The Uruguay Round

High Hopes, Hard Realities, and Unfinished Business

Philip H. Trezise

Long March to Stalemate

Since 1947 the General Agreement on Tariffs and Trade (GATT) has been the forum for a series of multicountry negotiations to reduce official restrictions on international trade. Seven of these negotiating "rounds" were successes, principally in bringing down, at least among the main industrial nations, the high, in some cases prohibitive, protective tariffs inherited from the interwar period. The eighth and clearly the most ambitious, the Uruguay round, reached and passed its December 1990 deadline with nothing settled after four years of negotiating.

Previously, the failure of a GATT round was considered to be unacceptable. Memories of the breakdown of international trade in the 1930s remained to warn politicians of the risks of a replay of that disastrous episode. Then too there was the role of the United States. Each new GATT negotiation was convened at American initiative. Few of the contracting parties were prepared to send home the negotiators from the world's largest economy with no progress to report to an unpredictable U.S. Congress. Most important, no doubt, was the seeming proof that freeing up trade worked: as tariffs fell, world commerce boomed and so did world income.

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The consensus, of course, was never complete. GATT rules and disciplines had much less than full force in the Third World. And in the industrial world, the pains of adjusting to rising imports—textiles being an early and notable example—proved excessively costly politically for national governments, including that of the United States. As industrial country tariffs on average fell to quite modest levels, other forms of trade restriction became more visible and in many cases more pernicious. After the Kennedy round (1964 to 1967), the need for a GATT round agenda broader than tariffs became increasingly evident. So it was that after much travail the Tokyo round (1973 to 1979) produced a set of new agreements on government procurement, import licensing, subsidies, antidumping, customs valuation, and technical standards. These were in the form of "codes" supplementary to GATT and subscribed to by the principal GATT contracting parties.

As impressive as these results were, the Tokyo round left a large body of unfinished or untouched business. Trade in agricultural goods was still conducted with minimum acknowledgment of GATT principles. Trade in textiles continued to be managed in numbing detail under an agreement that violated the most fundamental GATT articles. As written, GATT essentially did not reach the growing area of services trade. Attempts in the Tokyo round to deal with extra-GATT trade restrictions such as "voluntary" export restraints had foundered. Experience

with the Tokyo round's codes gave reason for their review and possible revision. And, as the 1980s wore on, protectionism seemed to be gaining, not losing, ground, and acrimony among the big powers over trade issues increased.

As ever, the United States, whether in response to or despite a massive external trade imbalance, took the lead in promoting a new negotiating round. The reception given it was perhaps a portent of things to come. The European Community and Japan were customarily cautious toward the proposed negotiating agenda, and some developing countries, led by India and Brazil, were openly hostile to parts of it. Nevertheless, the eventual ministerial declaration, made at the Uruguayan resort city of Punta del Este in September 1986, proved to be a comprehensive and, by the standards of such statements, a forthright program that promised something for everybody in return for concessions by all, not excluding the Third World countries. To a greater degree than in the past, moreover, the key negotiating items were linked, in the sense that a deadlock on one could threaten to undo potential or achieved agreements on others.

A look at the way the Punta del Este scenario was played out will suggest the high hopes that rode with it and the disappointingly stubborn obstacles to their realization. What the trade ministers agreed should be negotiated can be put into four main groups. First came the standard market access issues—tariffs and nontariff barriers. Next were market access issues of a peculiarly difficult nature, that is, trade in agricultural goods and trade in textiles and apparel. A third grouping comprised subjects considered but left incomplete in the Tokyo round (the GATT escape clause or safeguards and disputes settlement) and the codes that were completed in that round but believed to require close review. Fourth were new matters for a GATT negotiation: trade in services, trade-related aspects of international property rights, and trade-related investment measures. For good measure, the declaration said that all existing articles in the general agreement should be reexamined and that a special panel should study ways in which GATT's role in the world might be enhanced.

Far more than in any other GATT negotiation, this agenda proposed to deal with measures and practices usually thought of as domestic in character. Subsidies paid for farm crops, regulation of financial institutions, requirements placed on direct (that is nonportfolio) investments by foreigners, patent and copyright laws, and many other governmental activities were said to be sufficiently trade-related to make them open to negotiation. To this considerable extent, then, the Uruguay round proposed to go beyond global deregulation of controls at frontiers to global deregulation of controls and interventions in home economies.

In due course these varied matters were remanded to 15 negotiating groups, supervised by a trade negotiating committee, whose charge was to complete the negotiations within four years. The breakdown, when it came, was precipitated by a failure to agree on a formula for agricultural trade liberalization. It is fitting to begin a survey of the Uruguay round with that discouraging outcome.

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The Hard Cases

Agricultural Trade. When GATT was written in 1947, it was recognizably an American document, drawn in substance and to a considerable extent in language from drafts written in the Department of State for the commercial policy chapter of the proposed International Trade Organization. The provisions for agricultural trade substantially exempted from GATT discipline the U.S. farm programs inherited from the New Deal. Article XI, the prohibition of import quotas, does not apply to agricultural commodities subject to production or marketing controls. Article XVI, which frowns on trade-distorting subsidies in general, allows export subsidies on primary products, with the vague injunction that such subsidies capture no more than an "equitable" share of trade. These openings were widened in 1955 when Congress forced the Eisenhower administration to obtain a sweeping waiver of GATT rules for any article produced under a U.S. farm program.

Even absent the GATT loopholes and the wrong-headed U.S. example, agricultural trade was

inherently vulnerable. Governments, including normally committed free traders such as the Swiss or the Scandinavians, have made agriculture the most managed industry in the world. Farming that could not possibly withstand foreign competition has been handsomely subsidized, usually by high consumer prices. When the European Community came into being in 1958, its cementing feature, so the argument went, was the Common Agricultural Policy. Its price structure was protected by variable tariffs that were operated to hold imports down, if need be, to a zero level. In due course, high prices induced high output, the excess of which was disposed of on world markets with the aid of export bounties.

In the Kennedy round a not very aggressive U.S. effort to put limits on agricultural protectionism produced an International Grains Agreement that, but for its lack of teeth, could have led, perversely enough, to internationally managed grain markets. The Tokyo round in the 1970s was equally barren of constructive results.

To open the Uruguay round talks, an irked American delegation tabled a radical submission that called for eliminating over 10 years all agricultural border protection and export subsidies as well as the domestic measures that made protection and subsidies necessary. This vision of agricultural free trade had the support of 14 developed and developing country agricultural exporters in the Cairns group, led by Australia. It met with the predictable opposition of the European Community and Japan, whose negotiators were encumbered by a unanimous Diet resolution insisting on zero imports of rice.

Under a proposal made to intensify the negotiations, GATT members would commit themselves to "progressive and substantial reductions" in subsidies, price fixings, output controls, import quotas and embargoes, voluntary export restraints, and variable tariffs. Instead, the Uruguay round went into indefinite recess.

The European Community never seriously considered the American proposal, but at various points a genuine negotiation toward a more modest reform seemed possible. In April 1989, after a rebellious Cairns group had forced an extension of the 1988 midterm review of the whole Uruguay round, the agriculture negotiating group concluded a "framework agreement." The framework covered, although in general terms, all the major points at issue and could have set the stage for actual bargaining. It did not.

Then, in July 1990, to intensify the negotiations the heads of government at the Houston seven-nation economic summit endorsed a proposal offered by the negotiating group's Dutch chairman, and the door to progress seemed again to open.

Under this proposal the contracting parties would commit themselves to "progressive and substantial reductions" (language agreed upon earlier) in all forms of internal support other than tax-funded programs such as agricultural research. Reductions would thus have to be made in deficiency (income) payments as well as in market price supports and input—for example, fertilizer—subsidies. As the European Community and Japan wished, aggregate measures of support would be calculated for each country and would become support-level ceilings from which cuts would be made. But as the United States stipulated, all individual commodity supports would be subject to reduction so that it could not be possible to select only those that would be easy to reduce.

All methods of border protection would be converted to tariffs, and these would be bound against increases and made subject to annual reductions toward agreed upon levels. For commodities for which no significant imports have been allowed, tariff quotas would provide an initial minimum level of access, to be raised at an annual average rate over an agreed upon time period. An escape clause would permit temporary tariff increases, but only under defined conditions. Export aids would be reduced at a faster rate than other forms of support. Rules would be written to curb the use of health and sanitary regulations as nontariff barriers.

With reasonable numbers attached to these several propositions, a meaningful start could have been made toward ending the extraordinary accumulation of subsidies, price fixings, output controls, import quotas and embargoes, voluntary export restraints, and variable tariffs that characterize national farm policies. But injunctions from prime ministers and presidents to the contrary, the chairman's plan did not intensify the negotiations. Indeed, no substantive negotiations had taken place when the final meeting of trade ministers was convened in Brussels in December. There the Swedish minister suggested a scaled-down version of the U.S. platform

of phased reductions in border protection, domestic supports, and export subsidies. When the European Community decided that this was an unacceptable basis for negotiation, the ministerial meeting and the Uruguay round in its entirety went into indefinite recess. First to walk out, tellingly, was not the United States but Colombia, a member of the Cairns group.

Textiles. At Punta del Este the declaration on textiles and clothing was as direct as might have been hoped from a committee document: "Negotiations . . . shall aim to formulate modalities that would permit the eventual integration of this sector into the GATT on the basis of strengthened GATT rules and disciplines."

The 1988 midterm review made this formulation more specific: "Modalities . . . should *inter alia* cover the phasing out of restrictions under the Multi-Fiber Arrangement and other restrictions on textiles and clothing not consistent with GATT rules and disciplines, the time span for integration, and the progressive character of this process."

These statements appeared to be a firm commitment to end within a finite period the elaborate structure of controls over the textile trade established under the 1974 Multifiber Arrangement and its 1962 predecessor, the Long-Term Arrangement on Cotton Textiles. If this commitment were honored, it would have been a reversal in a record of increasingly tight regulation of this major sector of international trade. It would have happened, moreover, in the face of bitter resistance from the powerful lobbies that have largely shaped the regulatory system.

In their essentials the successive textile "arrangements" have allowed the importing countries—the United States, Western Europe, Canada, Australia, and New Zealand—to set quotas for textile imports by exporting country and by category and type of fabric. The quotas are a clear violation of GATT Article XI, which prohibits quotas. And the unwritten understanding that restrictions would not apply to the textile trade among the "importing" countries (Japan aside) made a mockery of Article I, the nondiscrimination clause.

Originally operative only for cotton goods, the restrictions were extended to synthetics and woolens in 1974, and then to fabrics of vegetable fibers such as ramie. Since apparel in particular is an easy industry to enter, exporters from new, uncovered countries have appeared regularly. Equally regularly, the geographic scope of the system has been extended to deal with these circumventions. The United States in 1989 regulated imports from 45 countries and territories (including Guam!) with quotas applying to 147 separate categories of textiles and to 80 percent of textile imports.

Proposals for reform have been of two kinds. One, favored by the United States, would move promptly to global quotas with ceilings for import categories without respect to country of origin. The quotas would grow at a stated rate until, after 10 years, they would no longer be restrictive of imports. A variant would be a system of tariff rate quotas under which a gradually declining tariff surcharge would be applied to imports above specified threshold levels. Either approach, depending crucially on the rate of quota growth (or surcharge reduction), would liberalize trade. Both would introduce a welcome element of competition by phasing out the stultifying system of nontransferable country quotas. And undoing the exemption from quota restraints enjoyed by rich country exporters would put them in competition with the Chinas, Indias, and Hong Kongs of the textile world.

Two proposals for reform of textile arrangements would liberalize trade. One would move promptly to global quotas with ceilings for import categories without respect to country of origin. After growing at a stated rate for 10 years, the quotas would no longer restrict imports. A variant would be a system of tariff rate quotas with a gradually declining tariff surcharge applied to imports above threshold levels.

The alternative would be to retain the Multifiber Arrangement for a further period while disposing of its quota restrictions according to an agreed upon schedule and procedure. Although differing on important details, the European Community and a substantial number of developing countries agreed to that approach, and it became the odds-on favorite. Underlying this alliance was a shared dislike for the competitive uncertainties that global quotas would usher in. Still, a transitional Multifiber Arrangement could bring progress, depending heavily on the arithmetic of the promised liberalization and the operation of the escape and evasion provisions, especially the latter.

In short, the textile talks were heading toward a liberalization agreement that would again have tested the ability of the United States and other major importers to keep their promises. The Multifiber Arrangement, after all, had a commitment to 6 percent annual import growth, which was widely evaded by unilateral interpretations of safeguard clauses. A new commitment, which would have met the letter of the Punta del Este declaration, might have been more fully honored and in any case would have been worth a try.

Market Access for Other Goods

Tariffs. Conventional wisdom has been that tariffs no longer matter after seven postwar rounds of tariff-cutting. Of course, they do matter. Excessively high tariffs abound in the developing world, including such important trading countries as India, Brazil, and South Korea. Because many tariffs—particularly in the smaller contracting parties—are not bound against increases, tariff cuts are of questionable value. Thus, Mexico has recently run an impressive program of applied tariff reductions, down to a trade-weighted average duty in the 10 percent range. But most of the new rates are not bound and could bounce back without penalty to a legal ceiling of 50 percent at any time.

Failure to meet the Uruguay round's tariff-reduction target means that all the contracting parties will have forfeited prospective income gains. The chief losers, undoubtedly, will be the East European and Third World countries struggling to dig out from years of ruinous economic policies.

Furthermore, low average rates in the industrial countries hide pockets of high tariffs, mainly on finished manufactured goods. The United States, by no means the only offender, has duties of 35 percent on some clothing items, 38 percent plus a specific duty on certain fabrics, and rates up to 48 percent for footwear.

In the Kennedy and Tokyo rounds the negotiating rule called for across-the-board tariff cuts, subject to a minimum of exceptions. In the Uruguay round the contracting parties could have elected either to accept a like formula or to follow the older-style, request-and-offer procedure. The target, in any case, was an overall reduction approximating the Tokyo round's 33 percent. Credit was to be given for new bindings, which would have stabilized some national tariff structures. The U.S. offer, if matched, would have phased out tariffs altogether for a sizeable batch of industrial goods including steel, wood products, semiconductors, and construction equipment.

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Nontariff Measures. The most costly nontariff measures were those being discussed in the separate agricultural and textile negotiating groups and in the group negotiating the GATT escape clause. Most of the measures on the table in the nontariff groups were country- or product-specific and thus were matters for request-and-offer bargaining. One nontariff measure for which a generalized answer was sought was rules of origin.

What are the criteria that entitle a product exported from, say, the United States to treatment as a U.S. product? The applicable rules are of primary relevance to preferential trade arrangements or country-specific quotas, where the origin of an import determines its treatment at the customs

house. A standard of sorts has been that a product was considered to originate in the nominal exporting country if the components have been so transformed that the tariff classification has changed. A common further requirement is that the finished good have a minimum percentage of local content, which is 50 percent in the U.S.-Canada free-trade agreement.

In anticipation of 1992, the European Community has considered variable local-content requirements —up to 70 or 80 percent on some products—or has proposed to define the requisite content as including a specific component or process—for example, the country where a microcircuit is etched on a silicon chip becomes the place of origin for a semiconductor. These requirements have been aimed at Japanese direct investments in EC states, but, of course, they would also apply to other investors in the community. And, after a dumping finding against a Japanese firm, the European Commission considered that products of a California subsidiary of the parent firm should be liable to the same dumping penalties.

Arbitrary rules of origin obviously can be another form of protection. The Uruguay round discussions found the matter to be highly complex, however, and work on an agreed upon pattern of rules probably would have had to be continued beyond the end of the Uruguay round proper.

Old Issues Revisited

Tokyo Round Codes. An early organizational decision put the subsidies (more accurately, antisubsidies) code from the Tokyo round in a separate negotiating group. Of the other codes, antidumping was considered the most in need of an overhaul, but it was unlikely to be improved.

Antidumping laws once were considered a defense against predatory pricing, that is, sales at low prices to destroy competitors and establish monopolies. That rationale may still be offered, but it has been superseded by the proposition that certain low or not-so-low prices are simply unfair and that their perpetrators are therefore liable to penalties. And antidumping penalties and countervailing duties against subsidies have become the most common forms of new import restrictions. The European Community and the United States have been especially creative at defining dumping and making its penalties more certain.

Since in principle every nation can play this game, it might have been thought prudent to check this spreading form of protectionism by incorporating in the GATT code common curbs on antidumping practice. That point of view was not dominant in the Geneva discussions.

Rather, the United States and the European Community took the offensive, if that is the appropriate term, by offering changes and additions, the net effect of which would be to loosen the present modest disciplines on national antidumping practice and to introduce new concepts of dumping into the code. The would-be liberalizers, including Japan, Korea, Singapore, Hong Kong, and the Nordic countries, focused on revising the methodologies used in North America and in the European Community to determine a dumping price—in particular, a "constructed value," which, among other things, can have the odd effect of making it necessary to sell at a higher price abroad than in the home market. Since the United States and the European Community were sure to reject these proposed revisions, this negotiation ended in deadlock.

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Subsidies. In the Tokyo round's code the United States gave up its grandfathered right to assess countervailing duties without a showing of injury to a domestic industry in return for tighter controls on export subsidies. This bargain has proved unsatisfactory to almost everyone. The United States and others complain that the code's prohibitions fail to reach subsidies that are not paid directly on exports but are trade-distorting nonetheless. A widespread countercomplaint is that the United States has habitually used its countervailing duty statute abusively.

No contracting party asserts that outright bounties paid on exported goods can be consistent with GATT's basic antisubsidy article. But a number of developing countries, for the customary bad reasons, wish to retain the virtual absolution conferred by their special and differential status. The European Community for its part has been unwilling to go as

far as the United States in expanding the list of prohibited subsidies. And many subsidies—regional development programs, for example—fall into a gray area, where the effect on trade flows is not always clear.

During the 1980s, the United States imposed countervailing duties more than 20 times as often as all other GATT countries combined. Further, Section 301 of the 1988 trade bill permitted unilateral U.S. penalties against subsidies not actionable under the GATT code. While all other signatories favored some GATT restraints on national antisubsidy measures, the American negotiators had to consider the likely congressional reaction to any limitations on the use of the now very popular U.S. countervailing duty law.

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A maximum reform of the countervailing duty practice would have been to require that all subsidy complaints be brought to GATT for examination before national decisions are reached. That was not in the cards, although a more circumscribed version might have been. The test for "material" injury could have been strengthened. A de minimis rule would be desirable. So would a provision for ending a countervailing duty after some defined period or when the offending subsidy has been discontinued.

These and other changes to regularize and make countervailing duty practices more civil would have had to be matched by extending a prohibition to "domestic" subsidies such as tax holidays or income supports that operate to foster exports or to discourage imports. Such a bargain should have made sense for subsidizers and countervailers alike and might well have satisfied the U.S. Congress.

Safeguards. Article XIX, the escape clause, was written into GATT on the reasonable assumption that obtaining significant tariff reductions would depend on leaving open the possibility of at least temporary relief from politically onerous inflows of particular imports. The article fell into disuse early, however, in part because of its limiting conditions. One requires an invoking party to pay compensation (in the form of lower tariffs on other products) for concessions withdrawn. The preferred routes of escape from GATT commitments soon became bilaterally arranged "voluntary" export restraints, orderly marketing agreements, or, in the textile instance, an elaborate multilateral agreement outside GATT.

By the time of the Tokyo round it was widely agreed that something should be done to restore meaning to Article XIX. A substantial effort to that end was stymied, however, by the European Community's insistence on the right to apply the escape clause selectively, that is, discriminatorily. The European Community argued that penalizing all suppliers is unfair when only one or a few are sources of import "injury."

In the Uruguay round spokesmen for the developing countries stated that their acceptance of any package would require the inclusion of a satisfactorily tightened safeguard clause. As in the Tokyo round, the key issue quickly became the European Community's selectivity demand versus GATT's most-favored-nation principle.

A consensus might have developed around a revised Article XIX that would make escape measures limited in time and degressive in application, would establish tariffs as the preferred if not the only method of escape, would modify but not eliminate the compensation requirement, and would phase out and prohibit safeguards inconsistent with GATT. An acceptable compromise on selectivity might require a showing of exceptional circumstances, shorter time limits, and tighter disciplines otherwise. Given the gross abuses that have grown up under the present Article XIX, such a result would have been considerably better than another stalemate.

The "New" Issues

Services. A North-South division between the parties to the Uruguay round was by no means absolute, but the developing countries were certainly less than enthusiastic about the negotiations on services, intellectual property, and direct investment. Strictly speaking, services were not on the agenda at all. At the urging mainly of Brazil and India, that negotiation was on its own track. Whether an eventual agreement would have been enrolled as a new chapter in GATT or would have become a separate General Agreement on Trade in Services

was left open. The developing countries' concern was that violations of GATT-enshrined rules on services could bring retaliation against trade in goods.

In the Punta del Este declaration the GATT ministers directed that negotiations should aim at a "multilateral framework of principles and rules for trade in services, including elaboration of possible disciplines for individual sectors." The midterm ministerial review produced more detailed guidelines. The framework's principles, it was then proposed, should include transparency of laws and regulations relating to services trade, national treatment, the right of establishment, and most-favored-nation treatment.

These principles reflect the fact that obstacles to the export of services typically are embedded in domestic regulations rather than in border restrictions. Subscribers to the framework agreement thus would have accepted an obligation to revise or scrap inconsistent regulations. In many cases this could be a substantial undertaking; the U.S.-Canada trade agreement identifies more than 50 service sectors to which its services chapter could apply. There were other problems. Some services—aviation and maritime transport are leading examples—have anticompetitive practices sanctioned by existing intergovernmental agreements or by longstanding governmental toleration or encouragement. Although the United States had been the champion of a services trade agreement, its negotiators were unsure as to how the framework should apply to the large financial services sector. But the most serious difficulty came from the most-favored-nation clause in the draft framework agreement. And here the United States was in the position of being the objector.

The heart of the matter was and is that regulatory systems for services differ widely from country to country. With an unconditional most-favored-nation obligation, countries willing to consider relaxing their regulatory systems would find themselves required to afford national treatment to services providers from all parties, regardless of their restrictions. Or a country with a relatively open services sector—for example, the United States in telecommunications—would have no bargaining leverage with highly restrictive countries. Thus, adopting an unconditional most-favored-nation rule threatened to hinder greater international competition in the provision of services.

As the chief proponent of a conditional most-favored-nation rule, the United States received a bad press. Yet some form of reciprocity requirement had long been considered to be a necessary feature of a services agreement. If a multilateral agreement on services trade can eventually be negotiated, it will unquestionably involve the reciprocal exchange of access commitments.

Trade-Related Aspects of International Property Rights. A negotiating group was charged with deciding the extent to which creators of various forms of new and salable information are entitled to have stronger international rules to protect their property rights. On one side of the argument were the United States, the European Community, and other countries, mainly but not exclusively members of the Organization for Economic Cooperation and Development. On the other was a group of developing countries, again led by Brazil and India. The latter group is willing to concede that creators or holders of intellectual property do have rights to protection but that such rights must be balanced by obligations, to wit, to recognize "public policy objectives" of importer governments.

The abstract merits of the two positions are no doubt reasonable subjects for debate. Do the not-so-temporary monopoly positions granted to patent and copyright owners generate net benefits to the world by encouraging technological innovation and artistic creation? Or are the welfare consequences of these anticompetitive grants actually negative? Merits of the two positions aside, the heavy artillery in the Uruguay round was with those pushing for more effective protection of property rights. For the big, information-exporting countries, the failure to reach a satisfactory multilateral agreement will simply lead to unilateral penalties levied against alleged intellectual property infringement abroad. (The U.S. Omnibus Trade Act has a "special-301"

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section that mandates enforcement measures against violations of intellectual property rights.) In the case of the United States, moreover, the outcome could have been make-or-break for the Uruguay round, since business support for the required congressional approval might have been undermined if the ultimate package lacked an acceptable intellectual property accord.

The central problem to be resolved by the intellectual property negotiators was setting minimum standards of protection—for example, the term or scope of property rights or the conditions under which the exercise of these rights may be narrowed, as by compulsory licensing of patents. Much of this is technical, as in the case of computer software or biotechnology products, or highly particular, as in the case of designations of wines according to places of origin. If negotiators had agreed that the standards, which would have to be more stringent than the provisions of the World Intellectual Property Organization, belong in GATT, the standards would have become commitments subject to GATT disciplines. This would have required many, if not all, contracting parties to revise domestic legislation. For the developing countries the revision generally would have had to be in the direction of the strong legislated standards found in Western Europe and the United States.

The central problem to be resolved by the intellectual property negotiators was setting minimum standards of protection—for example, the term or scope of property rights or the conditions under which the exercise of these rights may be narrowed, as by compulsory licensing of patents.

If the standards question had been settled, enforcement procedures would be internal, under civil or criminal provisions, or at borders, by custom officers' seizure and destruction of counterfeit goods. Failure to enforce the agreed upon standards could bring into play the GATT disputes mechanism and retaliation by the aggrieved contracting party or parties.

The developing countries were willing to accept stricter controls over trade in counterfeit goods, but revisions in domestic laws were harder to swallow. To muster the affirmative votes of two-thirds of the GATT membership would have required attractive commitments elsewhere in the overall negotiation, on safeguards and textiles for instance. An easy concession to them in the intellectual property negotiation would be a longer transition period during which to enact and fully enforce new standards of protection. Most compelling, perhaps, was the reflection that a GATT system may be preferable to unilateral punitive actions.

An alternative would be a GATT code applying only to those contracting parties willing to accept the standards and enforcement procedures desired by the United States and its allies. Whether that outcome would satisfy the intellectual property lobbies is quite uncertain. A GATT chapter, with its near universality of application, has been a first-order objective. An agreement that did not include such important developing countries as Brazil might well be seen as inferior to relying on stern unilateral measures to enforce the protections already written in domestic laws.

Given the conflicting pressures, a realistic outcome would have been a GATT chapter or annex providing upgraded international standards for intellectual property rights and procedures for their more certain enforcement. The contracting parties would then be allowed to opt for differential but not open-ended periods during which to make the new regime fully operative. That would have been a considerable achievement and likely a desirable one. The remaining problems would not be trivial, for this is an area where there will continue to be legitimate bases for contention. But the proposition that creators of some kinds of information are entitled to favored treatment in the marketplace enjoys a broad consensus. A multilateral system for giving substance to that proposition surely is preferable to a regime of unconstrained rulemaking and retribution.

Trade-Related Investment Measures. The group negotiating trade-related investment measures focused on various requirements—export targets, minimum local content, and mandatory transfer of technology—imposed on multinational corporations by host governments as conditions for doing business. Many of these conditions are in effect trade policy measures. Thus, a local-content requirement is one kind of tariff; an export target is a form of export subsidy.

Once again, the debate over these practices has been mainly across the North-South fissure. The United States, with varying degrees of support from

has Section 301 of the 1988 trade act as a seemingly proven fallback.

Moreover, a negotiation with Mexico—leading quite possibly to a North American free-trade area of Canada, Mexico, and the United States—has acquired an impetus that will be enhanced by the Uruguay round's failure. There will be strong pressures to complete this negotiation before the 1992 elections. Thereafter, or conceivably during the same period, free-trade talks may begin with individual South American states—Chile?—under the Bush administration's new doctrine for Latin America. Whether hemispheric preferential trading arrangements make a feasible or even a desirable objective is open to considerable question. But with the effort under way, resistance to a global negotiation that would have to dilute the benefits of hemispheric preferences would be powerfully strengthened.

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