, a framework of effective IP protection encourages product innovation within a country which can lead to new investment in research and development, can lead to the promotion of domestic technologies, and can contribute to enhanced economic growth, exports and increased employment. In addition, Canada, as a net importer of technology, has found that effective domestic intellectual property

standards are a key factor in gaining access to the latest and best emerging world technologies (since one can convince the owner of the technology that his intellectual property rights will be protected) and in encouraging investment in research and development facilities.

17. Procedures to Acquire Rights - Procedures of the parties for the acquisition or revocation of IPRs should be prompt, effective, non-discriminatory and transparent. Otherwise the procedures would have a negative impact on IPR related trade because they make it difficult for companies to acquire rights, thus denying them the benefits of their inventions or creations. They also increase uncertainty in trade since products and services will be traded without full knowledge by the IP owner of the rights attaching to them, pending finalization of the acquisition process.

SPECIFIC STANDARDS ISSUES

18. The following paragraphs highlight Canada's ideas on key intellectual property standards issues which should be addressed in the TRIPS negotiations.

A. PATENTS

i) Patents provide protection for, and dissemination of information about inventions by according the exclusive right to the use of the invention for a limited period of time. Without effective patent laws in a country to provide a secure environment for protecting technology, inventors will be constrained from transferring technology to that country or investing for research and development purposes. Major trade distortions can result from the absence of adequate patent protection or substantive variations in levels of protection because protection available in one country is not available in another, and because an invention which can be legally sold or used in one country cannot be legally sold or used in another.

ii) Although the Paris Convention contains important provisions affecting patents, e.g. provisions governing the right of priority, the standards in the Paris Convention relating to patents are insufficient to ensure adequate levels of patent protection. For example, the Convention is silent with respect to patentable subject matter, necessary conditions for obtaining a patent and term of protection and it deals only marginally with the rights conferred by a patent. Accordingly, Canada considers that significant improvements should be added to those standards in the Paris Convention, and that these should be developed as part of a TRIPS agreement.

iii) Canada is concerned about the discriminatory reduction-to-practice requirements of some countries. Such requirements have the effect of diverting research and development and the transfer of technology to the discriminating country. Canada believes that this problem could be resolved if all countries made patents available under the first-to-file principle.

iv) It is in the international interest to have the broadest coverage for patentable products and processes in order to ensure technological innovation in all areas. Patents should generally be available in all fields of technology. It would nevertheless not be reasonable to oblige all governments to extend patents to an area such as multicellular life forms for which considerably more technical study is required both domestically and internationally concerning the most appropriate form of protection and the conditions under which it should be accorded.

v) Compulsory licensing should be available to parties only under certain limited conditions and in accordance with the Paris Convention. This Convention contains certain safeguards but is not sufficient. In particular, it does not require adequate compensation or access to judicial review. Accordingly, the legitimate public interest purposes for which compulsory licensing could be required by participants to a TRIPS agreement should be defined. In addition, important safeguards should be provided in order to protect the rights of the patentee in terms of:

* Full transparency
* National Treatment
* Non-exclusivity
* Adequate compensation
* Judicial review

B. TRADEMARKS

i) Trademarks are used to distinguish wares or services of a particular trader. Collective or certification marks are a particular form of trademark used to indicate wares or services conforming to some owner-defined standard which may relate to the character or quality of goods, the working conditions under which they are produced, the class of persons involved in producing them, or the area in which they are made.

ii) Effective protection for trademarks is clearly an essential element of an open, predictable and equitable international trading system. Trademarks provide basic information necessary to consumers and businesses in making decisions about the purchase of goods and services. Failure to provide adequate protection for trademarks can result in both serious confusion and deliberate deception as to the source of goods and services among these groups.

iii) The standards in the Paris Convention relating to trademarks, although important, are of limited scope, and do not ensure adequate levels of trademark protection. For example, the Paris Convention is silent on the definition of a trademark and the term of protection. In addition, Article IX(6) of the GATT concerns marks of origin and the use of trade names to misrepresent the true origin of a product, but has limited enforceability. Canada therefore considers that additional international standards are needed in a TRIPS agreement to ensure levels of trademark protection which will minimize trade distortions.

iv) There should be no possibility of compulsory licensing. The ability of a trademark owner to control the use of his trademark is essential to protect the value of the trademark and to protect the public from confusion and deception.

v) International trade in services is growing rapidly and service marks are becoming increasingly important to protect both providers and users of services. Canada considers that the substantive obligations for protection in respect of trademarks should be expanded to cover service marks.

C. GEOGRAPHICAL INDICATIONS INCLUDING APPELLATIONS OF ORIGIN

i) The World Intellectual Property Organization uses the term "geographical indications" to mean both indications of source and appellations of origin. "Indication of source" means any expression or sign used to indicate that a product or service originates in a country, a region or a specific place. "Appellation of origin" means the geographical name of a country, region or specific place which serves to designate a product originating therein, the qualities and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.

ii) Misrepresentation of the true origin of a product causes trade distortions, damages the economic interests of rights holders and misleads consumers. In order to ensure adequate protection for geographical indications, all countries should comply with the substantive obligations of the Paris Convention and to the proposals outlined above for trademarks standards, particularly protection for collective or certification marks.

D. COPYRIGHT

i) Copyright embraces a wide range of media and forms of expression including literary, musical, dramatic and artistic works. It gives the authors and creators of these works protection against a variety of unauthorized uses, including copying and performance in public. Trade problems due to copyright piracy are particularly evident in respect of computer programs, films and books.

ii) For the most part, the Berne Convention contains substantive obligations providing adequate protection of copyright for purposes of a TRIPS agreement. It is specific on the issue of what constitutes adequate rights and standards for copyright works. It deals with issues such as the subject matter of protection, term, scope and ownership, and generally provides a high level of substantive minimum standards of protection.

iii) However, there is some uncertainty as to whether the Berne Convention covers computer programs. To remove this uncertainty, Canada believes that a TRIPS agreement should provide for protection for computer programs essentially equivalent to that given to literary works under the Berne Convention. Canada is also concerned about the unexpectedly wide scope of protection conferred by the courts to computer programs in certain jurisdictions, which could have serious anti-competitive effects. Accordingly, Canada believes that protection should be appropriately limited.

E. NEIGHBOURING RIGHTS

i) Some countries protect neighbouring rights which are similar to, but outside of, traditional copyright protection. Neighbouring rights' protection extends to the rights of performers, phonogram (sound recordings) producers and broadcasters.

ii) The Berne Convention does not require protection of neighbouring rights and, internationally, protection is uneven.

iii) However, piracy of phonograms has become a serious trade problem due to the low cost of making illegal copies and the difficulty of enforcing protection. Canada considers that a TRIPS agreement should provide for protection against the unauthorized reproduction of phonograms for a minimum period of fifty years.

F. LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

i) An integrated circuit product is a manufactured device in which highly miniaturized and very complex electronic circuits are integrated. The circuits are embodied in the product in a three-dimensional hill and valley configuration known as a layout design of a topography. Existing international protection for layout designs is inadequate in that many countries provide no protection at all.

ii) Adequate international protection for topographies is essential in order to promote the creation of new topographies and to prevent persons from unfairly gaining a competitive advantage by appropriating someone else's design and avoiding the significant costs of creation. Highly specialized skills and costly investment are required to design topographies. Canada recognizes that a recent treaty on integrated circuit protection has been negotiated under the auspices of the World Intellectual Property Organization. However, certain of the key standards in that draft convention (e.g. term, compulsory licensing provisions) are lower than those currently provided by most countries having such protection and are inadequate to provide sufficient protection. In addition, the dispute settlement provisions of the treaty are unsatisfactory to address trade problems particularly in view of the lengthy time delays and uncertain procedures which would be involved.

iii) Given the increasing use of integrated circuits in a wide variety of products, failure to provide for exhaustion could cause trade problems since the presence of one chip as a minor part of a product could allow importation of the product to be blocked. A TRIPS agreement should provide that rights are exhausted once the circuit has been legitimately put on the market anywhere in the world.

G. INDUSTRIAL DESIGNS

i) Industrial designs are shapes, patterns or ornamentation applied to products to make them more appealing. International protection is necessary in order to promote development of new designs and to prevent the theft of designs whose creation may have required a considerable investment.

ii) The standards in the Paris Convention relating to industrial designs are limited and insufficient to ensure adequate levels of international industrial design protection and trade. The Paris Convention is silent on subject matter, conditions for protection, rights conferred and term of protection.

iii) At the present time, there are a wide variety of approaches taken internationally to the protection of industrial designs. These vary from protection of a copyright nature (protection only against copying) to protection of a patent nature (giving broader rights to exclusive use).

iv) Canada considers that basic standards for industrial designs - flexible enough to accommodate different approaches - should be developed for inclusion in a TRIPS agreement.

H. TRADE SECRETS/ACTS CONTRARY TO HONEST COMMERCIAL PRACTICES

i) Trade and business secrets protect important commercial and technical data of businesses. Protection for trade and business secrets is therefore an important aspect of providing a secure environment for the transfer of technology.

ii) At the present time, international conventions contain little, if anything, relating to trade secrets. Because of this and because there are currently a wide variety of approaches taken internationally for the protection of business secrets, a TRIPS agreement should contain a general obligation that would prevent anyone other than the owner from using trade secrets contrary to honest commercial practices.

ANNEX

DETAILED CANADIAN PROPOSAL ON STANDARDS ISSUES

INTERNATIONAL CONVENTIONS

All countries should comply with the substantive obligations in the Stockholm text of the Paris Convention for the Protection of Industrial Property and the Paris text of the Berne Convention for the Protection of Literary and Artistic Works.

A. PATENTS

Patentable subject matter

Patents should be available for all products and processes in all fields of technology. National laws, however, may provide that the following are not patentable:

i) multicellular life forms or processes for producing new multicellular life forms;

ii) methods of medical treatment for humans or animals;

iii) mere scientific principles;

iv) schemes, plans or systems for doing business, accounting, playing games and the like;

v) printed or design material having intellectual connotations only; and

vi) algorithms and computer programs per se.

Conditions for patentability

Patents should be available under the first to file principle.

Patents should be available for inventions that are new, useful and unobvious.

Term of protection

The term of a patent should be 20 years from the filing date of the application.

Rights conferred

The owner of a patent should have the right to exclude others from making, using, selling or offering for sale the patented invention. In respect of process patents, the owner should in addition have the right to exclude others from using, selling or offering for sale a product directly resulting from the use of the process in any country.

National laws, however, may provide that the owner of a patent has no right to prevent third parties from performing the following acts:

i) acts done privately and on a non-commercial scale provided that they do not significantly prejudice the economic interests of the owner of the patents; and

ii) making or using for solely experimental purposes or scientific research in relation to the technology in respect of which the patent was granted, or a competing technology.

Compulsory licensing/forfeiture

Compulsory licensing should be available to parties only under certain limited conditions and in accordance with the Paris Convention.

Any compulsory licence granted should be non-exclusive and should provide for adequate compensation to the patentee for the use of the invention.

Any decision relating to the grant of a compulsory license or the forfeiture of a patent should be subject to judicial review.

Voluntary licensing

Countries should not impose unreasonable or discriminatory terms or conditions on parties negotiating voluntary licences.

B. TRADEMARKS

Paris Convention

The substantive obligations imposed by the Paris Convention in respect of trademarks should be expanded to cover service marks wherever possible e.g. in respect of the right to priority (Article 4), the period of grace (Article 5 bis), well-known marks (Article 6 bis) and the nature of the services (Article 7).

Definition

Trademark protection (the term trademark being used to include service marks and certification marks or collective marks) should be provided for all marks capable of being represented graphically including any sign, word, design, letter, numeral, colour, shape of goods or of their packaging, or any combination thereof provided that such marks are capable of distinguishing the goods or services of one undertaking from those of other undertakings.

Protection should not be provided to marks which are in conflict with earlier trademark or trade name rights.

Derivation of rights

Trademark rights may derive from use or registration or a combination thereof.

Use of the trademark in the contracting country may be a prerequisite to registration other than in circumstances where this is prohibited by Article 6 quinquies of the Paris Convention for marks registered in the country of origin.

Rights conferred

The owner of a trademark should have the right to exclude others from using any mark in association with any goods or services including distributing or advertising if such use would be likely to cause confusion.

Protection of well-known marks

No specific provisions proposed because Article 6 bis of the Paris Convention requires protection of well-known marks for goods and as noted above, Canada proposes that this obligation be expanded to cover well-known marks for services.

National registration systems

A system for the registration of trademarks should be provided.

A reasonable opportunity should be provided to oppose or challenge a registration.

Term of protection

A trademark should be registered for no less than ten years and should be renewable indefinitely for further terms of no less than ten years.

Use requirements

No requirements should be imposed on the use of a trademark that would inhibit recognition of the mark or that would inhibit the mark from serving to distinguish a good or service.

If use of a registered mark is required to maintain trademark rights, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless legitimate reasons for non-use exist. Circumstances arising independently of the will of the proprietor of a trademark which constitute a serious obstacle to the use of the mark (such as import restrictions on products protected by the trademark) should be sufficient to constitute legitimate reasons for non-use. Authorized use of a trademark by a third party should be considered use by the trademark owner for purposes of meeting use requirements.

Licensing and assignment

Licensing of trademarks should be permitted.

No compulsory licensing of trademarks should be imposed.

Countries should not impose unreasonable or discriminatory terms or conditions on parties negotiating voluntary licences.

Trademarks should be transferable with or without the transfer of the undertaking to which they belong.

C. GEOGRAPHICAL INDICATIONS INCLUDING APPELLATIONS OF ORIGIN

All countries should be required to provide protection for geographical indications by complying with the substantive obligations in the Paris Convention and the above Canadian proposals for trademark standards.

D. COPYRIGHT

Subject Matter for Protection

In addition to the subject matter covered by the Berne Convention, computer programs should be protected.

Conditions for Obtaining Protection

The requirement in the Berne Convention that protection arise automatically upon creation is adequate.

Rights Conferred

In the case of computer programs, the protection should be essentially equivalent to that provided to literary works under the Berne Convention, except that protection should not extend to the "look and feel" or "structure, sequence, and organization" of a program, or to algorithms, ideas, systems, and the like.

Further, national laws may allow for adaptation, arrangement, conversion or alteration of the program for an entity's own use as well as the making of a single copy for strictly back-up or archival purposes.

Otherwise, the Berne Convention deals adequately with rights conferred.

Limitations

The Berne Convention contains acceptable limitations.

Term of Protection

In the case of computer programs, the minimum term should be 50 years.

Otherwise, the Berne Convention deals adequately with the term of protection.

E. NEIGHBOURING RIGHTS

Provided that a TRIPs agreement contains provisions relating to phonograms as proposed below, Canada does not consider that a TRIPs agreement should deal specifically with neighbouring rights.

Phonograms

Phonograms should be protected, the obligation to protect being limited to the right of reproduction. The minimum term should be 50 years.

F. LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

Subject matter for protection

Protection should be provided for the design, however expressed, of the disposition of the elements and the interconnections for the making of an integrated circuit product, provided that it is original and not commonplace.

Conditions for obtaining protection

National laws may require registration as a condition for protection.

Rights conferred

Protection should be against unauthorized copying and the distribution and importation of unauthorized copies.

There should be an exception for reverse engineering. Rights should be exhausted in an integrated circuit once it has been put on the market anywhere in the world by, or with the consent of, the holder of the right.

Compulsory licensing

National laws may provide for compulsory licensing only for abuses under competition law.

Term of protection

The term of protection should be ten years.

G. INDUSTRIAL DESIGNS

Subject matter and conditions for protection

Protection should be available for designs which are original or novel, a design being a two or three dimensional external appearance of an article that is not solely dictated by the utilitarian purpose of the article.

Rights conferred

The owner of an industrial design right should, at a minimum, have the right to prevent others from manufacturing or selling articles bearing a design which has been copied or has been substantially copied.

Term of protection

The term of protection should be at least ten years.

H. TRADE SECRETS/ACTS CONTRARY TO HONEST COMMERCIAL PRACTICES

Subject matter for protection and rights conferred

Trade and business secrets should be protected.

The owners of trade and business secrets should have the right to prevent them from becoming available to or being used by others in a manner contrary to honest commercial practices.

I. ACQUISITION OF IPRS

Procedures of the parties for the acquisition or revocation of intellectual property rights should be prompt, effective, non-discriminatory and transparent.

Government of Canada | Gouvernement du Canada

news release

Date October 26, 1989. No. 260

For release

CANADA PROPOSES INTELLECTUAL PROPERTY STANDARDS TO REDUCE TRADE PROBLEMS

International Trade Minister John C. Crosbie and Acting Minister of Consumer and Corporate Affairs Harvie Andre announced today that a Canadian paper on intellectual property standards and international trade will be tabled in Geneva, Switzerland on October 30, 1989 as part of the Multilateral Trade Negotiations under the General Agreement on Tariffs and Trade (GATT).

The Canadian paper is on trade-related aspects of intellectual property rights (TRIPs) and addresses the need for adequate international intellectual property standards, in order to reduce trade problems which have emerged in recent years.

"Canada is proposing that a TRIPs agreement should provide for enhanced effective levels of protection of intellectual property rights, remove discriminatory practices in other countries, and ensure that Canada retains access to world-level technology," Mr. Crosbie said.

Effective protection for inventors, owners of intellectual property and users serves to encourage innovation and improve competitiveness. It provides a secure environment to facilitate international trade in goods and services. It creates employment and spin-off benefits in the high technology, manufacturing and service industries. By contrast, inadequate protection can result in lower levels of creativity and research and development, and reduce the range of new, leading-edge technologies, products and services available to Canada and in the international market.

Mr. Andre said, "Canada's proposals are in line with the Government's increasing emphasis on the need to promote the development and use of science and technology by Canadians. They also complement the work being done in Canada to modernize the

...2

domestic intellectual property framework, and are consistent with the direction of Canada's intellectual property policies which encompass effective protection of owners' rights, appropriately balanced with reasonable access for users."

This standards submission follows Canada's September 1989 proposals on the enforcement of intellectual property rights, which provide the basis for effective and non-discriminatory international enforcement rules. In Canada's view, such a multilateral system of rules would replace unilateral action by individual countries. Canada supports wide participation in a Multilateral Trade Negotiations agreement on trade-related intellectual property.

The two sets of proposals were developed in consultation with representatives of the Canadian private sector and reflect their concerns about the protection of owners' rights, users' rights, trade distortions and the use of discriminatory and unilateral trade instruments.

The General Agreement on Tariffs and Trade (GATT) is the cornerstone of the world trade system and of Canada's international trade policy. The Uruguay Round is the eighth major round of multilateral trade negotiations and it is expected to conclude in December 1990. One of Canada's objectives under the Uruguay Round is to develop trade rules for subjects not previously covered under GATT, including trade-related intellectual property matters, in order to strengthen the ability of the multilateral trading system to deal with the emerging trade policy issues of the 1990s.

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MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

MTN.GNG/NG11/W/42
5 September 1989
Special Distribution

Group of Negotiations on Goods (GATT)

Original: English

Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods

ENFORCEMENT OF TRADE-RELATED INTELLECTUAL PROPERTY RIGHTS

Submission from Canada

INTRODUCTION

1. Canada regards the development of fair, effective and non-discriminatory international rules and disciplines to enforce intellectual property rights (IPRs), consistent with basic GATT principles. as central to the negotiations on the trade related aspects of intellectual property (TRIPS). Such a framework would help to alleviate the shortcomings of existing international conventions on intellectual property which contain few, if any, detailed obligations regarding enforcement. Such a framework should be acceptable to the widest possible number of countries.

2. This submission provides Canada's views on the relationship between intellectual property enforcement measures and international trade. It outlines basic principles to ensure enforcement of IPRs takes place in a manner that would minimize possible trade impediments and distortions. Attached to the submission are more detailed views on the specific issues covered in the GATT synoptic table MTN.GNG/NG11/W/33, which inter alia may assist the Negotiating Group in addressing the level of detail appropriate for the enforcement provision of a TRIPS agreement.

INTELLECTUAL PROPERTY ENFORCEMENT AND INTERNATIONAL TRADE

3. The issues of enforcement of IPRs in the context of the MTN TRIPS negotiations need to focus on two interrelated aspects. First, because enforcement measures should be designed to protect "legitimate trade" i.e. the trade that does not infringe IPRs, it is necessary to define what should be regarded as being adequate standards of IP protection internationally. Second, enforcement of IPRs should avoid creating international trade distortions which can result from either inadequate or excessive enforcement measures.

4. Inadequate enforcement of intellectual property rights can adversely affect rights holders; their licensees; local manufacturers; distributors or retailers facing unfair competition from counterfeit or otherwise infringing product in their domestic markets; and consumers who have inadequate protection from counterfeit or otherwise fraudulent goods.

5. Excessive enforcement of IPRs can prove to be distorting if, as a result of enforcement measures, particularly at the border, which are arbitrary, unfair or overly zealous:

- foreign companies (i.e. the exporter) are not allowed to compete on an equal footing with local companies in the latter's domestic market;

- the legitimate importation, distribution and retailing interests of the importing country are negatively affected and;

- consumers and industry in the importing market are denied lower prices, higher product quality and more choices.

6. In Canada's view, a TRIPS agreement should contain enforcement provisions which strike an appropriate balance among the commercial and economic interests of the various private sector parties concerned.

7. In addition, a TRIPS agreement should recognize that individual participants will want to maintain reasonable flexibility in the application of basic international enforcement obligations within their own national legal systems. Exporters do not expect legal systems and enforcement procedures to be identical in all countries. However, a TRIPS agreement which provides broad-based enforcement principles and a more uniform and transparent set of enforcement rules internationally would produce many benefits. Such an agreement would not only decrease the risk, uncertainty and expense of doing business in other countries, and therefore reduce trade distortions, but it would also increase international trade by materially facilitating the exports of all participants.

ENFORCEMENT PRINCIPLES

8. Under an agreement, the enforcement principles, in Canada's view, should include the following:

A. Procedures to enforce intellectual property rights should be effective but should not create unnecessary obstacles to legitimate trade.

COMMENT

This is the most basic and fundamental aspect of the enforcement principles. The needs of intellectual property rights holders would be balanced with the needs of legitimate traders of goods and services containing those rights.

B. **Procedures and remedies for enforcing intellectual property rights provided to persons, goods and services of all other parties should be no less favourable than those provided to its own persons, goods or services, i.e. national treatment.**

COMMENT

Failure to give procedural rights and remedies based on the national treatment principle may arbitrarily reduce the flow of imported goods and distort decisions on the location of manufacturing and other production facilities.

Defendants subjected to import proceedings must have recourse to the same defences or counterclaims which would be available to domestic defendants before the courts. Further, the application of time deadlines under legal procedures should be comparable for imports and for domestic goods and services. The existence of different legal procedures raises the possibility of less favourable treatment of importers.

In this regard, complainants in disputes involving imported goods or services should not have options to initiate proceedings in judicial or administrative forums if comparable options do not exist for complainants in disputes involving domestically produced goods and services. Imported goods must not be subject to double jeopardy. If they are challenged under legal or administrative proceedings which apply only to imports, they must not be subsequently or simultaneously challenged for the same alleged offence in domestic courts. This can result in situations where it is more costly and difficult to defend the validity of imported goods than it is to defend the validity of domestic goods, thereby discouraging trade.

C. **Procedures and remedies for enforcing intellectual property rights provided to persons, goods or services of one party to a TRIPS agreement, should be equally applicable to the persons, goods or services of any other party to the agreement, i.e. unconditional mfn/non-discriminatory treatment.**

COMMENT

In order to ensure that all contracting parties benefit fully from a TRIPS agreement, it is important to have an effective MFN principle ensuring non-discriminatory treatment in the enforcement of intellectual property rights. Such a principle will assist in achieving the widest possible acceptance of a TRIPS agreement. It also requires the widest possible acceptance of obligations to provide adequate standards.

D. Procedures for enforcement should be fair and equitable to the affected parties and transparent.

COMMENT

Fair and equitable procedures are intended to ensure an appropriate balance between the rights of intellectual property rights holders and defendants and to ensure that the interests of licensees, manufacturers and consumers are also protected. The absence of such a balance could mean either that plaintiffs do not have a fair opportunity to prove their case or, alternatively, that defendants do not have an adequate opportunity to prepare or present their defence. That could mean either excessive or inadequate enforcement with corresponding limitations on international trade.

Such procedures should normally include the right to:

(a) prompt and reasonable notice of the commencement of proceedings;
(b) an adequate opportunity to prepare their cases;
(c) effective means to present evidence and to communicate their views to the authorities;
(d) compensation against the abuse of procedures;
(e) reasoned decisions made without undue delay in a transparent manner; and
(f) judicial review.

As an exception to these procedures, it may be necessary to allow an intellectual property rights holder to take immediate action to seize evidence or stop infringement if enforcement procedures are to be effective. Typical circumstances could relate to trading in pirated and counterfeit products where a requirement to notify a defendant prior to taking action would often result in the destruction of necessary evidence. As a result, contracting parties should make available ex parte judicial proceedings to preserve evidence or grant preliminary relief in cases where immediate and serious harm could result. Such ex parte proceedings must, of course, conform to the "equitable procedures" outlined in this principle.

The procedures also need to be transparent to provide those trading in IPRs with greater certainty and to ensure that the parties to a dispute are fully provided with an opportunity to access or respond to these procedures.

E. **There should be judicial and/or administrative civil remedies which effectively stop or prevent the infringement of intellectual property rights, and entitle the rights holders to claim compensation for the injury caused by the infringement. Criminal sanctions and penalties for trademark counterfeiting and copyright piracy if committed wilfully and for commercial purposes also need to be provided for.**

COMMENT

Lack of effective remedies leads to increased circulation of infringing goods and, consequently, decreased trade in non-infringing goods; and therefore hurts the export efforts of legitimate producers in all member countries. Smaller companies in particular encounter serious difficulties in competing against infringing products and therefore are discouraged from entering the export market.

Intellectual property rights holders should be provided with a range of remedies (e.g. injunctions, seizure and damages) to prevent such abuses.

Canada believes that contracting parties should protect intellectual property rights by means of civil remedies or under certain conditions by criminal remedies. Regarding criminal remedies, Canada's view is that there should only be a requirement to provide these in relation to wilful and commercial trademark counterfeiting and copyright piracy. For other intellectual property rights and in particular, patents, criminal sanctions are considered to be inappropriate under most circumstances since the existence of the patent right itself is usually the essence of the question in dispute.

In addition to compensation for losses, in appropriate cases damages should be available to deprive the infringer of any profit and to deter further infringement.

For the purposes of an agreement, it will be necessary to define counterfeit and pirated goods. From a Canadian point of view,

COUNTERFEIT GOODS should mean

> any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark and which thereby infringes the rights of the owner of the trademark in question under the legislation of the country of importation.

PIRATED GOODS should mean

> any goods which are copies made without the consent of the rights holder or person duly authorized by him in the country of production and which are made directly or indirectly from an article where the making of that copy constitutes an infringement of a copyright under legislation in the country of importation.

F. **There should be interim procedures: (a) to allow the courts to direct customs authorities to detain counterfeit or pirated goods, or (b) to allow interim detention by customs of such items, subject to appropriate safeguards. Such measures should not be applied in a manner which would constitute a disguised restriction on international trade.**

COMMENT

In the case of counterfeit or pirated products, special border procedures are required, in order to be able to stop the products from entering the country and being circulated widely. Contracting parties should accordingly provide for interim procedures to allow the courts to direct customs authorities to detain counterfeit or pirated goods or provide for interim detention by customs for such items. However, all interim detention procedures should be for a clearly limited duration, should be subject to appropriate safeguards, and also be subject to the general provisions for enforcement outlined in principles A-E above. This situation differs from internal infringement because it is not usually possible to take more complete judicial measures against the source of the infringing products which may often be located abroad. However, the border procedures should not be more onerous, i.e. less favourable, than those applied internally and imported goods should not be subject to double jeopardy.

G. **The enforcement procedures of a TRIPS agreement should be subject to multilateral dispute resolution within the GATT.**

9. Attached are Canada's more detailed views on the points covered in Doc. MTN.GNG/NG11/W/33.

ANNEX

CANADIAN PROPOSAL ON ENFORCEMENT

A. GENERAL OBLIGATIONS

(1) Objectives

Contracting parties should establish measures and procedures to ensure prompt, effective and non-discriminatory enforcement of intellectual property rights (IPRs) covered by this agreement. Such procedures should minimize interference with legitimate trade.

(2) Types of procedures to be provided

Contracting parties should protect IPRs by means of civil procedures being judicial or administrative or a combination thereof. In appropriate circumstances, criminal procedures should also apply.

(3) Procedures, general requirements

[See above, A(1)]

(4) Assurance of equitable procedures

Procedures for the enforcement of IPRs should be fair, equitable and transparent.

Such procedures should meet the following criteria.

Except for ex parte proceedings, parties to a dispute should have a right to receive written notice in sufficient time prior to a hearing on the merits to enable a defence or response to be prepared. Such notice should contain sufficient information to determine the basis of the dispute.

Parties to proceedings should be entitled to substantiate their claims and to present evidence relevant for the establishment of the facts and the determination of the validity and infringement of the IPRs concerned either orally or in writing as appropriate, as well as to exercise their rights of defence. Decisions should be based only on such facts in respect of which the parties were offered an opportunity to present their positions. Hearings should be transparent and, unless there are reasonable grounds to the contrary, should be open to the public. Procedures should not be subject to unreasonable time limits or unwarranted delays.

Decisions should be in writing and should normally be accompanied by written reasons for decision. Decisions should be made without undue delay and in a fair and open manner. Decisions should be published or otherwise available to the public.

(5) **Rights of representation/presentation of evidence**

Parties may be represented by independent counsel where such representation is customary in the relevant proceedings.

Procedures should not impose overly burdensome requirements concerning personal appearances by parties.

Subject to procedures and conditions to ensure reliability and fairness, such as cross-examination and disclosure of adverse information, contracting parties should facilitate the acceptance of evidence, including expert testimony, and technical or test data, in order to assist in expediting and reducing costs of participating in enforcement procedures.

(6) **Access to information**

Procedures should provide for the disclosure of relevant information in the possession of the adverse party prior to a hearing on the merits.

(7) **Treatment of confidential information**

Contracting parties should provide a means to effectively identify and protect confidential information provided by any of the parties to the dispute or by others required to give evidence.

(8) **Facilitation of the obtaining of evidence**

Contracting parties should provide for ex parte judicial procedures to preserve evidence. Applicants may be required to post security or to provide equivalent assurance before obtaining such an order. Parties adversely affected should promptly be given notice of the subsequent proceedings for which the evidence was obtained.

Generally, such measures should include the following provisions:

Unless there are reasonable grounds to the contrary, the right holder should be entitled in civil proceedings to be informed by the infringer on request, of the identity of the persons involved in the production and the channels of distribution of infringing goods or services. A court or tribunal may order that this be treated as confidential information by the party obtaining it but it may be used in proceedings against other infringers.

(9) **Consequences of failure to provide information**

Where a party to a proceeding refuses to provide necessary information within a reasonable period or fails to take the necessary steps required to further the proceedings, preliminary and final determinations, affirmative or negative, may be made on the basis of evidence previously presented.

(10) **Avoidance of barriers to legitimate trade**

Enforcement procedures should be implemented in a manner to minimize interference with legitimate trade. In particular, any alleged infringement or other violation of an IPR relating to the importation of goods or services originating in the territory of another party should be adjudicated through proceedings no less favourable than those applicable to goods or services originating in the domestic territory.

Complainants in actions where imported goods are concerned should not have the option to initiate proceedings in judicial or administrative forums if comparable options do not exist for complainants in disputes involving domestically produced goods and services.

National Treatment

Contracting parties should provide procedures and remedies for enforcing intellectual property rights to persons, goods or services of the other parties, no less favourable than those accorded to its own persons, goods or services.

Most-Favoured-Nation Treatment

Contracting parties should provide procedures and remedies for enforcing intellectual property rights to persons, goods or services of all other parties, equally applicable to the persons, goods or services of any party.

(11) **Remedies and Sanctions**

Contracting parties should provide for remedies which effectively stop or prevent the infringement of IPRs, and entitle the right holder to compensation for the injury caused by the infringement. In appropriate cases, damages should be available to deprive the infringer of any profit and to deter further infringement. Contracting parties should provide criminal remedies at least for trademark counterfeiting and copyright piracy if done in a wilful and commercial manner.

(12) **Right of judicial review**

Contracting parties should provide the right of appeal to a court of law of initial judicial decisions on the merits of a case and final administrative decisions on the merits of a case. The court of appeal should be entitled to consider and review all legal issues raised before or considered by the previous court or administrative tribunal and should also be entitled to review issues of procedural fairness.

B. INTERNAL MEASURES

(1) **Coverage**

See above, A(1) and A(11).

(2) **Standing to initiate procedures**

Procedures should be available to owners of IPRs and to any other person duly authorized by such owner to exercise and enforce such rights.

(3) **Provisional Measures**

(a) **Nature and purpose**

Contracting parties should provide prompt and effective provisional measures to prevent or stop an infringement of an IPR. Where appropriate, these measures may be taken ex parte.

(b) **General Conditions**

The applicant should be required to provide any reasonably available evidence so as to permit the authority to establish with a sufficient degree of certainty that he is the right holder or other authorized person and that there is an arguable case that his right is being infringed.. The applicant may be required to provide security to prevent abuse.

Provisional measures should be revoked or lapse where, notwithstanding a request by the defendant, proceedings leading to a decision on the merits of the case are not commenced within a reasonable period of time.

Contracting parties may also provide that provisional measures may be revoked or lapse where the applicant does not pursue a decision on the merits in an expeditious manner.

(c) **Conditions on ex parte proceedings**

Where provisional measures are adopted ex parte, an oral hearing should take place upon the request of the defendant within a reasonable period after the notification of the measures to decide whether the measures should be revoked, modified, or confirmed.

(d) **Indemnification of defendant [and others]**

Contracting parties should provide for safeguards against the abuse of enforcement procedures and for compensation of the injury suffered by a party which has been subject to such abuse. In appropriate cases, contracting parties should provide for indemnification of parties wrongfully enjoined or restrained.

(4) **Civil remedies for infringement**

(a) **Injunctions**

Final injunctions should be available.

(b) **Seizure, forfeiture, destruction**

Remedies for the infringement of IPRs should include the possibility of seizure, forfeiture, destruction and removal from commercial channels of infringing goods. Remedies should also include the possibility of seizure, forfeiture or destruction of any device specifically used for the production of infringing goods.

(c) **Damages [and recovery of costs]**

In addition to the damages provided in A(11), right holders should be entitled to recover costs reasonably incurred in the proceedings involving counterfeiting or piracy or proceedings where the relevant good has been previously held on the merits to infringe an IPR.

(5) **Criminal sanctions**

Criminal remedies with respect to counterfeit and pirated goods should include imprisonment and monetary fines. They should also include the possibility of seizure and forfeiture of counterfeit and pirated goods and any plate, cast, mold or similar device used in their creation.

(6) **Indemnification of defendant**

Parties wrongfully enjoined or restrained should be entitled to claim adequate compensation for the injury suffered and to recover the costs reasonably incurred in the proceedings. Contracting parties should provide for the possibility that these parties may, in appropriate cases, claim compensation from the authorities where such authorities have initiated the proceedings.

C. SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES

(1) **General requirement**

Contracting parties should provide for interim judicial measures to allow the courts to direct customs authorities to detain counterfeit or pirated goods or they should provide for interim detention by customs as provided by this section. Contracting parties may also provide for the detention or prohibition of other types of infringing goods.

Any procedure to allow customs authorities to detain or prohibit any type of infringing good without a court order should conform to the rules set out in this section.

Where contracting parties allow the right holder to initiate detention, they should establish procedures according to which a right holder may lodge an application in writing with competent authorities for the suspension by the customs of the release into free circulation of suspected counterfeit or pirated goods.

(2) **Coverage**

(a) **Of IPRs**

Counterfeit trademark goods and pirated copyright goods.

Definitions

COUNTERFEIT GOODS should mean

> any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark and which thereby infringes the rights of the owner of the trademark in question under the legislation of the country of importation.

PIRATED GOODS should mean

> any goods which are copies made without the consent of the rights holder or person duly authorized by him in the country of production and which are made directly or indirectly from an article where the making of that copy constitutes an infringement of a copyright under legislation in the country of importation.

(b) **Of acts involving those IPRs**

Importation of counterfeit trademark goods or pirated copyright goods.

For greater certainty, contracting parties may, but are not required to, have border measures for goods that have been put on the domestic market or the market of a third country with the consent of the right holder.

The provisions should not apply to small quantities of goods of a noncommercial nature contained, for example, in travellers' personal luggage.

(3) **Standing to initiate procedures**

[See above, C1, re: right holders]

Contracting parties may require customs authorities to act upon their own initiative and to suspend the release of goods where they have a sufficient degree of certainty that an IPR is being infringed. Such detention should be subject to the same conditions, mutatis mutandis, as set out in C(5) below.

(4) **Requirements for initiation of procedures by IPR owners**

(a) **Application**

See above, C(1) paragraph 1.

(b) **Information to be provided**

The application should be accompanied by proof that the applicant is the right holder or duly authorized person. It should contain all pertinent information available to the applicant to enable the competent authority to act in full knowledge of the facts, and a sufficiently detailed description of the goods to enable these to be recognized by the customs authorities. The applicant may also be required to supply any other information available to him necessary for the identification of the goods concerned.

(c) **Provision of security**

Contracting parties may require a right holder to provide security up to an amount sufficient to hold the authorities and importer harmless from loss or damage resulting from detention where the goods are subsequently determined not to be infringing or where the right holder, after being informed of the detention, does not promptly inform the customs authorities that he does not intend to refer the matter to the competent authority for a decision on the merits or provisional measures. However, such securities shall not unreasonably deter recourse to such procedures.

Right holders should be liable to indemnify importers for goods wrongfully detained at their request regardless of whether the right holder has provided a security.

(5) **Conditions on detention of goods by customs**

If, within a reasonable time as set by legislation following the notification of the suspension of the release of goods in response to an application by a right holder, the customs authorities have not been informed either that the matter has been referred to the authority competent to take a decision on the merits of the case or that the duly empowered authority has taken provisional measures, the goods should be released, provided that all other conditions for importation or exportation have been complied with.

Unless a court of appeal has made a decision affirming detention, seizure or prohibition by customs, goods should be released if any internal court or authority acting upon similar facts decides that the products are not infringing.

(6) **Inspection of detained product by right holder**

No proposal

(7) **Release of information concerning other parties to the transaction**

No proposal

(8) **Remedy**

See above, B(4)

D. **ACQUISITION OF IPRS**

In the Canadian proposals, this subject will be dealt with as a matter of standards.

MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

MTN.GNG/NG5/W/128
27 November 1989
Special Distribution

Group of Negotiations on Goods (GATT)

Original: English

Negotiating Group on Agriculture

COMPREHENSIVE PROPOSAL FOR THE LONG-TERM REFORM OF AGRICULTURAL TRADE

Submission by the Cairns Group Comprising Argentina, Australia, Brazil, Canada, Chile, Colombia, Hungary, Indonesia, Malaysia, New Zealand, Philippines, Thailand and Uruguay

Introduction

1. The purpose of this paper is to indicate how the Cairns Group sees the individual elements of the negotiating framework fitting into an integrated package designed to meet the negotiating objectives agreed at the Mid-Term Review (MTR). The Group will further elaborate these views as the negotiations proceed.

2. The Cairns Group bases this paper on the MTR Agreement on Agriculture contained in MTN.TNC/11, the long-term objective of which is the establishment of a fair and market-oriented agricultural trading system. As further elaborated in the Mid-Term Review Agreement, this objective is to provide for substantial progressive reductions in agricultural support and protection, sustained over an agreed period of time, resulting in correcting and preventing restrictions and distortions in world agricultural markets.

3. This objective is to be initiated through a reform process based on negotiated commitments on support and protection and through the establishment of strengthened and more operationally effective GATT rules and disciplines. The reform process, to be completed over an agreed period of time, is to be based on commitments on specific policies and measures, on an aggregate measurement of support, or a combination of these approaches.

4. These commitments will also be guided by agreement that special and differential treatment for developing countries is an integral element of the negotiations; that direct and indirect government assistance measures to encourage agricultural and rural development are an integral element in the development programmes of developing countries; and that ways should be developed to take account of the possible negative effects of the reform process on net food importing developing countries.

GATT SECRÉTARIAT
UR-89-0412

5. The Cairns Group considers that a competitive, efficient and market responsive world agricultural system would serve the common long-term interest of developed and developing countries alike. The Cairns Group expects that contracting parties will enter into binding commitments on an effective programme for the liberalization of agricultural production and

6. The Cairns Group recognizes that proposals related to non-trade concerns such as food security need to be taken into account in negotiations to achieve the long-term objective outlined in paragraph 2 above. However, proposals which contemplate the long-term retention of restrictions and distortions clearly would be inconsistent with that objective and contravene the Mid-Term Ministerial Agreement. The aim therefore should be to identify means to meet non-trade concerns which are not trade-distorting in nature.

7. The Group also recalls its position as stated in its earlier framework proposals (GNG/NG5/W/21 and 69) which aims at the full integration of trade in agricultural products into the generally applicable provisions within the GATT system.

Nature of the reform process

8. The Cairns Group envisages a reform process, over a period of ten years or less, which is comprehensive, integrated and equitable, which provides no scope for the raising of protection levels for any product except under carefully circumscribed safeguard provisions, which provides for time-limits by which obligations must be met, and which provides for liberalization obligations on policies to which contracting parties are irreversibly committed. To give effect to these criteria, the liberalization process must apply to all measures affecting agricultural trade, directly or indirectly, to all contracting parties and to all agricultural products.

9. To achieve these ends, liberalization commitments should:

- be formula-based in proportion to base period protection and support levels and apply universally across products and participants;

- be consistent with the objectives of special and differential treatment as spelt out in the Punta del Este Declaration and the MTR Agreement;

- be specific both as to policies and products and also as to the time by which obligations must be fulfilled;

- ensure that reductions in import access barriers are parallelled by reductions in export subsidies and internal support measures;

- involve steps for each product for each year of the liberalization period which would be bound.

The final outcome of the liberalization will be in the form of strengthened and more operationally-effective GATT rules and disciplines, with product-specific bindings on the basis of agreed criteria including bound tariffs and disciplines on identifiable measures of domestic support.

10. The Cairns Group reiterates its established position that commitments by countries to change trade-distorting policies must be the primary vehicle for reform. An appropriate AMS approach would complement and assist these policy changes. It could be used to:

- provide a measure of the support levels provided by national agricultural policies in a broadly comparable way, so as to establish points of departure for substantial reductions in support;

- gauge commitments to annual reductions in support;

- monitor progress towards attaining negotiated targets.

The commitments proposed in this paper to phase out or reduce trade-distorting support and protection measures would act to reduce AMS levels.

Reform elements

I. Import access

(a) Reform process

11. The objective is to achieve the liberalization of markets through an access package involving:

- a prohibition on the introduction or continued use of all measures not explicitly provided for in the GATT, including non-tariff barriers and other measures such as variable import levies and minimum import prices;

- the elimination of all provisions for exceptional treatment whether maintained under waivers, protocols of accession, or other derogations and exceptions;

- a binding of all tariffs on agricultural products at low levels or zero;

- phased elimination of voluntary restraint arrangements, consistent with the Punta del Este rollback commitment.

Non-tariff measures

12. Concurrently with action to reduce internal support measures and phase out export subsidies. the Cairns Group favours the conversion to tariffs of

other border measures, including variable import levies, minimum import prices and measures of similar effect, which will introduce more transparency in the reform process. The initial tariff equivalents would be subject to a maximum ad valorem level to be agreed and would be reduced by the end of the reform process to bound, low, ad valorem levels and accompanied by the progressive expansion of tariff quota levels where these are used as a transition mechanism. The objective of the negotiation is to reduce substantially protection and correct and prevent restrictions and distortions. The conversion process must therefore not increase protection levels for any product.

13. Liberalization would be achieved by:

(a) progressive reduction of the initial tariff equivalents to final bound rates according to an agreed formula(e) with a harmonizing effect. The formula(e) reductions could be supplemented by request/offer negotiations;

(b) and, where necessary, the creation and/or progressive expansion of global tariff quotas, which would be removed when the final bound rates are implemented.

Whichever approach is used, access must be expanded on a global basis from a starting point of current levels, which should continue on access conditions which are either improved or no less favourable than apply at present. Where country-specific access is involved, tariff quotas would permit its orderly phase out.

14. Where existing policies have had the effect of prohibiting or severely inhibiting imports of an agricultural product, the initial tariff rate (a) or tariff quota (b) should be set at a level that will allow, at a minimum, access equivalent to a specified level of domestic consumption or production.

Tariffs

15. Where conversion of NTMs is not involved, existing tariffs, consistent with the objectives agreed in the MTR Tariffs Agreement, should be reduced on a formula basis so as to deal with tariff peaks to bring them into line with the average tariff rate for industrial products, and to achieve lower and more uniform rates. Through the application of such a formula approach, the target amount for tariff reductions agreed to in the MTR Agreement should be met as a minimum. There could also be, via a request and offer process, specific negotiated reductions going beyond the levels to which a formula approach would otherwise bring them, including the prospect of total tariff elimination in particular cases. The new rates resulting from either formula or more significant reductions would be phased in over an appropriate period of years and would be consolidated within each participant's GATT Tariff Schedule. The base rates for the negotiations would be those agreed for tariffs in the MTR Agreement.

(b) Strengthened rules/disciplines

16. GATT rules and disciplines necessary to remove restrictions to the free flow of trade in agricultural products, including:

(a) a prohibition on the introduction or continued use of all measures not explicitly provided for in the GATT, including non-tariff barriers and other measures such as variable import levies and minimum import prices;

(b) the elimination of all provisions for exceptional treatment whether maintained under waivers, protocols of accession, or other derogations and exceptions;

(c) binding of all tariffs on agricultural products at low levels or zero.

II. Internal support

(a) Reform process

17. Achievement of the objective of the MTR Agreement for agriculture requires an integrated approach to achieve the market orientation of policies across all agricultural sectors, through substantial progressive reduction in those policies which most distort agricultural trade. An essential element of an integrated approach will be commitments on internal support which:

- are consistent with and reinforce commitments proposed in Sections I and III of this proposal on import access and export subsidies;

- provide for minimum adjustments to specific policies while providing some flexibility in meeting overall reform targets;

- bear a relationship to initial support levels and aim to achieve their gradual harmonization;

- provide comprehensive coverage of commodities.

18. Commitments aimed at reducing substantially the most trade-distorting policies will need to encompass:

1. Market price support: measures that raise the market price received by producers and paid by consumers;

2. Direct payments: measures that raise the effective price received by producers for their output, implemented through direct payments from budgetary outlays rather than by raising the price paid by consumers.

19. For commodities for which an AMS can be calculated, target reductions in the above forms of support would include annual commodity-specific cuts to:

- producer support prices; and

- an aggregate measurement of support (AMS) expressed in total value terms.

20. It is recognized that there is a range of commodities for which an AMS cannot be calculated because of various technical and data limitations. These commodities would be subject to commitments equivalent to those applied to commodities for which an AMS can be calculated. These commitments to reduce support outlined in paragraph 18 will be implemented through annual reductions in:

- producer support prices; and

- budgetary expenditure.

21. Other forms of support which have an impact on trade (e.g. input subsidies) should be subject to commitments to target annual reductions in total levels of budgetary expenditure on them and government revenue foregone.

22. Countries may be accorded flexibility in choosing the policy mix they would use to achieve the agreed reductions in trade-distorting support.

23. Some forms of support considered not to be linked to production or trade because they meet clearly-defined and multilaterally-agreed criteria, would be exempted from the reform commitments. Surveillance of the use of these policies will be required to ensure that recourse to them does not create new trade distortions. In that event, disciplines may need to be considered.

24. The commodity and country coverage of AMS calculations should be as wide as possible. It is proposed that 1986-88 be the base period for the AMS. The use of a multi-year average to establish the base period AMS would ensure that it is not unduly affected by short-term fluctuations.

25. Commitments to be undertaken by countries with relatively high levels of inflation should be determined in a way which ensures that the real burden of adjustments for each country would be equitable. This is to be achieved through the use of a deflator, with the specific policy, and/or other commitments being adjusted according to such countries' rates of inflation.

26. With regard to the AMS, further consideration will need to be given to the treatment of developing countries and the use of such a measure for monitoring reductions in support.

(b) Strengthened rules/disciplines

27. Internal support measures could be categorized into: (1) prohibited; (2) permitted but subject to discipline; and (3) permitted. Negotiations will need to clarify which programmes and policies fall within each category.

28. To bind the results of the reform process, the first two categories of support will be subject to clearly-defined rules and disciplines on policy-specific parameters, including:

- producer support prices;
- commodity-specific and non-commodity-specific budgetary expenditure and Government revenue foregone;
- levels of support for each commodity.

29. Measures falling into the permitted category would need to meet prescribed and tightly circumscribed criteria to ensure that their effects on output and trade are negligible. Consistent with the Cairns Group proposal of October 1987 (MTN.GNG/NG5/W/21), these could include measures with humanitarian objectives (including grant food aid and disaster relief), direct income support decoupled from production and marketing, resource redeployment assistance and non-commodity-specific aid for infrastructure development.

30. There need to be improved international disciplines on countervailing practices so as to enhance predictability and stability in agricultural trade. Redress for any violation of the rules must be pursued through GATT dispute-settlement procedures. Any remedial action must be consistent with agreed multilateral procedures.

III. Export subsidies

(a) Reform process

31. A key Cairns Group goal is to prohibit new, and phase out existing, export subsidies. The subsidy practices involved will need to be clearly identified and defined. The phase-out process should take the following form for each commodity:

(a) current maximum level of export subsidies (per unit and total outlay) would be frozen as a first step;

(b) in each year thereafter these maximum levels would be progressively phased out in accordance with an agreed time-table and formulae.

32. If export assistance for commercial shipments is progressively reduced, there is a risk that participants will shift export assistance into concessional food aid shipments. All food aid should therefore be

provided on a grant basis and to the maximum extent possible, bearing in mind legitimate donor priorities, channelled through existing relevant international organizations. Governments should strictly comply with existing international commitments and understandings in regard to bilateral food aid shipments.

(b) Strengthened rules/disciplines

33. Prohibition of export subsidies.

34. Appropriate amendments to Article XVI (and relevant articles of the Subsidies and Countervailing Measures Code) will be required. An associated rule, to be incorporated in the General Agreement, but linked to FAO/CSD procedures, would be that all food aid be provided on a grant basis.

IV. Export prohibitions and restrictions

35. As part of a satisfactory, comprehensive reform package, the Cairns Group stands ready to consider relevant proposals. It notes that this would be without prejudice to measures applied consistent with, among others, Article XX of the General Agreement.

V. Sanitary and phytosanitary measures

36. The Cairns Group has recently submitted a proposal on sanitary and phytosanitary measures to the Agriculture Group (MTN.GNG/NG5/W/112). This will be further elaborated as the negotiations proceed.

VI. Product coverage

37. The Cairns Group considers that a precise definition of the product coverage of the negotiations in the Negotiating Group on Agriculture is required. In this context, it notes that the agriculture negotiations should not prejudice the objectives of the Punta del Este Declaration nor the decision of the MTR Agreement to the fullest liberalization of trade in tropical products, including in their processed and semi-processed forms.

VII. Developing countries

38. A competitive, efficient and market-responsive agriculture serves the common long-term interest of developed and developing countries alike. In achieving that long-term objective the reform process in agriculture must provide the framework and opportunity for a dynamic process of structural adjustment to take place both in the developed and developing countries. The implementation in developing countries of reform commitments regarding a more market-oriented agriculture must be coupled with the effective application of special and differential treatment. Developing countries in due course should be prepared to participate more fully in the framework of rights and obligations under the General Agreement.

1. Development objectives

39. Government measures on assistance, whether direct or indirect, to encourage agricultural and rural development are an integral part of the development programmes of developing countries. These measures are, among others, basic infrastructure development, physical support facilities such as storage for agricultural products, extension services, research and development, skill and human resources development and measures necessary to develop long-term staple food production capabilities at internationally competitive levels. Therefore, measures in these fields should not be included in any list of support measures subject to reduction commitments by developing countries.

2. Reform process commitments

40. In order to enable developing countries to make necessary and gradual adjustment towards more market-responsive agriculture consistent with their individual trade, financial and development needs it is indispensible that they be provided with necessary flexibilities in designing their programmes and implementation schedules. The modalities for the application of the differential treatment principle at this particular stage will be structured around the following terms:

1. Longer time-frame

The time-frame for implementation and completion of the reform commitments for developing countries must be extended for a certain period to be agreed upon with a view to allowing a gradual adjustment in their agriculture sectors and avoiding possible disruptive effects in the reform process. Such an extended time-frame could be readjusted, on a case-by-case basis according to multilateral procedures to be defined, as certain genuine difficult circumstances arise.

2. Differential treatment in the application of commitments

The principle of differential and more favourable treatment will be reflected in the reform commitments both in the areas of import access and internal support.

(a) Import access

The depths of cuts in import access barriers for developing countries will be lower than the generally agreed target.

For products of priority export interest to developing countries, the negotiations should seek to provide reductions in trade barriers and internal support policies by developed countries on an accelerated basis.

(b) Internal support

Commitments to reduce internal support measures which form an integral part of the development programmes in developing countries will not be required in the negotiations. Internal support measures which form an integral part of the development programme of developing countries will not be included in the AMS commitment or other internal support reduction commitments. For trade-distorting support measures, the depths of commitments to reduce support levels by developing countries will be lower than other countries.

3. Developing net food-importing countries

41. In the process of implementing long-term reform of agriculture, the specific needs of net food-importing, developing and least-developed countries must be taken into account. In taking into account their needs, the following aspects should be the guiding principles:

(a) measures for net food-importing countries could be divided into those which:

(i) are feasible in the context of GATT;

(ii) need to be taken outside GATT;

(b) definition of net food-importing developing countries should be made more specific. In this context we refer to those least-developed countries and developing countries which face critical food shortages, critical balance-of-payments problems and critical shortage of foreign exchange reserves. In determining further the criteria based on balance-of-payments considerations, co-operation with the IMF is needed;

(c) for the purposes of (b) above, food is defined as basic foodstuff normally considered as the staple food in the country concerned and consumed by the low income segment of the population;

(d) countries without critical balance-of-payments problems and with an acceptable level of foreign-exchange reserves should not be eligible for whatever measures might be agreed upon to meet the seriously affected importing developing countries.

VIII. Non-trade concerns

42. The Cairns Group notes that certain developed countries have raised particular concerns in relation to food security, the quality of the social and physical environment, and regional issues such as income parity, employment and security. The Cairns Group does not believe that these concerns should be met through recourse to policies which distort agricultural production and trade. Many of the latter concerns also apply to other sectors and are handled without recourse to trade restrictions.

43. Food self-sufficiency policies are an inappropriate, ineffective and costly means of achieving food security objectives and directly damage the interests of other countries. Secure supplies of food can be achieved through means such as:

- the maintenance of adequate food and feed grain stockpiles to ensure against shortages;

- the diversification of sources of supply.

44. Other non-trade concerns should be addressed by recourse to forms of support that are not linked to production or trade, such as retraining and relocation assistance, improved social security arrangements and policies designed to encourage land use adjustment.

IX. Implementation and surveillance

45. Commitments made by individual countries at all stages and under all elements of the reform programme would be binding. They would be subject to multilateral surveillance and other procedures necessary to ensure compliance. The final results of the Round would be incorporated into the General Agreement and related instruments to ensure continued compliance.

X. Safeguards

46. The Cairns Group recognizes the importance of adequate safeguards during the transitional period. The full range of existing mechanisms in the GATT, including balance-of-payments and safeguards provisions, are fully applicable to the agricultural sector. The pace of liberalization, and the methods used to achieve liberalization, can themselves be designed to cushion countries from immediate competitive effects. Additionally, the Cairns Group is ready to explore the concept of a special safeguard mechanism, applicable only during the transitional period, providing for a temporary interruption to agreed tariff reductions where non-tariff measures have been converted to tariffs.

News Release Communiqué

Minister for International Trade | Ministre du Commerce extérieur

No. 292 November 23, 1989.

CANADA ENDORSES CAIRNS GROUP AGREEMENT ON A GATT NEGOTIATING POSITION

Chiang-Mai, Thailand, November 23, 1989 -- International Trade Minister John C. Crosbie today welcomed the agreement by the Cairns Group on the text for a joint position to be tabled on November 27 at the GATT negotiations on agriculture, in Geneva.

"The Cairns paper is a blueprint for achieving agricultural trade reform, and meets Canada's key objectives for agriculture," said Mr. Crosbie. "Canadian agriculture in all regions of the country stands to benefit from foreign trade and a fairer and less distored trading system. This will provide a solid basis for the expansion of Canadian agricultural exports," Mr. Crosbie said.

On access to markets, the Cairns Group paper urges that all tariffs be reduced, and that all measures not explicitly provided for in the GATT be eliminated or brought into conformity with the new GATT rules. This covers non-tariff barriers and variable import levies, special waivers and other country specific derogations. At the end of the Uruguay Round, all import measures would be covered by specific GATT commitments.

On the proposal of converting non-tariff measures into tariff equivalents, Mr. Crosbie made it clear to the Cairns Group members that, in Canada's view, this would not apply to import measures maintained in conformity with GATT article XI. In this regard, he said "that the existing GATT rules which permit import restrictions, particularly Article XI governing import controls in support of effective supply management, should be clarified and strengthened."

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The Cairns paper, represents the consensus of the 14 developed and developing countries who make up the Cairns Group: Argentina, Australia, Brazil, Canada, Chile, Colombia, Fiji, Hungary, Indonesia, Malaysia, the Philippines, New Zealand, Thailand, and Uruguay. These countries have been working together since the beginning of the Uruguay Round in 1986 to ensure that meaningful agriculture trade reform is achieved in this Round.

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MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

MTN.GNG/NG7/W/58
16 November 1989
Special Distribution

Original: English

Group of Negotiations on Goods (GATT)

Negotiating Group on GATT Articles

PROPOSAL FOR REFORM OF THE GATT BALANCE OF PAYMENTS DISCIPLINES

Submission from the United States and Canada

The following proposal has been received from the delegations of the United States and Canada, with the request that it be circulated to members of the Negotiating Group.

I. INTRODUCTION AND SUMMARY

The attached proposal is aimed at providing more effective policies to improve the operation of the balance of payments provisions. While it continues to recognise the right of countries to impose temporary trade restrictions to assist in addressing serious difficulties in their balance of payments position, it attempts to establish a more sustainable balance between this right and the obligations on the part of all parties to pursue policies which contribute to the viability of the GATT system as a whole.

To this end, the proposal attempts to provide clearer guidance to enable contracting parties to resort to trade restrictions, where these are necessary, for the shortest period of time and with the least harmful impact on trade.

The proposal further sets out a process which will permit a contracting party taking trade restrictions consistent with clearly established guidelines to do so without the need for a decision by the Balance of Payments Committee.

Under this mechanism, Guidelines are established for the kinds of actions that countries with serious balance of payments problems are entitled to take without a decision by the Balance of Payments Committee. If countries conform to the Guidelines, they need only inform the Committee of their measures taken for balance of payments reasons at regular consultations. There is no need for the Committee to draw conclusions during consultations as to the GATT-consistency of these measures.

Where countries wish to take exceptional measures which do not conform to the Guidelines, the proposal provides that they must inform the Committee of their alternative plans for application and phase-out of balance of payments measures and submit the exceptional measures to the Committee for a decision about whether the measures are acceptable. A Committee decision that the measures are acceptable establishes their GATT-consistency. To facilitate the achievement of Committee consensus, the proposal provides the opportunity for the Committee to accept exceptional measures conditionally, that is, subject to fulfilment of specific Committee recommendations for reform of measures. If the Committee does not accept the measures, adversely affected countries can, if they wish, pursue their interest through normal GATT procedures.

II. OBJECTIVES

The proposal has three objectives:

(1) to clarify the criteria for assessing trade restrictions applied for BOP purposes;

(2) to provide guidelines for the kinds of actions countries facing serious BOP problems are entitled to take without a decision by the BOP Committee; and

(3) to strengthen disciplines and BOP Committee procedures which apply to countries wishing to take measures in excess of those specified in the guidelines.

III. STATEMENT OF PRINCIPLES

The CONTRACTING PARTIES shall agree that the following principles shall guide the operation of the GATT BOP Committee and countries' decisions concerning the use of BOP-related trade restrictions.

- Trade restrictions for BOP purposes, which are recognised as an inefficient means to maintain or restore BOP equilibria, shall not be imposed as a substitute for more appropriate measures.

- Trade restrictions for BOP purposes shall only be imposed on a temporary basis if necessary to provide time for more appropriate adjustment policies to take effect.

- Prolonged use of trade restrictions perpetuates BOP problems and frustrates adjustment by damaging economic efficiency and growth.

- Macroeconomic/exchange rate policies, as well as structural policy reforms including trade liberalisation, are the effective means for correcting external imbalances on a sound and lasting basis.

- The BOP exemption shall provide for a limited exception from the GATT prohibition against quantitative restrictions and from tariff obligations and shall not exceed what is necessary to address serious BOP difficulties.

  - The CONTRACTING PARTIES have a right to impose limitations and conditions on the use of trade restrictions by countries invoking these Articles.

  - The GATT BOP Articles shall comprise effective sets of disciplines to guide countries back into conformity with GATT principles and obligations.

- BOP disciplines shall particularly limit recourse to the most distortive kinds of trade restrictions. Price-based measures which apply as uniformly as possible across sectors should be employed rather than selective quantitative or price-based restrictions which are more damaging to resource allocation and trade patterns.

- Trade restrictions which are applied in a manner inconsistent with these principles result in the inefficient allocation of resources, encourage the development of some industries or sectors at the expense of others, and are not to be considered acceptable responses to balance of payments difficulties. They must be justified on other GATT grounds or removed.

- Disciplines which apply to developed countries shall strongly discourage resort to any trade restrictions in periods of BOP difficulty.

- The BOP Committee shall, in its deliberations, take account of any trade measures imposed by other contracting parties which have a direct effect on the BOP situation of the consulting country.

IV. IMPROVED DISCIPLINES AND PROCEDURES

Criteria for Assessing Countries' Use of BOP-Related Trade Restrictions

A country's use of BOP-related trade restrictions shall be evaluated by the BOP Committee in the light of (a) its BOP situation and economic adjustment effort and (b) the consistency of the specific types of measures chosen with GATT principles and obligations.

A. The BOP Situation and the Economic Adjustment Effort:

Countries seeking a BOP exemption from basic GATT disciplines must have a serious balance of payments problem and must be engaged in a responsible effort to restore equilibrium "on a sound and lasting basis" (Article XII:3; Article XVIII:11).

- The BOP Committee shall accept the determination of the International Monetary Fund regarding the severity of the BOP problem. The Fund may base its determination on whatever information it deems pertinent, including exchange reserve developments, other BOP developments, financial developments, and domestic macroeconomic developments.

- In addition, the International Monetary Fund shall provide relevant and appropriate information concerning the adjustment measures being undertaken to correct the BOP problem. The BOP Committee shall accept the determination of the Fund concerning the relationship between the country's overall adjustment effort and its use of BOP-related trade restrictions: specifically, the Fund statement should take up the question of whether the country has in place adjustment policies that would allow progressive removal of BOP-related trade restrictions by the medium term.

- Non-members of the Fund shall provide sufficient information to the CONTRACTING PARTIES to enable the BOP Committee to assess the severity of the BOP problem and the economic adjustment effort in relation to application of trade restrictions.

B. Consistency of Specific Measures Chosen:

In addition to the requirement that the BOP problem be serious and that appropriate adjustment effort be underway, countries applying BOP-related trade restrictions are obliged to ensure that the duration, intensity, scope, and types of measures employed are as consistent as possible with GATT principles and obligations.

Specifically, trade restrictions imposed on BOP grounds shall meet the following standards. They shall

- be temporary and degressive;

- be administered on an MFN basis;

- be transparent and primarily price-based;

- be applied to substantially all imports, so that restrictions justified on BOP grounds are aimed at controlling the level rather than the composition of imports[1];

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[1] This is to ensure that BOP-related measures are not taken for the purpose of protecting a particular industry or sector, a purpose addressed by other GATT provisions such as Article XVIII:C. If product exceptions for BOP measures are necessary, they should be limited to: (a) allowing unrestricted imports of products not produced domestically but essential for basic consumption or industrial needs, e.g., food or petroleum; or (b) applying more stringent restrictions on imports of luxury goods, i.e., those products subject to domestic excise taxes on luxury goods. Imports of all other products should be treated on an equal basis and should be subject to restrictions of the same intensity.

- not exceed what is required to address the BOP problem and not administratively prohibit trade in any given product; and

- not be applied in a manner which results in the imposition of multiple BOP-related measures on any product.

The Rights and Obligations of Consulting Countries

Two different approaches for meeting GATT obligations are available to a country taking trade restrictive actions for BOP reasons. A country has the right to take actions consistent with pre-established Guidelines covering the nature, type, and duration of the restrictions. In this case, the country must consult regularly with the BOP Committee to provide full information on its actions, but no explicit acceptance of the restrictions by the Committee is necessary.

Alternatively, the country can seek Committee acceptance of its actions as exceptions if they do not conform to the Guidelines. In this case, the onus is on the consulting country to demonstrate to the BOP Committee that exceptional (*i.e.* more restrictive, more distortive, longer-term) measures are justified and that no, less disruptive alternatives are available. If the country gains acceptance of its exceptional restrictions from the BOP Committee, it is considered to be in conformance with its GATT obligations. If the country fails to gain acceptance, the GATT consistency of its actions can be addressed through GATT dispute settlement procedures, if desired by adversely affected countries.

The Initial Consultation

The initial consultation shall be held within four months of the imposition of new restrictions or the intensification of existing restrictions. The consulting country shall notify the new or intensified restrictions as soon as they are imposed, or prior to their imposition if possible. If the measures are removed in a period less than four months, no consultation is necessary.

The purpose of the initial consultation is to determine whether there is a serious BOP problem, whether the country is conforming to the standards cited above in selecting specific measures, and what the country's plans are for adjustment to the BOP problem and progressive removal of the measures. Specifically, the country should indicate its intentions concerning adherence or non-adherence to the Guidelines (below) for BOP-related measures.

Measures Which Do Not Require a BOP Committee Decision

Unless the International Monetary Fund finds no serious BOP problems, a country shall have the right to apply BOP-related trade restrictions, without the need for a BOP Committee decision, if the measures and their application conform to the following generally applicable Guidelines on the use of BOP-related measures.

Guidelines

Phase I (period between imposition or intensification of the measures and the second consultation: see the Consultation Schedule below): No discriminatory measures and no measures which prohibit all trade in a given product can be used; multiple BOP-related measures cannot be applied on any product. Quantitative measures must be phased out by the end of the period.

Phase II (period between the second consultation and the third (final) consultation): Remaining BOP-related measures must be price-based and applied to substantially all imports. Remaining quantitative restrictions must have been eliminated by the beginning of the phase or justified on other GATT grounds. BOP-related measures must be eliminated by the end of the period.

Countries reimposing BOP-related trade restrictions within three years of eliminating previous BOP-related measures must follow Guidelines beginning with Phase II.

Measures Which Require a BOP Committee Decision

If, at any point, the consulting country elects to apply trade restrictions which do not conform with the measures outlined in the above Guidelines (e.g. they are more restrictive, distortive, or long-lasting), the country must: (a) supply the BOP Committee with its plan for applying and phasing out the measures, i.e. its trade liberalisation plan for BOP-related measures; and (b), seek the Committee's acceptance of the exceptional measures at regular consultations.

The Trade Liberalisation Plan for BOP-Related Measures

The purpose of the liberalisation plan is to inform the Committee of the extent to which the consulting country intends to deviate from the Guidelines established above and to specify its alternative sequence for phasing out BOP-related measures.

The plan shall be implemented within a reasonable, clearly specified time-frame. The plan constitutes a binding commitment to the CONTRACTING PARTIES, and its implementation shall be monitored at subsequent consultations. It should be specific about types of BOP-related measures applied and individual products affected to allow members of the Committee to make an informed decision about whether trade liberalisation progress under the plan is acceptable to them.

Countries formulating these trade liberalisation plans for BOP-related measures should incorporate in the plans any commitments for liberalising BOP-related trade restrictions made in the context of World Bank and IMF policy-based lending.

Conclusions to BOP Committee Consultations When A Decision Is Required

The consulting country gains acceptance of exceptional actions which go beyond the Guidelines specified above if the BOP Committee recommends either of the following to the GATT Council:

- Acceptance. If the BOP Committee recommends acceptance of the measures with no conditions, the consulting country has fulfilled its GATT obligations under these Articles until the next scheduled consultation.

- Conditional Acceptance. The Committee can recommend acceptance of the exceptional restrictions on the condition that the consulting country implement specific Committee recommendations, including recommendations to modify, or speed implementation of, its trade liberalisation plan. The time-frame for implementing Committee recommendations shall be specified by the Committee.

If, at the end of a consultation concerning measures not conforming to the Guidelines, the BOP Committee report includes neither of these recommendations, the measures are not accepted by the BOP Committee. The question of the GATT consistency of the exceptional measures can be taken up by adversely affected countries, if they wish, in GATT dispute settlement.

If a consultation cannot be completed during the initially scheduled meeting, the Committee shall reconvene no later than 30 days from the start of the consultations in question. If there is no agreement to recommend either of the decisions specified above by the end of 45 days after the start of the consultations in question, the measures are not accepted by the BOP Committee.

Consultation Schedule

Normally, after the initial consultation, full consultations will be held every year for developed countries and every two years for developing countries so long as restrictions justified on BOP grounds remain.

However, the Committee may consult more frequently if warranted by the following circumstances.

- If the initial consultation occurred more than four months after the measures were imposed or intensified, the second consultation shall be scheduled earlier by an amount of time corresponding to the delay in the initial consultation.

- If consultations are incomplete, the Committee shall resume consultations promptly as described above.

- If a country departs from its commitment to follow the Guidelines in the period intervening between two consultations (e.g. due to external factors which cause the country's BOP situation to worsen), it should promptly request an early consultation to seek acceptance by the BOP Committee for its exceptional measures.

- In cases where exceptional measures are being applied with the acceptance of the BOP Committee, if a country departs from, or wishes to depart from, its own trade liberalisation plan for BOP-related measures in a manner which slows trade liberalisation progress (e.g. due to adverse external factors), it should promptly request an early consultation to seek the further acceptance of the BOP Committee for this departure from its commitment.

The Committee can decide in the case of a developing country making rapid trade liberalisation progress that its next consultation can be conducted under simplified procedures.

In fixing the exact dates for consultations, the BOP Committee and appropriate IMF officials shall endeavour to coordinate BOP consultation schedules with IMF consultation schedules to ensure that an up-to-date IMF statement on the consulting country's BOP situation and economic policies can be made available to the Committee on the proposed date.

Information Required by the Committee

In notifications of BOP-related trade restrictions and in statements provided to the Committee prior to BOP consultations, countries shall furnish complete information in a timely fashion on:

- the level and coverage of tariff rate increases for BOP reasons, including information on which items are bound;

- the specific items which are affected by quantitative restrictions (QRs) applied for BOP reasons, the specific types of restrictions used, such as discretionary licensing requirements, and how the restrictions are administered, e.g. how permissible import quantities are determined;

- the coverage of BOP-related QRs, such as the share of total domestic output, the tariff schedule, and import flows subject to restrictions;

- recent trade flows for restricted items;

- the length of time specific BOP-related measures have been in place, and the timetable for their removal;

- any increases in trade restrictions by other contracting parties which have contributed significantly to the consulting country's BOP deterioration; and

- an overview of non-BOP-related trade restrictions to provide the trade policy context in which BOP measures operate.

If a country applying BOP-related measures fails to provide complete information to the GATT secretariat and the Committee in a timely fashion prior to consultations, the Committee can report to the GATT Council that the country's consultation cannot be completed without additional information. While a consultation remains incomplete, any BOP measures which do not conform to the Guidelines are not accepted by the BOP Committee.

The Rights of Other Contracting Parties

Countries adversely affected by a contracting party's BOP-justified measures which exceed those allowable under the Guidelines can seek redress through GATT dispute settlement procedures if:

- the exceptional measures have not been accepted, with or without conditions, by the BOP Committee;

- the consulting country fails to implement the conditions for acceptance; or

- the consulting country departs from, or fails to implement, its trade liberalisation plan for BOP-related measures and fails to gain Committee acceptance of this derogation from its commitment.

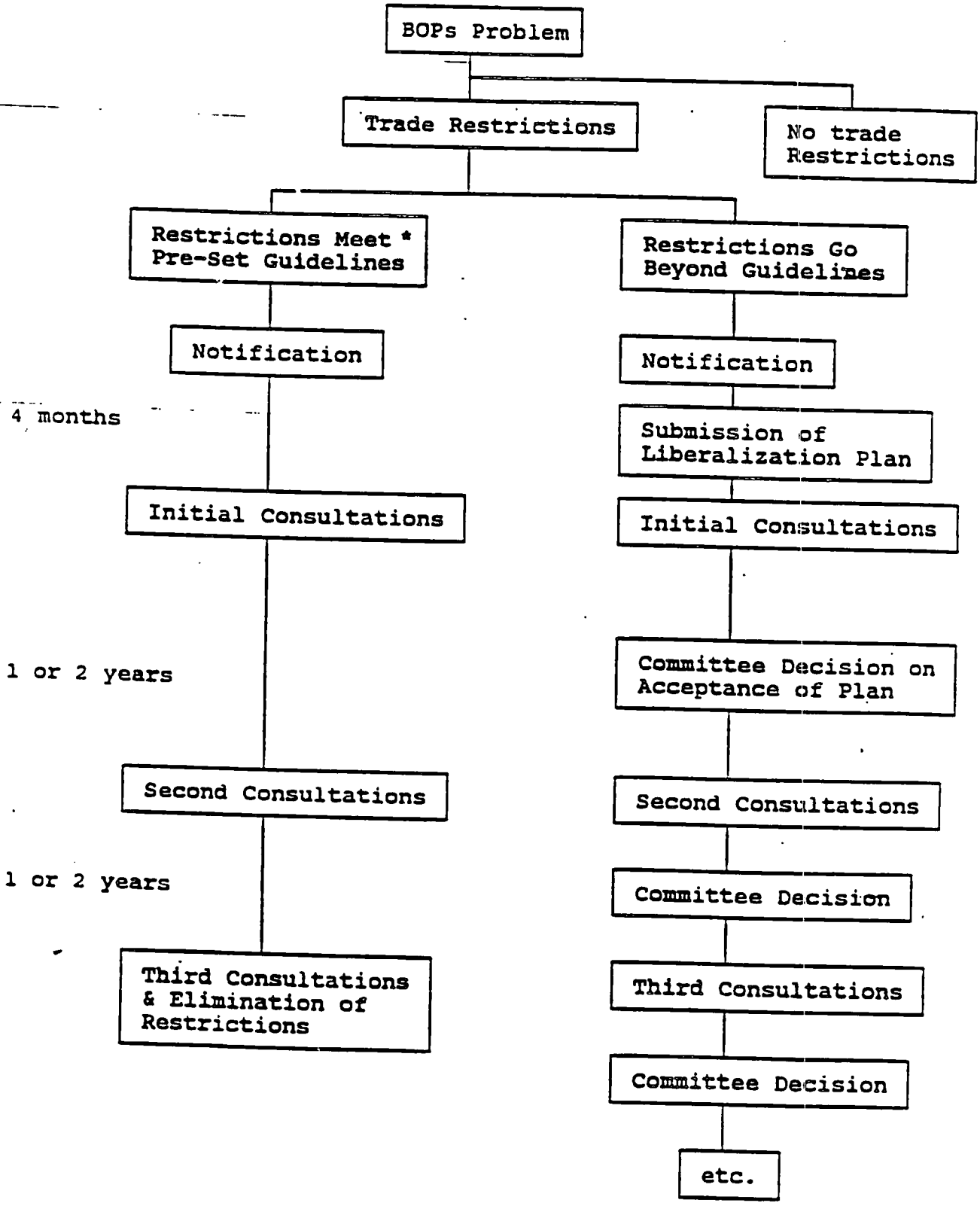
In these cases, the onus in dispute settlement proceedings is on the country applying the exceptional measures to demonstrate that no less disruptive (restrictive or distortive) alternatives are available and that the measures are GATT-consistent. The panel shall use the same criteria for assessing BOP-related trade restrictions as those outlined above for use by the BOP Committee.

Where a panel report which concludes that the measures are inconsistent with the invoking country's GATT obligations is adopted by the Council, adversely affected contracting parties may withdraw concessions of equivalent value.

In addition, under existing rules, if the BOP Committee reports to the GATT Council that the restrictions are inconsistent with the provisions of the General Agreement and if that finding is adopted by the CONTRACTING PARTIES, adversely affected contracting parties are released from appropriate obligations to the country applying the restrictions.

In any case, contracting parties retain their existing rights to seek redress where any action, whether or not it conflicts with GATT rights or obligations, is nullifying or impairing any benefit accruing to them directly or indirectly. However, in such cases where there is no question of violation of an obligation, the onus is on the affected country to demonstrate actual injury due to the measure(s) in question.

U.S./CANADA MTN BOPs PROPOSAL



* At any point in this track, a country could decide to avail itself of its option to seek acceptance of BOP-related restrictions which go beyond the guidelines.

December 20, 1989

CANADIAN MTN SUBMISSION ON THE GATT ANTI-DUMPING CODE

Canada submits the following initital proposals regarding the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (the Anti-dumping Code) to the Negotiating Group on MTN Agreements and Arrangements. These proposals seek to improve and clarify the operation of the existing rules.

I. ACHIEVING GREATER PROCEDURAL UNIFORMITY AND CONSISTENCY

The fundamental principle underlying the existing Anti-dumping Code is that dumping is to be condemned when injurious to domestic producers. Because anti-dumping practices, however, can have an immediate and significant effect on trade, it is essential that the rules be as clear and transparent as possible. In particular, there is a need to ensure greater uniformity and consistency in their implementation and to reduce the potential for arbitrary or unilateral interpretation. A number of provisions of the Code should be made more explicit in order to reduce areas of potential dispute.

a) Initiation of investigations:

(i) Standing of complainants: Article 5 of the Code prescribes that an investigation shall normally be initiated upon a request from the industry affected. The term "domestic industry" refers to the industry as a whole or those of them representing a major proportion of the total domestic production. A more explicit definition of "major proportion", such as a minimum of x % of total domestic production, should be provided to clarify the standing requirement. There should also be an obligation on the part of the investigating authorities to verify the standing of petitioners, i.e. that they satisfy the major proportion requirement, before initiating an investigation.

(ii) Prima facie evidence: The Code requires that initiations shall only proceed where there is "sufficient evidence of (a) dumping; (b) injury ... and (c) a causal link between the dumped imports and the alleged injury." Experience shows the need to set more specific guidelines on the minimum documentation and information requirements needed for a complaint to be considered by the investigating authorities. Simple assertion or the provision of selected facts unrepresentative of the true situation cannot be considered sufficient to meet the minimum technical requirements.

b) Definition of industry in agricultural products: Under current rules, the definition of industry can result in situations where the market structure of particular industries, and the particular nature of trade in the agricultural sector, could preclude the application of anti-dumping duties even when the dumped imports are shown to directly causing injury. A special provision could be made for clarifying the term "domestic industry" in instances where, by virtue of the particular market structure of an industry based on agricultural inputs, injury caused or threatened by imports of partly or minimally processed agricultural products can be transmitted to producers who have a coincidence of interests in respect of imports of those products and are situated along the same chain of production.

c) Minimum period of time before imposing provisional measures: Article 6 of the Code provides that interested parties should be given the opportunity to present evidence and offer rebuttal arguments. The investigating authorities should ensure that such responses and information are fully taken into account, such that a preliminary determination of dumping should not normally be made sooner than 60 days following the initiation, unless the product involved has been previously investigated or there exists a situation of massive importation.

With respect to massive importation and repeated dumping of a product, it is desirable given the concerns which have been expressed, that the Group assess whether the existing provisions of the Code to impose provisional duties afford adequate and effective remedies to deal with injury related to massive imports of dumped goods over a short period of time and to deal with the disruption caused by repeated dumping. In examining any improvements to the existing provisions to deal with these circumstances, the Group will wish to ensure that adequate standards of evidence and transparency are maintained.

d) Amount for administrative and selling expenses and profits when establishing normal value for constructed value cases: Article 2.4 of the Code requires that when the normal value is determined on the basis of the cost of production in the country of origin, it should include "a reasonable amount for administrative, selling and any other costs and for profits." This provision should be clarified to stipulate that actual data be used for administrative and selling costs and the amount of profit, whenever available and verified by the investigating authorities. Where the amount of profit cannot be directly determined, investigating authorities provide for an amount of profit not exceeding the profit normally realized on sales of representative products produced and sold in the domestic market, preferably by the company under investigation or alternatively profits earned by other vendors on sales of representative products.

e) Price undertakings: Several elements of Article 7 of the Code governing the use of price undertakings should be clarified. Article 7.1 should make explicit that only price undertakings can be accepted. The investigating authorities should also make public the details of the price undertaking with due regard for commercial confidentiality requirements. The undertaking should be subject to review and a sunset clause. Article 7.3 should also be clarified to stipulate that in the event that one of the parties to an undertaking requests that an injury investigation be continued and a finding of injury results, the undertaking shall continue in force.

f) Imposition and collection of anti-dumping duties: Article 8.2 of the Code requires that an anti-dumping duty be collected in the appropriate amounts in each case. This duty must not exceed the margin of dumping, and any amount paid in excess should be quickly reimbursed (Article 8.3). It should be clarified that the amount of anti-dumping duties payable should be determined at the time of entry of the subject good, or as nearly as possible thereafter. The duty payable should be established in the amount by which the normal value exceeds the export price. When the export price of a subject good reflects a non-dumped price (i.e. exporter is pricing up to normal value), no anti-dumping duties should be collected. To the extent feasible, individual normal values should be established and provided to each exporter at the time of or in advance of shipment in order for the exporter to be in a position to determine the extent to which anti-dumping duties will be assessed.

g) Transparency: The transparency of decisions is an essential element to ensure that Parties fulfil their obligation under the Code. In this regard, steps should be taken to incorporate the principles enunciated in the Anti-dumping Practices Committee Recommendation of 1983 concerning the transparency of anti-dumping proceedings, in particular providing access to relevant information and requiring the publication of a statement of reasons at the initiation, preliminary and final determination stages, as well as when an undertaking is accepted.

h) Time limits given to respondents: Respondents should always be provided with sufficient time to present evidence regarding the allegation of injurious dumping. The minimum 30 day period established by the Anti-dumping Practices Committee Recommendation of 1983 should be explicitly incorporated in the provisions of the Code.

i) Use of best information available: When any interested party does not provide the necessary information, or significantly impedes the investigation, investigating authorities have the right to base findings on the facts available. However, in this regard, investigating authorities should follow the directives given in the Anti-dumping Practices Committee Recommendation of 1984 concerning the use of best information available.

j) Determination of threat of material injury: Article 3.6 of the Code requires that a determination of threat of material injury should be based on facts and not merely on allegation, conjecture, or remote possibility. Steps should be taken to include in Article 3.6 of the Code the elements contained in the Anti-dumping Committee Recommendation of 1985 concering the determination of threat of material injury.

k) On-The-Spot Investigation: The verification of information at the premise of the exporter is often required to complete an investigation. Procedures governing on-the-spot investigations elaborated in the Anti-dumping Practices Committee Recommendation of 1983 should be enshrined in the provisions of the Code.

II. IMPROVING STANDARDS FOR APPLICATION OF ANTI-DUMPING MEASURES

Article VI and the Anti-dumping Code, while recognizing the legitimacy of anti-dumping measures when necessary to remedy injurious dumping, also commits Parties to ensure that such remedial actions do not unduly disrupt trade. The experience gained over the past decade suggests certain areas where the operation of the Code could be improved to better reflect the balanced objectives set out in Article VI and in the Code Preamble.

a) Sales below cost: Under current rules, sales below cost can be either excluded from the calculation of the normal value or the presence of such sales can trigger the use of an alternative method (e.g. third market sales, constructed value). More specific guidance is required to assist in determining when and under which circumstances sales below cost should be disregarded and excluded in the calculation of the normal value.

As a general rule, sales below cost should only be excluded from the calculation of the normal value when made in substantial quantities and over a significant period of time. In addition, the investigating authorities, in determining that sales below cost are to be disregarded, should take due account of the particular nature of the industry, the time period of the investigation as compared to the industry's normal business cycle, the normal amortization period for capital and development costs, and the degree of expectation of full recovery of costs plus profit within a reasonable period of time. In instances where sales below cost are disregarded, the

investigating authorities should provide reasons for their decision in this regard as well as reasons for the use of an alternative method of establishing normal value.

b) De minimis standard for margin of dumping: The current directive in Article 5.3 to terminate a proceeding when the margin of dumping is negligible should be improved by specifying that the application of anti-dumping duties should be precluded where the margin of dumping is less than x per cent.

c) Cumulation: The rules pertaining to the conduct of an anti-dumping investigation should explicitly provide for the possibility to exclude from the scope of the investigation countries whose exports contribute to neither injury nor threat of injury. Cumulation should not be mandatory. A country should be excluded from the scope of an investigation at any stage, in any case in which imports of the like products from that country are negligible and have no discernable adverse impact on the domestic industry.

d) Injury factors: Article 3 of the Code contains an illustrative list of factors to be examined in the injury determination. The causality test should be strengthened by requiring that the following principal factors be present in order to demonstrate that the dumped imports are causing or threatening to cause material injury: either price suppression or loss sales; and reduced profits. In addition, the investigating authorities should take into account the margin of dumping in determining the existence of injury.

e) Injury analysis: consideration of factors other than dumping: Article 3.4 of the Code stipulates that injury may be caused by factors other than dumping and that such injury should not be attributed to the dumped imports. Whenever the evidence suggests such other factors to be present, investigating authorities should be specifically required to take due account of factors other than dumping, in particular the prevailing market conditions in the industry as a whole, in performing the analysis of the impact of the dumping. There should also be an obligation to report on the assessment of these other factors in issuing the determination of material injury.

f) Sunset clause: Article 9 of the Code prescribes that an anti-dumping duty shall remain in force as long as, and to the extent necessary to counteract the injurious dumping. This provision should be modified to include a specific time limit requiring that findings automatically lapse after five years, unless a review establishes the need for the maintenance of the finding with a maximum renewal of three more years.

g) Anti-circumvention: The world economy has undergone significant changes over the last two decades. Production resources have become increasingly mobile; and the nature of the enterprises, production functions and shipment routes have made national economies increasingly interdependent. This in turn means that the pattern of trade has posed new situations for investigating authorities where little or no guidance exists. In this context, it is important that the Code provides Parties with the necessary tools to deal effectively with situations of injurious dumping while ensuring that anti-dumping actions do not create an unjustifiable impediment to trade.

The absence of explicit rules to identify situations of genuine circumvention of legitimate anti-dumping findings and to govern the application of measures to deal with this problem is a source of concern for both exporters and domestic producers. Rules or guidelines should be developed to include in the Code a provision which would specify the conditions under which an existing finding may be extended, consistent with the Code, to goods assembled domestically or in a third-country from parts and components originating in a country subject to a finding.

Such rules or guidelines should be based on the principle that circumvention exists only where the value-added in third-country or domestic assembly is minimal and the conditions are such as to continue to directly injure domestic producers of the assembled good. These conditions would include, inter alia, whether the domestic producers of the assembled good are also producers of the parts, whether domestic producers of the assembled good are importers of parts from the subject country, and the extent to which there is a separate market for parts and components.

h) Public interest considerations: The increasing interdependence of economies means that the question of injury to domestic producers from dumping needs to be seen in a broader context. Anti-dumping actions may have unintended consequences for the national economy as a whole. Scope should be provided to enable these broader economic considerations to be brought forward and considered.

While the determination of injurious dumping is made in regard of domestic producers of the like good, the imposition of anti-dumping duties can have implications for other industries, consumers and the economy in general. Parties should, under the revised Code, undertake to provide procedures for formal consideration of whether the imposition of the anti-dumping duty is in the public interest. It is intended that this consideration takes place, where appropriate, subsequent to the determination of injury.

III. DISPUTE SETTLEMENT

Given that anti-dumping actions authorized under Article VI constitute a measure of exception to the basic GATT principle of non-discrimination, it is essential to provide for an effective multilateral surveillance and dispute settlement process to ensure (a) that the procedural requirements laid out in the Code are being properly applied and (b) that national legislation governing the application of anti-dumping measures is in full conformity with the substantive standards and rules established under the Anti-dumping Code. In this regard, the adequacy of the existing provisions of Article 15 of the Code may need to be examined at a later stage to reflect progress in the discussion of the substantive and procedural provisions of the Anti-dumping Code.

News Release

Minister for International Trade

Communiqué

Ministre du Commerce extérieur

No. 314

December 20, 1989.

CANADA SUBMITS PROPOSALS FOR REFORM OF INTERNATIONAL ANTI-DUMPING RULES TO GATT

International Trade Minister John C. Crosbie today announced that the Canadian government has submitted its detailed proposal for reforms to the international Anti-dumping rules within the current round of the Multilateral Trade Negotiations.

"Our experience with the existing GATT Anti-dumping Code has shown that we need a clearer and more widely accepted interpretation and a more uniform application of the Anti-dumping provisions to ensure consistent standards and procedures apply," Mr. Crosbie said.

Canada's Anti-dumping proposal complements its earlier comprehensive submission to reform the GATT rules on subsidies and countervailing duties. Canada attaches considerable importance to improving the international rules on these trade remedies as part of the overall effort in the GATT talks to enhance predictability of market access, constrain unilateral trade restrictive actions and to strengthen the multilateral trading system.

Mr. Crosbie emphasized that "Canada's proposal will preserve its GATT right to protect the interests of its domestic producers when they are injured by the unfair trading practices of other nations."

Minister Crosbie recalled that until a new regime to deal with unfair pricing practices, including dumping, is developed under the Free Trade Agreement, the GATT rules on anti-dumping will continue to apply to bilateral trade between Canada and the United States. "In this situation," he said, "progress made in the GATT talks should also help to advance the bilateral negotiations on trade remedies under the FTA."

Anti-dumping duties are imposed by an importing country when imports are priced at less than the "normal" price charged in the exporter's domestic market. Where material injury to a domestic industry in the importing country can be directly linked to the dumped foreign goods, the GATT authorizes remedial anti-dumping duties.

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