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NEW THEMES AND AGRICULTURE  
IN THE NEW ROUND:  
A View From The South\*

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## 1. Introduction

This paper addresses the two issues which could be considered as the major stumbling blocks preventing advance in the current Uruguay Round of negotiations: new themes and agricultural protectionism.

The three issues referred to in the jargon of trade negotiations as "new themes" - as they have not been contemplated in previous MTNs - are Trade Related Aspects of Intellectual Property Rights, Trade Related Investment Measures and Trade in Services. In the context of the current MTNs the discussion on agricultural protectionism is meant to refer basically to trade disruptive practices affecting temperate agricultural goods as a result of agricultural policies in the North. Developing country exports of agricultural raw materials and tropical agricultural commodities which do not compete with the output of developed countries are relatively unaffected by such measures and, thus, fall outside the area of agriculture in common GATT parlance.

The report is divided into four sections besides this Introduction. Section 2 provides a historical background covering previous discussions of such issues in the GATT before the launching of the new round of trade negotiations at Punta

del Este in September 1986. Sections 3 and 4 present an interpretation of the rationale of the negotiating positions adopted by the main participants during these discussions and describe the proposals presented since Punta del Este concerning the new themes and agriculture, respectively. Finally, Section 5 considers the possibilities offered by the South's diversified interests in the round to strengthen its collective bargaining power in relation to these two issues.

## 2. A Background to the Uruguay Round Negotiations

### 2.1. The "New Themes"

The three issues referred to in the jargon of trade negotiations as "new themes" - as they have not been formally contemplated in the agenda of previous MTNs - and the scope of the negotiations regarding them, defined in the Ministerial Declaration which launched the Uruguay Round are:

- (a) Trade Related Aspects of Intellectual Property Rights, where negotiations "shall aim to develop a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods"<sup>1</sup> ;
- (b) Trade Related Investment Measures, where "following an examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects on trade"<sup>2</sup> ; and
- (c) Trade in Services, where negotiations "shall aim to establish a multilateral framework of principles and

<sup>1</sup> Ministerial Declaration on the Uruguay Round.

<sup>2</sup> Idem.

rules ... including elaboration of possible disciplines for individual sectors, with a view to expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting economic growth of all trading partners and the development of developing countries." . It is also stated that "such framework shall respect the policy objectives of national laws and regulations applying to services and shall take into account the work of relevant international organizations."<sup>a</sup> .

In the drafting of the Uruguay Round declaration, however, following strong resistance to the inclusion of negotiations on services in the MTNs by a group of developing countries in which Brazil and India played a particularly active role, an explicit distinction was made between trade in services and the several other subjects considered for negotiation, including the other new themes. While the latter were included in the undertaking given by the GATT contracting parties to enter into negotiations "within the framework and under the aegis" of the General Agreement, which form Part I of the Punta del Este declaration, separate negotiations were launched for trade in services. The ministers decided that a special Group on Negotiations on Services should be established with GATT Secretariat support and be given a broad mandate to carry out negotiations in this area to which GATT procedures and practices

<sup>a</sup> Ibidem.

should apply. This Group should report later to the Trade Negotiations Committee which shall decide as to the implementation of its recommendations.

The inclusion of the new themes in the MTNs and, especially, the decision to take a "two track" approach to deal with the question of services, ended a long standing dispute as a number of developing countries resisted the introduction of all the three issues - and especially so the introduction of services - in the draft agenda, which was being pressed by the United States with support from Japan and a more nuanced backing from other OECD countries since the installation of the Preparatory Committee for the new round in November 1985. The early history of this dispute, however, not only precedes its recent build up, but also the current usage of treating such conceptually widely different issues under a common heading. Thus, to get a clearer perspective of the issues at stake under GATT law as well as of the contending negotiating positions of developing and developed countries it is apt to review how each of the new themes appeared and were treated in the context of GATT negotiations before the deep divisions appearing in the work of the Preparatory Committee took shape.

Until very recently trade related aspects of intellectual property rights were a narrowly defined and not particularly contentious subject within GATT discussions. The

General Agreement touches on this issue only in the provisions of Article IX, which covers appellations d'origine and deals with abuses of marking requirements, and Article XX (d), which permits measures necessary to comply with "laws and regulations [relating to] the protection of patents, trademarks and copyrights, and the prevention of deceptive practices" and, of course, is exclusively directed at international trade transactions. Moreover, on a broader context, intellectual property rights is an area regulated by international conventions, the supervision and enforcement of which falls under the jurisdiction of other multilateral agencies such as the World Intellectual Property Organization (WIPO) and UNESCO.

Dissatisfaction expressed by developed countries with an alleged growth in the infringement of the rules regulating intellectual property rights by producers of internationally traded goods, especially in semi-industrialized developing countries, and the weak enforcement powers of the existing supervisory bodies led to the introduction of a carefully worded call in the work programme of the 1982 ministerial session to examine the question of counterfeit goods "with a view to determining the appropriateness of joint action in GATT on the trade aspects of commercial counterfeiting and, if such action is found to be appropriate, the modalities for such action, having full regard to the competence of other international organizations". In subsequent discussions, however, GATT members



failed to agree even on the establishment of a working party, as developed countries consistently tried to extend GATT rules to cover goods legally protected by intellectual property regulations, including patented and copyrighted goods, and use GATT machinery to enforce them. These attempts were opposed by a large number of developing countries and the dissent led to the recommendation to establish an experts' committee at the 1984 ministerial session.

On the question of trade related investment measures discussions in the GATT have been centered on the legality of national regulations affecting the operation of foreign controlled firms in the form of requirements regarding export performance (the obligation placed upon a foreign firm to export a given amount of its output ) or of minimum domestic or maximum import content ( the obligation placed upon a foreign firm to purchase a given amount of its current inputs or equipments from domestic suppliers ). The subject was first raised at a meeting of the Negotiating Group of 18 in 1981, resulting in a Secretariat background paper, but was not included in the 1982 ministerial session work programme. These discussions only served to show the complexities raised by bringing foreign direct investment regulations within the GATT framework and some participants argued that consideration should be given to the fact that these regulations, by improving the balance of payments and the overall economic performance of the host

country, might well have positive effects on the trade of her trading partners.

However it is the report of a panel established to examine a complaint by the United States against Canadian foreign investment law, adopted in February 1984, which throws more light on the interpretation of GATT rules as well as on the extent of developing countries' concern over this issue. The panel concluded that export performance regulations are not illegal since there is no provision under GATT rules which forbids requirements to sell goods in foreign markets in preference to the domestic market, but that import content obligations were inconsistent with Article III:4. Not surprisingly, in spite of the response of the panel to a statement by Argentina to the effect that in disputes involving less-developed parties full account of their special rights should be taken, many developing countries made quite clear that the panel report should not be taken as case law applying to them.

Finally, the question of enlarging the GATT mandate to encompass the regulation of trade in services came up for discussion in the preparation of the 1982 ministerial session during which the United States exerted strong pressure for its inclusion in the work programme. As the American position encountered opposition from many developing and even some

developed countries, which recommended a less bold approach in the light of the very limited information contracting parties had on this issue, it was decided (i) to invite the elaboration of national studies and stimulate the exchange of information regarding trade in services, and (ii) to postpone further consideration as to whether multilateral action in this case was appropriate and desirable to the 1984 session. However even the implementation of the first of these decisions was hampered by disagreement and it was not until after the 1984 meeting that this process of exchange of information began in an informal group chaired by Ambassador Jaramillo of Colombia.

In spite of the very limited progress then made on GATT discussions in addressing the difficulties posed by the enlargement of the GATT mandate to encompass the broader issues raised by intellectual property and foreign investment regulations and to include trade in services by the end of 1985, all these issues were given a prominent position in the United States agenda for the new round pressed from the onset of the work of the Preparatory Committee and backed, with minor qualifications, by the other leading industrial countries. In fact, on the question of trade related investment measures there was some degree of convergence in the debates at the Preparatory Committee as political and technical difficulties to broaden the debate on foreign direct investment rules within the GATT framework became clear. In the end, the decision was to focus

only upon the direct impact of foreign investment regulations and to the extent to which they bear upon the provision of GATT articles. The more contentious issues proved to be intellectual property rights and, especially, trade in services.

In the question of international trade in counterfeit goods, developed countries continued to attempt to broaden the scope of GATT rules to include intellectual property rights not contemplated in the provisions of Article XIX and extend GATT enforcement procedures and mechanisms in disputes arising therefrom. As had been the case since 1982, this negotiating stance continued to meet opposition from a large number of developing GATT members, basically on the grounds that jurisdiction to deal with the matters raised by developed countries belonged to the WIPO. No compromise was achieved in the Preparatory Committee, giving rise to expectations of a clear North-South division in the context of the final stages of the debates on the draft agenda.

However it was placing trade in services within the GATT framework which proved to be the really divisive question among the new themes. The main issues were twofold and not totally unrelated. On the one hand, there were fears by developing countries that the introduction of the debate on services as part of the compact of negotiations forming the new round, on a par with traditional GATT issues, would twist the trade-off

possibilities offered by the round in favour of developed countries. In particular, they felt that not giving priority to traditional GATT issues in the Uruguay Round was an unacceptable departure from the "first things first" principle in addressing the agenda outlined by the contracting parties in the work programme of 1982 Ministerial Declaration, a document which paved the way to the launching of a new round of MTNs and stressed the need to address the backlog of unfinished business in previous GATT attempts to deal with the growth of non-tariff barriers, agricultural subsidies and other problems relating to trade in goods of particular interest to developing countries.

On the other hand, there was the question of whether this new theme should be treated in a multilateral framework and within the GATT in view of the large number of sector specific issues involved and of the work of other international organizations dealing with these sectoral issues. These problems were compounded by GATT's lack of experience to deal with trade in services and the complex technical and legal problems it raised, as discussed in Section 3 below. These were misgivings shared by some EEC member countries which made for a less wholeheartedly European support for the unqualified introduction of the negotiations on services in the agenda than was the case of the position adopted by the United States and Japan.

Although by mid-1985 Brazil had tabled a proposal for a "dual track" procedure according to which negotiations on a framework for trade in services would be conducted in parallel to the new round by GATT member governments, the United States, perceiving that the unity of developing countries on this seemingly procedural issue could be broken, went on pressing uncompromisingly for a single track approach. In face of this stalemate the report of the Jaramillo Group - whose conclusions were expected by the Preparatory Committee to inform the Punta del Este special session on the issue - would be rather inconclusive.

Thus, the work done on the new themes in the Preparatory Committee only served to show that there was no consensus either in relation to whether it was appropriate to enlarge GATT's mandate to include them or even about the procedures which further discussion on this issue should follow.

Thus, when the ministers arrived in Punta del Este in September 1986, they had before them two formal agenda proposals. One, tabled by Colombia and Switzerland - the so-called café au lait proposal - which included all the new themes in a single track<sup>4</sup>. The other, tabled by the so-called G-10 - a group of developing countries formed by Argentina, Brazil, Cuba, Egypt, India,

<sup>4</sup> In fact this draft resolution also included a fourth new theme - trade in high technology goods - which had made its way into the agenda because of the confusion surrounding the discussions on intellectual property. This theme was, of course, dropped as there is no basis on which to distinguish between goods of different "technological levels" within the General Agreement's framework.

Nicaragua, Nigeria, Peru, Tanzania and Yugoslavia - which included none of them <sup>5</sup>.

However, the Colombian-Swiss draft presented to the Preparatory Committee - which had mustered overwhelming support from developed countries and substantial support from developing countries - had in fact foundered before Punta del Este, when the EC withdrew its support to its wording on agriculture. This breakup of North solidarity indirectly strengthened the position of the G-10. Indeed, to counterbalance its unflexible stand on agricultural matters, the EC was able to show a more constructive stand than that of the US on the services issue by entering into informal negotiations with Brazil and India before Punta del Este in which the basic ideas of the hybrid "two track" negotiations format were agreed upon. The disclosure of this conciliatory move by the EC aroused an angry reaction from the United States at the quadrilateral meeting of the leading developed GATT parties held at Sintra to prepare a common front for Uruguay and would eventually be formally withdrawn. However, it showed the way to avoid an inevitable deadlock on the question of trade in services which threatened to prevent the launching of the new round and, as shown above, was eventually to be adopted.

<sup>5</sup> Mention should also be made to an Argentinian proposal which was an amendment to the G-10 proposal referring to services.

## 2.2 Agriculture

In the context of the current MTNs the discussion on agricultural protectionism is meant to refer basically to trade disruptive practices affecting temperate agricultural goods as a result of agricultural policies in the North. Developing country exports of agricultural raw materials and tropical agricultural commodities which do not compete with the output of developed countries are relatively unaffected by such measures and, thus, fall outside the area of agriculture in common GATT parlance.

This should not conceal the fact that the processing of such commodities in the South is heavily penalized by the escalation of tariffs and non tariff measures in the North which twists the worldwide distribution of value added along the processing chain in favour of developed countries. Non-Lomé exports of some raw tropical products are also affected by reasonably high import duties and high internal taxes in some EC countries, which are an obstacle to higher consumption. This introduces an important element of heterogeneity among developing countries on the issue of European protection on tropical agricultural products as the reduction of tariff escalation in the North may unfavourably affect ACP countries which now enjoy EC preferences <sup>4</sup>. This divisive factor, however, is relatively minor both in relation to the whole menu of

<sup>4</sup> This is, of course, no more than a sectoral manifestation of a well known consequence of tariff reduction on trade preferential arrangements.



pending questions concerning the trade of tropical goods and to other sources of division among developing countries in the present round of trade negotiations.

The picture concerning temperate agricultural commodities which are produced both in the North and in the South - which constitutes the kernel of the MTN debate on agriculture - is much more complex. National agricultural policies in the North are extremely protectionist and result in the dislocation of efficient agricultural producers not only by closing the markets of inefficient producers through the use of barriers of several types (variable levies and quantitative restrictions mainly) but also through the impact of export subsidies required by the disposal of surplus production. World prices of agricultural products are of course significantly depressed by such policies. This is particularly true of inefficient producers such as the EC, Japan and many small European economies but also applies to the United States whose record in protecting inefficient production of rice, sugar, wool, cotton, certain processed meats and dairy products is not good. Moreover if the term "protectionist policies" is understood to cover market disruption activities the United States have a long standing bad record which has been worsened recently by the introduction of the Export Enhancement Program in answer to competitive pressures stemming from the rise of EEC agricultural exports <sup>7</sup>.

<sup>7</sup> Warley (1976), p.322 very apt remark remains valid after ten years: "America's enthusiasm for a liberal trade regime for farm products is not only a late conversion but is also highly selective. It focuses on those commodities in which the United States is an exporter."

These protectionist policies affecting temperate agricultural products are a consequence of national agricultural policies which have firm historical roots and dominate world trade on such products <sup>8</sup>. Political strength of the agricultural lobbies and, to a lesser extent, a rather irrational but well manipulated argument relating to security of supply strategic policy are mainly to blame and account for the "peculiarities" relating to the treatment of agricultural policies in developed countries reflected in the relevant articles of the GATT since its inception: previous schemes of agricultural protection through quantitative restrictions as well as of export subsidies were grandfathered <sup>9</sup> and, when even these exceptions to GATT law proved to be insufficient, the US obtained a very broad waiver in 1955 which allowed the imposition of quotas on many agricultural products for an unlimited period with just the obligation of presenting an annual report to the GATT <sup>10</sup>.

Agricultural protectionism, as had already happened in the Kennedy Round, was only slightly affected by the Tokyo Round. Advance in the removal of protectionist barriers affecting agricultural trade was at first blocked by procedural differences between the EC and the US which resulted from their sharply different stands on the substantive issues. The US

<sup>8</sup> See Tracy (1982) and Petit (1985) for the history of agricultural policies in the EEC and the US.

<sup>9</sup> Articles XI and XVI of the Agreement.

<sup>10</sup> See Dam (1970), p. 260 and ff.

pressed for negotiations which would include agricultural products on a par with all other products, sought to eliminate export subsidies and was opposed to commodity agreements. The EC fought against all these, and even when the procedural deadlock was circumvented negotiation results were paltry if compared to advances in industrial tariff reduction and even in the drafting of special codes <sup>11</sup>.

There was no significant development affecting agricultural protectionism before discussions of the new Round agenda started. At the level of intentions Contracting Parties agreed that "substantially all measures affecting trade in agriculture [should] be brought more operationally effective under GATT rules and disciplines"<sup>12</sup>. Agricultural protectionism themes were, of course, a major stumbling block in the agenda definition process previous to the launching of the Uruguay Round, always with the EEC and the US in polar positions. <sup>13</sup>

However, a crucial development in the coalition formation process in relation to agricultural protectionism happened with the consolidation in August 1986 of the Cairns group of developing and developed countries <sup>14</sup>, mainly net exporters of temperate agricultural products, which have

<sup>11</sup> See Winham(1986), pp.156-8 and 248 and ff.

<sup>12</sup> See The Atlantic Council (1987), p. 47 and ff.

<sup>13</sup> On the background and initiation of the Uruguay Round see Finger and Olechowski (1987), pp.168-9.

<sup>14</sup> Argentina, Australia, Brazil, Canada, Chile, Colombia, Fiji, Hungary, Indonesia, Malaysia, New Zealand, Philippines, Thailand and Uruguay.

consistently underlined the need to dismantle agricultural protectionism. The group can be viewed essentially as a North-South coalition of efficient agricultural producers which explicitly recognizes the crucial importance of special and differential treatment for developing countries.

Agricultural negotiations in the Punta del Este meeting were marked by the French-inspired stubborn resistance of the EC to the explicit reference to export subsidies in the Ministerial Declaration launching the Round. Difficulties were removed by the inclusion of measures other than subsidies which affect agricultural trade. Eventually, the Punta del Este Ministerial Declaration on the Uruguay Round established that negotiations on agricultural products should aim at liberalizing trade in such products by improving market access, increasing the discipline in the use of direct and indirect subsidies which affected trade and minimizing the adverse effects of sanitary and phytosanitary barriers on agricultural trade.

### 3. New Themes in the MTNs

#### 3.1. The interests at stake: North and South

The introduction of the new themes in the Uruguay Round agenda is part of an strategic move led by the US to adapt the national and international rules governing direct investment and intellectual property rights to a changing real and institutional environment affecting the growth opportunities and the competitive edge of American firms, and use the allegedly more efficient GATT procedures to enforce these new rules. It also serves the not unimportant purpose of broadening the relatively meagre US shopping list in the negotiations concerning traditional GATT issues.

This rationale is more obvious in the case of the debate on Trade Related Investment Measures and Trade Related Aspects of Intellectual Property Rights than in the case of Services. To have a clearer picture of the bearing of the discussion on services liberalization on the present strategic aims of US trade policy it is crucial to grasp (i) the impact of some significant structural changes under way within the producer, or "business", services <sup>15</sup> sector in developed countries on the competitive edge and the foreign expansion possibilities of

<sup>15</sup> This term is used to refer to such services as telecommunications; engineering; financial and legal consultancy; insurance, banking and other financial services; advertising; distribution; data processing and so on. For a discussion see Gibbs (1987).

their firms and (ii) the importance of the regulatory framework in most countries in restricting the operation of foreign firms in the provision of many services.

Any clear cut discussion about services is complicated by the great heterogeneity of the activities classified under this general heading. However it is widely recognised that the past few years have witnessed changes in the organization of production in many producer services industries caused directly or indirectly by the widening application of advances in communication and information technology which is having a profound impact on international comparative advantage in the provision of such services. As is the case with most services transactions, the provision of these services is best performed - or, in a large number of cases, can only be performed - by being near the customer and thus require the establishment of a foreign branch. Therefore, the past decade also witnessed a growing diversification of manufacturing transnational corporations towards these activities - as a natural by-product of the internalization of their financial, marketing and other services made viable by their large scale of operation - and the establishment of a growing number of services affiliates. This partly explains the large proportion of revenues from foreign operations as compared with arms-length export transactions in many typical producer service sectors shown in Table 1, below.

The clear competitive advantage of US-based firms in most of these emerging international services industries is, of course, an important part of the rationale of the American position regarding services. This is compounded by the fact that the fast pace with which deregulation is proceeding in the US in many of the most important capital

Table 1  
United States:1983  
Ratio of Exports to Total Foreign Revenues\* in Service Sectors

Sector	Ratio
Travel	1.00 **
Licensing	1.00 **
Franchising	1.00 **
Education	0.98
Legal	0.95
Health	0.61
Transportation	0.61
Construction	0.61
Information	0.50
Telecommunications	0.50
Motion Pictures	0.50
Management & Consultancy	0.45
Software	0.40
Engineering	0.25
Insurance	0.22
Data processing	0.17
Investment banking & brokerage	0.16
Advertising	0.15
Leasing	0.14
Accounting	0.08
Retailing	--
TOTAL	0.41

\* Defined as exports plus sales of foreign affiliates.

\*\* In these sectors exports are identical to foreign revenues by definition.

Source: US Office of Technology Assessment, Trade in Services. Exports and Foreign Revenues. Washington, D.C., 1986, p. 43.

intensive producer services put US-based firms at a strategic disadvantage since the existing regulatory regime restricts the opportunities for the increase in TNC investments abroad. This is true of most developing and also of those developed countries in which the recent trend towards deregulation has proceeded at a relatively slow pace and is particularly true of services in which firm size and economies of scale are important elements of competitive edge such as telecommunications, public utilities, aviation and, to some extent, financial services. In these sectors the spread of multinational corporations is severely limited by existing regulations reserving the local market to national firms, not infrequently public monopolies.

The active role taken by some developing countries in the discussion about new themes have in the main been a reaction to US pressure for negotiations on a new framework for bringing trade and foreign investment rules applicable to services into the GATT. The resistance of developing countries is rooted in two distinct and not mutually exclusive sets of arguments.



The first includes negotiating points of a more political nature. Foremost among these is the case for dealing first with the backlog of unfinished business relating to trade in goods before proceeding to the services negotiation so as to avoid cross bargains which, as discussed above, are bound to weaken the bargaining position of developing countries in the traditional themes. Moreover, besides the strictly legal point, which is clearly against the inclusion of services in the scope of the General Agreement, the G-10 stance relied on the fact that the discussion of such matters was bound to raise questions such as right of establishment, national treatment and other issues concerning the general conditions faced by developed countries' service firms operating in developing countries which are complex and politically sensitive. In fact, the way in which the discussion on services was introduced in the GATT by the US was seen as a one-sided approach to issues relating to foreign direct investment which are of crucial interest for developing countries such as right of access to technology in the developed countries and a code on restrictive business practices by transnational corporations. Contradictions in the US stance concerning services in the GATT and these themes in the UN, where the US has effectively blocked the discussion of a code of conduct for transnational corporations, have also been noted <sup>14</sup>. Last but not least, it has been pointed out that the agenda proposed by developed countries unduly concentrates on capital-related services and excludes labour intensive services which are of much more interest for developing countries.

<sup>14</sup> On this see Maciel (1986), p. 90.

The second set of arguments put forward by G-10 countries against an early start of negotiations on services is of a more technical nature and stresses the fact that too little is known about international services transactions to allow a firm grasp on the effects of trade liberalization.

It is quite clear that domestic trade and industrial policies towards those rapidly changing producer services sectors are crucial for economic development. Firstly for, being intermediate inputs, their provision at internationally competitive prices is important to maintain overall efficiency and export growth. Secondly, because these new activities have important backward linkages with the production of hardware and technological capability in the domestic industrial sector.

However, it is widely recognized even among trade specialists that any exercise to quantify or assess with some degree of precision the country-specific gains from liberalization in services transactions is plagued with difficulties stemming from the paucity of available data, information on the structure of protection and the prevalence of non-price restraints and, last but not least, important conceptual problems <sup>17</sup>. From what stylised facts there are about the sectors of greatest interest to developed countries, the case for the developing countries stand against trade

<sup>17</sup> For a brief review, see Fritsch (1987), pp. 2-5.

liberalization has been summarized by Nayyar (1986) <sup>18</sup>: static gains are likely to be unevenly distributed as comparative advantage is concentrated in a limited number of developed countries and the realization of potential comparative advantage by developing countries would be thwarted.

### 3.2. The debate since Punta del Leste

Throughout 1987 and the early part of 1988 no concrete proposal has been presented on the question of Trade Related Investment Measures. The submissions made by the main developed demandeurs continued - although with some substantial difference of detail between them - to make the point that negotiators should address a much wider array of measures than export performance and import content requirements, the two investment measures hitherto discussed in the GATT. This was particularly true of the American position which purports to bring under GATT discipline measures widely used as part of national policies towards foreign direct investment such as Local Equity Requirements, Trade Balancing Requirements, Technology Transfer (including Licensing) Requirements, Remittance Restrictions (on profits, dividends, royalties or repatriation of capital), plus all other forms of tax or fiscal incentives to foreign investment <sup>19</sup>.

<sup>18</sup> For a treatment of the same theme from a Latin American point of view see Rodriguez Mendoza (1986).

<sup>19</sup> Submission by the United States, GATT Doc. MTN.GNG/NG12/W/4.

On the issue of Trade Related Aspects of Intellectual Property Rights, proposals to achieve the negotiating objective set in the Uruguay declaration have been presented by several developed countries. In both the US and the EC proposals explicit mention is made to the fact that present GATT articles are inadequate to resolve the problems encountered and to the necessity to enlarge the General Agreement's rules and disciplines in this area <sup>20</sup>.

The most comprehensive and far reaching proposal has been that presented by the US <sup>21</sup>. It suggests a conditional MFN agreement, where non-discrimination would apply only to signatories, and rather detailed rules both for implementation concerning consultation and dispute settlement - to follow basically the GATT model, including the provision for retaliation against non-compliance with panel recommendations - and for domestic enforcement measures binding on signatories to the agreement. Contrary to the European submissions presented by the EC, the Nordics and Switzerland, which gave due regard to the importance of extensive cooperation with the WIPO in this area, the US proposes the elaboration of a new set of norms

<sup>20</sup> The US document expresses also a very poor opinion of the effectiveness of the existing intellectual property conventions, considering them not sufficient "to stop the extensive worldwide trade losses to economies caused by counterfeiting and piracy [and not having] effective dispute settlement provisions". Suggestion by the United States for Achieving the Negotiating Objective, GATT Doc. MTN.GNG/NG11/W/14.

<sup>21</sup> Idem.

" based on existing national laws and international agreements that provide a sufficient level of protection " <sup>22</sup> covering a wide range of intellectual property items <sup>23</sup> which would constitute an Annex to the agreement and also binding on its signatories.

Finally, very little progress seems to have been made in the discussions on trade in services called under Part II of the Uruguay declaration. At the beginning of the talks the obvious inadequacy of the statistics relating to trade in services and the conceptual difficulties of the subject created " a common awareness that a great deal of further work had to be done in articulating the concepts and in gathering information in order to achieve the negotiating objectives " <sup>24</sup> leading the Negotiating Group on Services to agree on a programme for the initial phase of the negotiations. This programme would include:

- (a) Definitional and statistical issues;
- (b) Broad concepts on which principles and rules for trade in services, including possible disciplines for individual sectors, might be based;
- (c) Coverage of the multilateral framework for trade in services;

<sup>22</sup> Ibidem

<sup>23</sup> These would include Patents, Trademarks, Copyrights, Trade Secrets, and Semiconductor Chip Layout-Design Protection.

<sup>24</sup> The Uruguay Round on Trade in Services: a Summary, GATT Staff Paper prepared for the participants in the Third Session of the North-South Roundtable, Geneva, 6-7 November 1987, p. 5.

- (d) Existing international disciplines and arrangements;
- (e) Measures and practices contributing to or limiting the expansion of trade in services, including specifically any barriers perceived by individual participants, to which the conditions of transparency and progressive liberalization might be applicable.

Since then, although many interesting papers have been submitted - mainly by OECD countries - on how concepts such as transparency and non-discrimination or the mechanisms of surveillance and dispute settlement should apply to this area a strong polarization continue to exist in the GNS between the position of the US and that of the G-10 countries expressed by the Brazilian and Indian delegations. On the one hand, the G-10 continue to stress the need of addressing first the questions under (a) and (b) in the NGS work programme outlined above before proceeding to the elaboration of the multilateral framework and specific rules and disciplines in view of the possibly uneven distribution of the gains from trade stemming from liberalization under the present circumstances and, in particular, the difficulties found in relation to the application of the concept of national treatment in the context of activities which involve the presence of the supplier <sup>25</sup>.

<sup>25</sup> As put by the representative of Brazil: " I submit it would be unwise to start this exercise on the assumption that, in any agreement that may emerge, ...private parties, as foreign investors, may be given a legal status similar to that of "host countries", as is the case in the World Bank sponsored convention on dispute settlement ". Trade in Services: Brazilian View of the Negotiating Process, GATT Doc. MTN.GNS/W/3.

The US, on the other hand, uncompromisingly defends the importance of obtaining an early agreement on a general framework of principles which " should apply to the cross border movement of services as well as to the establishment of foreign branches and subsidiaries for purposes of producing or delivering the services within the host country". This general framework would cover the principles of Transparency, Non-discrimination, National Treatment, Discipline on State-sanctioned Monopolies, Subsidies, Non-discriminatory Accreditation Procedures, and Consultation and Dispute Settlement and agreement on its terms would be implemented during the Round and followed by sector-specific agreements.

The US hard line probably aims at enforcing general principles such as national treatment dear to US negotiators, while accommodating the EC preference for the sectoral approach. Indeed national treatment, the " primary objective [of which] is to prevent discrimination against a foreign service provider as compared to their domestic counterpart " is considered to be a " fundamental point " in the American proposal <sup>24</sup>. However, the wide gap existing between this and the position of most developing countries relating to the regulation of TNCs suggests that much ground will have to be covered before an agreement which is acceptable to a large number of GATT signatories can be reached. Indeed, as noted above, these are questions that

<sup>24</sup> GATT Doc.MTN.GNS/W/24.

occupied UN agencies for many years without any concrete results although as has been noted by a knowledgeable observer "certain kinds of leverage may be available in the GATT that were not available in the UN agencies dealing with these matters" <sup>27</sup> .

#### 4. Agriculture in the MTNs

##### 4.1. The costs of protection in agriculture

Contrary to the theoretical and empirical mist surrounding the discussion about the impact of protection on trade in services the effects of agricultural protectionism are much better understood and documented. Nominal rates of protection conceded to domestic producers over a wide range of products are generally very high, especially in Europe and Japan as shown in Table 2.

<sup>27</sup> See Dell (1987), p.4. In relation to the use of sticks as a form of leverage mention should also be made to the now frequent use of bilateral pressure by the Americans made possible under Section 301 of the US trade act.



Table 2

Nominal Protection Coefficients for Producer and Consumer Prices  
Selected Commodities, Major Developed Countries, 1980-82

	EC*	Other Europe**	Japan	US
<b>Wheat</b>				
Producer	1.25	1.70	3.80	1.15
Consumer	1.30	1.70	1.25	1.00
<b>Coarse grains</b>				
Producer	1.40	1.45	4.30	1.00
Consumer	1.40	1.45	1.30	1.00
<b>Rice</b>				
Producer	1.40	1.00	3.30	1.30
Consumer	1.40	1.00	2.90	1.00
<b>Beef and lamb</b>				
Producer	1.90	2.10	4.00	1.00
Consumer	1.90	2.10	4.00	1.00
<b>Pork and poultry</b>				
Producer	1.25	1.35	1.50	1.00
Consumer	1.25	1.35	1.50	1.00
<b>Dairy products</b>				
Producer	1.75	2.40	2.90	2.00
Consumer	1.80	2.40	2.90	2.00
<b>Sugar</b>				
Producer	1.50	1.80	3.00	1.40
Consumer	1.70	1.80	2.60	1.40
<b>Weighted average***</b>				
Producer	1.54	1.84	2.44	1.16
Consumer	1.56	1.81	2.08	1.17

Source: World Bank (1986), pp.112-3.

\* Excludes Greece, Portugal and Spain.

\*\* Austria, Finland, Norway, Sweden and Switzerland.

\*\*\* Averages weighted by values of production and consumption at border prices.

The price and trade volume consequences of agricultural protectionism in the North have also been estimated and are substantial in the case of both temperate (see table 3) and tropical commodities<sup>22</sup>. The impact of overall intervention in

<sup>22</sup> These estimates are fragile as they are very sensitive to initial assumptions as comparison, for instance, of estimates by Zietz and Valdés (1986) and by Anderson and Tyers (1986) in Snape (1986) shows.

agricultural markets in developing countries on world prices and trade volumes is also substantial <sup>29</sup> .

Table 3

International Price and Trade Volume Effects of Trade Liberalization of Selected Commodities, 1985

	Wheat	Coarse Grains	Rice	Ruminant Meat	Non-ruminant Meat
Price change					
EC	13	16	5	17	1
Japan	0	1	7	8	1
All developed market economies	20	16	14	24	2
Trade volume change					
EC	14	22	0	65	68
Japan	6	0	37	48	14
All developed market economies	9	23	32	94	65

Source: Anderson and Tyers (1986), in Snape (1986), pp. 97-98.

The estimates on how the trade benefits and losses of agricultural liberalization in the North would be distributed in the South are even more fragile and not compatible with the best aggregate estimates. In the event of a comprehensive liberalization of trade measures affecting agriculture in the North, agricultural exports by developing countries would increase very significantly as shown in Table 4. Table 5 summarizes the available evidence on the distribution of costs and benefits between developing countries for some of the more crucial temperate commodities.

<sup>29</sup> See World Bank (1986), p.129. Note that the table refers to all intervention in agricultural markets and not only to trade intervention

Table 4

Increase in Export Earnings of Developing Countries Generated by  
Trade Liberalization in the North, 1979-1981  
( in % )

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Sugar	103
Beef	533
Wheat	146
Maize	52

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Source: Zietz and Valdés (1986), pp. 76-90.

Table 5

Impact of Trade Liberalization in the North on Foreign Exchange Earnings and Import Bills of Developing Countries, 1979-1981, US\$ million\*

	Increase in Foreign Exchange Earnings	Impact on Import Bill
<b>Beef</b>	5,095	-325
Sub-Saharan Africa	99	-86
Kenya	-3	17
Asia	173	-105
Indonesia	151	-3
North Africa & Middle East	131	-27
Latin America	4,962	-107
Argentina	2,233	-
Brazil	1,370	-71
Chile	108	-13
Colombia	403	-
Mexico	201	-
Venezuela	238	-15
<b>Sugar</b>	2,748	-329
Sub-Saharan Africa	142	25
Nigeria	-	33
Asia	1,379	-62
India	988	-
Korea, South	-	34
Malaysia	-	12
Philippines	201	-
Thailand	111	-
North Africa & Middle East	70	-86
Algeria	-	13
Iraq	-	26
Latin America	1,157	-206
Argentina	136	-
Brazil	617	-
Dominican Rep.	107	-
<b>Wheat</b>	1,167	-351
Sub-Saharan Africa	4	23
Nigeria	-	15

To be continued

Table 5 (continued)

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Asia	611	-288
India	602	-145
Korea, South	-	27
Malaysia	-	11
Philippines	-	10
North Africa & Middle East	345	-89
Algeria	-	12
Egypt	-	35
Saudi Arabia	-	13
Turkey	304	-
Latin America	207	3
Argentina	207	-
Brazil	-	11
Venezuela	-	13
Maize	606	-572
Sub-Saharan Africa	90	-139
Asia	234	2
India	118	-2
Korea, South	-	35
North Africa & Middle East	18	-15
Saudi Arabia	-	11
Latin America	263	-420
Argentina	175	-

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Source: Zietz and Valdés (1986), pp. 76-90.

\* Countries were included when the increase in foreign exchange earnings was larger than US\$ 100 million or the increase in import bill was larger than US\$ 10 million.

Benefits of trade liberalization are concentrated in a small number of large developing countries: Argentina, Brazil, Turkey and India. Main losers are South Korea, Nigeria and some countries of the Middle East but their losses are rather insignificant if compared to gains by major suppliers.

There are some quite old estimates of the consequences of trade liberalization in the North on temperate agricultural

products other than those mentioned above as well as on tropical products <sup>20</sup>. With the exception of wine the other temperate products affected are much less significant in terms of value of trade or are much less affected. Examples are barley and oats in the first case, soya derivatives in the second. All processed tropical products would be affected and some, as roasted coffee, very significantly.

Summing up, the immediate interest in the reduction of agricultural protectionism in temperate products is heterogeneous both in the North and in the South. The relevant taxonomy for analytical purposes should distinguish producers with different degrees of efficiency, different income per capita levels, net importers and net exporters of agricultural goods and the importance of such goods in the total exports of each country. Australia is a good example of an efficient agricultural producer in the North which is hurt by the rise of protectionism. The US is a mixed case given the inefficiency of significant lines of agricultural activities and the well known competitiveness in others. Economies which are inefficient producers in the North can be classified into two major types: inefficient producers which protect domestic output and disrupt the world agricultural markets by heavily subsidizing exports such as the EC and to a much lesser extent Japan in the case of rice as opposed to those countries which are inefficient producers but do not export their inefficient output (typically EFTA members).

<sup>20</sup> See Valdés and Zietz (1980), p. 34.

In the South, interests can be very roughly divided into two groups. On the one hand, net exporters of varying degrees of efficiency in the production of agricultural products and with heterogeneous degrees of dependence on agricultural exports ranging from efficient and dependent Argentina to less efficient and less dependent, say, Brazil. On the other hand, net importers of agricultural goods have the benefit of lower import prices than would have been the case if efforts to dismantle agricultural protection had succeeded <sup>31</sup>.

#### 4.2. Proposals on agriculture in the MTNs

These varied agricultural trade interests were reflected in the proposals tabled in the Uruguay Round Negotiating Group on Agriculture. The US proposal for negotiations in agriculture has established as its main aims over 10 years a complete phase-out, a freeze of all agricultural subsidies which affect trade, a freeze then a phase-out of quantities exported with the aid of export subsidies and a phase-out of import barriers.

Implementation would proceed in two tiers. In the first tier the following issues would be dealt with: definition of measurement of support criteria following the lines of OECD's Producer

<sup>31</sup> Attention has been concentrated here on price and trade volume effects and not on the economically more meaningful net efficiency gains because the mercantilist features of the GATT negotiation procedures must be explicitly taken into consideration. But see World Bank (1986), p.131 for the relevant estimates for major economic blocs.

Subsidy Equivalent (PSE); policies which involve subsidization of agriculture (market price support, income support and others) and commodity coverage. In the second tier specific policy changes in each country would be defined over the agreed time span. The "decoupling" of farm incomes and output incentives was proposed.<sup>22</sup>

The Cairns Group proposal, on the other hand, carefully distinguished three phases:

a) the full application in the long run of a framework of strengthened rules and disciplines which would effectively prevent the use of all restrictions to trade not explicitly provided for in the GATT as well the use waivers or protocols of accession, bind the relevant tariffs at or near zero and prohibit the use of all subsidies and other government support measures affecting agricultural trade;

b) conditions would be created for the application of the long term framework by the adoption of a reform programme based on the targeted phase-down of direct export subsidies and enlargement of market access through tariff reductions and phase-out of non-tariff measures;

c) early relief measures to be immediately implemented involving a much more precise commitment to a freeze of trade distorting measures than the general standstill commitment of the 1986 Ministerial Declaration, a commitment to a non-

<sup>22</sup> See GATT Doc. MTN.GNG/NG5/W/14, 7 July 1987, for the US proposals. For "aggregate measurement of support" see GATT Doc. MTN.GNG/NG5/W/34, 27 November 1987 and OECD(1987).



disruptive release of stocks and a significant cutback effort in the form of reduction across the board of subsidies affecting trade.<sup>33</sup>

The EC proposal included a phased-down reduction of the "negative effects of [agricultural] support on international markets. Two stages were envisaged. In the first stage short-term actions were proposed consisting of emergency measures in the form of yearly renewable undertakings concerning cereal prices, sugar quantities and exports of dairy products. In this stage other measures would involve undertakings on the reduction of support for cereals, rice, sugar, oilseeds, dairy products and beef/veal. The second stage would involve an undertaking to carry out "a significant, concerted reduction in support coupled with a readjustment of...external protection in order to achieve a reduction of distortions".<sup>34</sup>

The importance of taking into account the interests of developing countries which are net importers of agricultural products has found the way in proposals and communications tabled in the GATT Negotiating Group which stress the need that liberalization of trade in agriculture should benefit all countries and especially developing countries.<sup>35</sup>

<sup>33</sup> See GATT Doc. MTN.GNG/NG5/W/21, 26 October 1987.

<sup>34</sup> See GATT Doc. MTN.GNG/NG5/W/20.

<sup>35</sup> See, for instance, Communication from Jamaica, GATT Doc. MTN.GNG/NG5/W/42, 4 February 1988.

The EC reaction to the US proposal is a good indication of the difficulties to be faced on the way to agreement: "too far, too fast". EC delegates have stressed that the elimination of subsidies was not the objective of negotiations and that the EC wants to maintain a dual price system with different prices for exports and for home consumption. Reservations on the realism of "decoupling" attempts have been raised.

#### 5. A Common Strategy for a Diversified South

In the previous sections it has been shown that developing countries have diversified interests in relation to both services and agriculture. In relation to the former, a small group of relatively more advanced developing countries has a more immediate interest in assuring that the way in which trade in services is eventually regulated in the GATT will not undermine the potential competitiveness of their services industries than smaller countries possessing little infrastructure and no significant domestic supply of the more capital intensive services. In relation to the reduction of agricultural protectionism, developing members of the Cairns group and net food importers also have opposing immediate interests even though the defence of agricultural protectionism by the latter would contradict their traditional overall stance against protectionism and undermine the consistent efforts by developing countries to assure the enforcement of GATT law. The

same diversified interests could have been shown to exist in relation to other important themes in the Uruguay Round agenda such as textiles, tropical products and market access issues involving anti-dumping and anti-subsidy actions as well as safeguards under article XIX of GATT, which fall beyond the scope of this report.

Developed countries were, of course, not slow in recognizing these divergent immediate economic interests among developing countries as this could provide a basis for a weakening of the common political stand traditionally adopted by G-77 countries in relation to many issues in the realm of international trade and finance. Indeed, the emphasis from the early 1970s on "graduation" in the World Bank and in the GATT as well as the strenuous efforts to characterize a group of "Newly Industrializing Countries" which would include countries outside Southeast Asia are manifestations of this increased awareness <sup>34</sup>.

It should be stressed, however, that the existence of diversified sets of interests among developing countries cannot a priori be construed as a sign of weakness of the traditional block-wide coalition of developing countries. The existence of a diversified set of trade negotiating interests in the South does not of course necessarily predetermine the breakup of the G-77

<sup>34</sup> The post-1982 debt crisis put many of these attempts in the adequate perspective

coalition in the same way as the existence of diversified sets of negotiating interests have not prevented developed countries from presenting a common front in almost all instances of significant North-South economic negotiations. Developing country solidarity has in the past been maintained - not without its problems - in UNCTAD as well as in GATT negotiations, in spite of extremely varied interests in relation to long-standing issues such as the distortions provoked by the MFA or the discrimination entailed by mainly illusory trade preferences administered by the North such as those under the Lomé arrangement.

Indeed, contrary to what has been suggested in many quarters in the North, the very nature of the diversified positions of developing countries allows for internal trade-offs which, if materialised in concrete offers and compensation proposals among them, could (i) greatly facilitate a common stand on agriculture and (ii) strengthen the cohesion of the traditional block-wide coalition to face issues placed squarely along the North-South divide - such as the new themes - and preserve what should be the fundamental aim of developing countries in the present MTNs: their joint commitment towards GATT legality and the priority of backlog themes over new themes

In relation to creating a common stand on agriculture, even a superficial analysis of possible inter-developing country

offers suggests that if developed countries refuse to compensate - as they should - the least developed food importers for the impact of dismantling agricultural protection in the latter's import bills this should not prevent them from supporting agricultural liberalization. Among the subjects negotiated in the GATT the two main areas in which least developed food importers could, at least in principle, be compensated for the higher food import prices stemming from agricultural liberalization are textiles and tropical commodities <sup>27</sup>. Textiles, however, poses the problem that a possible de-escalation of protection in the North would benefit low cost producers such as India which also reaps benefits from agricultural liberalization. The main area for compensations could, therefore, be that of tropical products and include both tariff and non-tariff de-escalation<sup>28</sup> and the negotiation of export quotas in international commodity agreements.

Moreover, South-South compensation need not to be restricted to trade. As the figures presented in Section 4 show, it does not seem that the total impact of trade liberalization in the North on the agricultural import bills of least developed countries would be incompatible with at least partial financial compensation through South-South aid which could involve greater

<sup>27</sup> This is of course a result of the well known supply response problems which affect more diversified integration of these countries in the global trade system.

<sup>28</sup> Note that tariff and non-tariff escalation is not a characteristic of developed countries' protection structures but also widespread in the South. On this see Laird and Yeats (forthcoming).

collaboration in the area of technical assistance from the relatively advanced developing countries supporting the Cairns Group proposals.

In relation to the typical North-South issues raised by the new themes it is crucial to distinguish between the short and the long run interests of developing countries in devising a common strategy. In the short run there should be no doubt that the strong commonality lies in the benefits to be derived in the negotiations under Part I of the Uruguay declaration from supporting the procedural point that offers relating to backlog issues should precede and not to be linked to the acceptance of the demands of developed GATT parties in regard to new themes. This was the position consistently taken by the vast majority of developing countries since the 1982 GATT Ministerial Declaration and still seems to command substantial support.

In the long run the crucial question, however, as argued in Section 3, is that of devising a framework of rules for trade in services which take into account the development needs of developing countries. Indeed, it does not seem realistic to suppose that the formal segregation of the negotiation on services will assure that cross trade-services concessions so much feared by developing countries will not be attempted. The G-10 coalition served developing countries interests well as it made possible to avoid - in spite of the contrasts in actual

bargaining power - the adoption of the US extreme line concerning the explicit joint consideration of goods and services which was equivalent to the recognition that the GATT umbrella also covers trade in services. However, the current trends in trade and direct investment in capital- and technology-intensive service sectors will continue to be a source of pressure from some of the leading industrial countries towards liberalizing international rules regulating the trade of those sectors and the difficulties of the South in maintaining a common stand on this issue is compounded by the fact that in relation to many of these sectors of greater trade interest to developed countries the heterogeneity of developing countries in terms of supply capability is much greater than in agriculture or manufacturing.

In the longer term it is clear that in spite of the very significant technical questions involved in the discussion of the trade effects of liberalization in the area of services developing countries will be involved in the discussion of a framework for liberalization of trade in services which has been up to now circumscribed to OECD members. It is however very difficult to be optimistic about the convergence of views on the framework. Developing countries common interests lie in principles connected with labour intensive services and access to advanced technology. While the US are likely to claim that emphasis on these issues is mere continuation of filibustering

techniques already adopted in the past in relation to procedures as well as to the lack of adequate data bases and conceptual framework, these are the areas, if any, in which liberalization can bring immediate concrete advantages to developing countries. Northern negotiators must be conscious that issues related to foreign direct investment and national sovereignty are probably as politically sensitive in the South as the links between labour services and immigration policies in the North.

It is likely therefore that developing countries would gain with a shift of emphasis from framework discussions and liberalization, which are unlikely to proceed very fast, to a sectoral approach as advocated by the EC stressing transparency and predictability of the rules governing them. This will hopefully move the discussion away from a sterile North-South confrontation on matters of principle to more constructive grounds were it should be possible to proceed, exploiting the varied trade-offs existing in this area as in agriculture and other traditional GATT issues.



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