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# The Uruguay Round of Multilateral Trade Negotiations: Developments and Prospects

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# THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS: DEVELOPMENTS AND PROSPECTS

LUIS ABUGATTAS

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## I. INTRODUCTION

State protectionism results in serious distortions of relative pricing and makes it difficult for countries to compete in the international marketplace. During the second half of the 1980, most Latin American countries, in recognition of this principle, progressively implemented structural adjustment programs designed to modify traditional trade restrictions. In fact, there is a clear, if revolutionary, trend in the region to reconcile foreign trade policies so

that domestic production may be maximized. Toward this end, countries have drastically reduced tariff levels, privatized many industries, and attempted to properly manage exchange rates, all in an effort to liberalize traditionally restrictive trade policies.

Latin American governments, seeking to abandon their traditional protectionist policies, face strong domestic opposition from interest groups such as industry and labor. In fact, a number of public officials in several Latin American countries were recently elected because of their opposition to drastic adjustment measures. The consolidation and permanence of the liberal programs depend, to a large extent, on the international community's clear support of liberal trade policies. Without this support, it will be extremely difficult to garner the required political backing needed to maintain the liberalization efforts. These concerns reveal why the success of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) is so vital to Latin America. A failure of the Uruguay Round would deal a major political blow to liberal leaders, eventually leading to increased protectionism.

The likelihood that Latin American nations will successfully penetrate the international market depends on the stability and predictability of the world economy. A strong world economy will encourage the abolition of trade restrictions imposed on Latin American imports, thus guaranteeing adequate access to foreign markets.

Fortunately, Latin American leaders have received some much needed support from the United States. In June 1990, President Bush proposed the establishment of a hemispheric-wide free trade zone in his Enterprise for the Americas Initiative.<sup>1</sup> Latin American leaders have greeted the President's proposal enthusiastically. In fact, a number of countries have already entered into bilateral agreements with the United States. These agreements, which establish trade and investment commissions, are important because they provide a foundation upon which further arrangements may be made and a forum in which the parties may discuss such issues. Further, Latin American integration groupings, such as the Andean Group<sup>2</sup> and MERCOSUR,<sup>3</sup> have also expressed an interest in

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1. *Five Latin Ministers Embrace Free Trade*, WALL ST. J., Sept. 13, 1990, at A-16, col. 3. For a text of President Bush's statement, see *President Bush's Address on "Enterprise for the Americas" Proposal and Accompanying White House Fact Sheet*, Released June 27, 1990 (Text), Daily Rep. for Execs. (BNA) No. 125, at M-1 (June 28, 1990).

2. The Andean Group consists of Colombia, Venezuela, Peru, Bolivia, and Ecuador. See

establishing trade and investment agreements with the United States.

The agendas for President Bush's Initiative and the Uruguay Round address overlapping considerations. A balanced result in the multilateral trade negotiations, including setting clear norms for conducting international trade, would certainly facilitate the establishment of free trade between the United States and Latin American countries or groupings. It is important that the resulting agreements take into account the needs and interests of all affected parties; if they do not, complications will arise as each issue will necessitate negotiations on a country-by-country basis. Thus, any bilateral or regional agreements must be compatible with the rights and obligations conferred upon the parties by the multilateral agreements generated by the Uruguay Round.

The Uruguay Round constitutes the principal forum in which to negotiate the conditions of market access. Its results will establish the general framework in which Latin American countries must negotiate future trade agreements with the United States. The impact of the Uruguay Round has particular significance for the regional textile and garment trades, agricultural and tropical products trades, and non-tariff barring.

This paper addresses two basic areas. Section II analyzes the development of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) during the past four years. This section examines the difficulties confronted during the negotiating process and the elements that must be addressed in future related discussions. Section III analyzes the state of current negotiations and focuses on Latin American interests and positions.

## II. DEVELOPMENT OF THE URUGUAY ROUND

### A. *The Uruguay Round: Current Status*

Trade ministers from over ninety-two countries met at the Uruguayan resort of Punta del Este in September 1986, to launch

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*generally Much in Common, But Not All Will Help Bring Them Together*, Latin Am. Newsletter, Dec. 13, 1990, at 2.

3. MERCOSUR is the term used for the South American Common Market, also known as the Southern Market, in which the regional giants such as Brazil and Argentina are the dominant nations. See *South American Countries Sign Common Market Treaty*, Reuter Lib. Rep., Mar. 28, 1991 (BC Cycle).

a new round of global trade discussions. Initially proposed by the United States and later supported by other industrialized nations, the agreement to initiate a new round of negotiations took a full week to craft. The GATT contracting parties drafted the Declaration of Punta del Este, thus formally commencing the eighth round of GATT negotiations.

The Uruguay Round enunciated four objectives: 1) to open international trade by reducing tariff and non-tariff barriers; 2) to strengthen the institutional capacity of GATT itself; 3) to expand the range of GATT coverage to include such areas as textiles and agriculture; and 4) to extend the scope of GATT to cover newly emerging issues of international trade, such as services, trade-related aspects of intellectual property rights (TRIPs), and trade-related investment measures (TRIMs). The Uruguay Round participants created fifteen negotiating groups to discuss these issues.

The Uruguay Round is one of the most ambitious series of global trade negotiations since World War II.<sup>4</sup> It is not surprising that there have been many stumbling blocks during the negotiations. The Uruguay Round represents a unique rule-making exercise in that it embraces problems and solutions far more complicated than those ever contemplated in earlier GATT negotiations. The Round necessitates a profound revision of basic trade concepts and definitions.

Conforming with the chronological framework established for the Uruguay Round, the Trade Negotiations Committee (TNC) convened at Brussels on December 3, 1990, to conclude the trade round. Unfortunately, the ministerial meeting collapsed and the negotiating process broke down. The contracting parties tabled the negotiations, and the participating trade ministers temporarily adjourned their four-year effort in order to reform the trading system. Although the ministers adopted a final declaration, they failed to sign any final agreements.

The collapse of the negotiations is generally attributed to an impasse regarding agricultural considerations.<sup>5</sup> However, a review of the "Draft Final Act" reveals a lack of agreement in several ma-

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4. One observer even suggested, "In the history not just of commerce, but of all areas of international cooperation, there has almost certainly never been a negotiation as complicated as the Uruguay Round." See *Fin. Times*, Dec. 8-9, 1990.

5. A *New York Times* article was especially harsh toward European resistance to modify farm policies. See *The Europeans Sabotage Trade*, *N.Y. Times*, Dec. 8, 1990, at 24, col. 1.

major areas of negotiation.<sup>6</sup> In fact, profound differences still exist in several areas including textiles, services, Trade-Related Intellectual Property Rights (TRIPs), Trade-Related Investment Measures (TRIMs), subsidies and countervailing measures, safeguards, dumping, and balance of payment restrictions per Article XVIII(B). The delegates also failed to reach significant agreement in the market access negotiations. They did, however, make some progress toward clarifying certain GATT articles and Multilateral Trade Negotiations agreements and arrangements.

Currently, the state of negotiations is uncertain. Although one can consider the Brussels meeting a complete failure because of the ministers' inability to reach an agreement, they did indicate that they intended to table the discussions merely to provide for a short "cooling off" period. The ministers demonstrated their commitment to free trade and their desire to sustain the Uruguay Round by designating Geneva as the locale for future negotiations. They instructed the Secretary General of GATT to determine possible avenues of consensus so that negotiations could resume. The ministers also agreed to base future negotiations on the "Draft Final Act," which insures that the interests of participants are not compromised by any agreements or offers made during the TNC meeting in Brussels.

Some progress has been made since the Brussels meeting. At the request of Minister Gros Spiel, Chairman of the TNC at the ministerial level, GATT Director General Arthur Dunkel conducted consultations with the major trading partners in an effort to resolve differences in all major areas of disagreement. Further, at the insistence of the Director General, the TNC convened a formal meeting to keep the Third World delegates informed and to explain the consultations.

The first two months of 1991 were intense. The Director General established a process involving bilateral and plurilateral consultations. This process was primarily aimed at producing a "platform" for future negotiations in agriculture.<sup>7</sup> However, it was also designed to provide the impetus for resuming negotiations in all other areas of concern as well. During this period, bilateral negotiations were held between the United States and the European

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6. *Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations*, MTN.TNC/W/35/Rev. 1, Dec. 3, 1990.

7. *South-North Development Monitor*, No. 2537, Feb. 5, 1991.

Community (EC). Discussions over agriculture with Cairns Group members also took place. Additionally, the EC met during January 28-29, 1991, with ministers from six Latin American countries — Argentina, Brazil, Colombia, Chile, Mexico and Uruguay — all of whom, with the exception of Mexico, are members of the Cairns Group. At the meeting, the EC emphasized the importance of a multilateral trading system, and suggested that the six countries curtail some of their more ambitious desires in an effort to save the negotiations.

Despite the praiseworthy efforts of all of the parties, a basic platform on agriculture was not produced. Consequently, serious negotiations and a restart of the Uruguay Round were simply not possible. It became clear that the negotiations would not be concluded by the beginning of 1991 as originally planned. The Secretary General therefore determined that a new strategy must be implemented in order to avoid a complete collapse of the negotiations process. Thus, he convened meetings in late February to discuss the possibility of resuming the Round with the major participants, inviting only those delegations that had contributed in particular areas to participate at the meetings.

At the meetings, the Secretary General filed a report on the findings gleaned from the consultation process. None of the countries were permitted to make presentations, nor debate any issues. Finally, the TNC met on February 26, at which time the Director General stated, "My consultations have led me to conclude that I have now at hand all the elements necessary to enable us to put the negotiations back on track." He then proposed a work agenda. Even though the committee concurred with the Director's assessment and officially resumed negotiating, it failed to establish any chronological framework for the Round.

Despite the progress made over the past year, future prospects for agreement remain uncertain. Although participants express a "cautious optimism," no significant progress has been made during this time period. In fact, crucial negotiating groups have failed to make any substantial progress since the midterm review, conducted in Montreal in December 1988.<sup>8</sup>

The prospects for success in the Uruguay Round remain un-

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8. The work program proposed by the Secretary General for the second stage of the negotiations addresses basically the same issues that have been unresolved since the Montreal meeting. See MTN.TNC/W/69, Feb. 26, 1991.

certain. In an attempt to achieve a consensus on crucial underlying issues, negotiations are continuing on a technical level. Yet, the real prospects for success depend on important political decisions that must be made by the major trading partners.

Short-term prospects for success depend on two fundamental factors. First, the EC must clearly demonstrate that it intends to negotiate seriously with respect to liberalizing international agricultural trade. Absent evidence of such an intention, it would be extremely difficult to maintain or accelerate the pace of the overall negotiating process and guarantee a real compromise on other issues. Unfortunately, the EC continues to send very ambiguous signals. Second, the United States Congress must extend the "fast track" authority of the American executive so that the President can negotiate more freely. In the absence of a clear mandate, negotiations will not be seriously considered by most of the participants. In fact, it is unlikely that the participants will engage in any substantive negotiations until a mandate is provided.

#### *B. Obstacles to a Successful Completion of the Uruguay Round*

The Uruguay Round is substantively different from previous trade rounds. Technological innovations in the productive processes and international transactions, the inadequacy of existing legal and institutional arrangements, and the change in the relative positioning of major trading partners to international labor, present new challenges to fiscal management systems.<sup>9</sup> Thus, one important objective of the Round is to improve production and trade mechanisms in order to reinforce multilateral norms and disciplines. Unfortunately, this objective has complicated the Round because many of the proposals infringe upon national sovereignty substantially more than those discussed in previous rounds.

The Uruguay Round was plagued with difficulties even before it began. For the first time in GATT history, the ministers lacked the consensus required to launch the trade round when they met. The ministers initiated the negotiations only after they reached a last-minute agreement for the liberalization of services and trade.

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9. Abugattas, *World Economic Restructuring and Multilateral Trade Negotiations: The New Issues in the Uruguay Round Problems and Prospects for Latin America* (paper presented at the XIVth World Congress of the International Political Science Association, Washington, D.C., Aug. 28 - Sept. 1, 1988).



Problems mounted despite this effort. The ministerial meeting for the midterm review of the negotiations, held in Montreal in December 1988, was eventually suspended. No substantive progress was made until April 1989, when the TNC adopted a very loose declaration at a meeting in Geneva.

The TNC meeting of July 23-28, 1990, was expected to generate basic agreements in the different negotiating groups and provide the impetus allowing for final agreements to be signed in Brussels. Once again, the participants were unable to produce any major agreements. Likewise, the meeting scheduled for November 12, 1990, which was to evaluate the negotiations according to the provisions of Section G of the Punta del Este Declaration, was cancelled.<sup>10</sup>

Unless major policy shifts occur, and absent substantial political concessions, even the Brussels meeting is now in jeopardy.<sup>11</sup> A contingency of several groups of countries advised the Secretary General to delay the TNC meeting at the ministerial level until there was some basis of agreement on the more conflictive issues. Nevertheless, he convened a meeting in December 1990, which, unfortunately, met with utter failure.

The complexity of the issues which have arisen during the negotiating process is compounded by the delicate interlacing between them and the short time frame available for decision-making. These difficulties must be confronted in the post-Brussels stage. Still, the Punta del Este Declaration is a carefully drafted document which expresses the delicate balance of interests achieved during the negotiating process. Although the Declaration is not the equivalent of a comprehensive and binding agreement, it does provide an impetus for further negotiation and development.

Several proposals have significantly impacted the development of the Uruguay Round. These proposals have affected the Round in the following ways: 1) in opposition to the stated objectives of TRIP and TRIM proposals, Latin American countries have forestalled the negotiating process; 2) developed countries are making

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10. Brazilian Ambassador Rubens Ricuepero explained, "[i]n the current state of affairs it is clearly impossible to carry out a detailed assessment of the progress in relation to special and differential treatment for developing countries in the negotiations." See FOCUS, No. 76, Nov. 1990.

11. In mid-November the Secretary General of GATT and the Chairman of the TNC at the official level stated, "Some major political decisions are urgent and essential and it is not an exaggeration to say that the Brussels meeting is now in jeopardy." See *Id.*

a concerted effort to curtail the special and differential treatment generally given to developing countries under GATT (Part IV);<sup>12</sup> and 3) although the Punta del Este Declaration mandates the development of balanced agreements, current negotiations are asymmetric.<sup>13</sup>

Latin American and Caribbean countries formulated a joint declaration in July 1990, which was drawn from the fifth Coordination Meeting of SELA. They stated that "[t]he results of the negotiations in the Uruguay Round will only be acceptable for the Latin American and Caribbean countries if they respond to the specific mandates of the Punta del Este Declaration," and "[t]he region will resist any attempt to redefine or to extend the principles agreed to for the conduct of the negotiations."<sup>14</sup> The majority of developing countries support this position and demand adherence to the Punta del Este Declaration. Prospects for success seemingly depend on the developed countries fulfilling this condition.

The evolution of the negotiations reflects the difficulties that the participants have faced in their quest to reconcile the existing trade regime with the new world realities. The difficulties encountered during the Uruguay Round have been particularly exacerbated by the absence of hegemonic leadership. In contrast to the early post World War II period, in which progressive liberalization of world trade and the establishment and maintenance of an international trade regime were possible under U.S. leadership, no country currently has the capacity to impose its will and bring about a conclusion to the negotiations. The Uruguay Round thus presents a great challenge to the world community. Agreement

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12. Although the Punta del Este Declaration clearly states that the developed countries should not expect the developing countries to make contributions that are inconsistent with their own development, financial, and trade needs, they are demanding reciprocity of negotiated commitments. These demands are of particular concern in such areas as textiles, tropical products, and services.

13. Developed countries demand strong multilateral commitments with regard to services, intellectual property, TRIMs, and TRIPs. Meanwhile, they have been unwilling to compromise on issues of primary importance to developing countries (*e.g.*, agriculture, textiles, natural resource-based products, market access negotiations). Thus, it is unlikely that the developing countries will be flexible in meeting their demands. Furthermore, because the contracting parties previously agreed to treat the various negotiations as a single undertaking, the possible imbalance in current negotiations could make it difficult to embrace any resulting agreements.

14. SELA, *Declaración de los Países de América Latina y el Caribe sobre las Negociaciones de la Ronda Uruguay*, July 17, 1990.

may be reached only through a meaningful cooperative effort. Success will only be attained if there is a significant change in the attitudes and behavior of major participants. The participation of developing countries must be encouraged and embraced because the Uruguay Round may only be concluded if the developing countries participate fully.

In Brussels, the major trading partners attempted to resolve several important and outstanding issues through private consultations in the so called "green room" meetings. This practice produced an absolute lack of procedural transparency. Further, it deprived developing countries of their right to participate in the negotiating process. The developing countries compounded their mistake by later suggesting that the documents produced during the meetings represented a consensus of all negotiators. This hypocrisy did not go unnoticed. The developing countries lambasted the President of the TNC during the midterm review. The Chilean delegate exclaimed, "In no other international forum [is there] so much talk about transparency, and in no other one [have we] witnessed a less transparent process in decision making. This fact is one of the principal reasons that makes it difficult to reach agreements." Unfortunately, the actions of the developed countries have created an atmosphere of suspicion and discontent. In a joint statement issued at the Brussels meeting, the developing countries explained that "[t]heir preoccupation with the lack of transparency of the negotiations [was] due, among other factors, to the attempt to solve outstanding issues through bilateral consultations among the major trading partners."

Secret negotiations represent only one of the stumbling blocks; a failure to cooperate is another. During the Montreal meeting, when it became apparent that the United States and Europe could not reach an agricultural agreement, the developing countries successfully disrupted the conference at Brussels by insisting that no other agreements would be ratified until an agricultural agreement was reached. This demand ultimately led to the collapse of negotiations.

It is abundantly clear that Latin American countries are willing to use their newfound power and must be included in the negotiations. A comprehensive reformulation of the negotiating methods must be made. Full and adequate participation must be guaranteed to all participants and decision making should be based on a generalized consensus.

### *C. Developments and Prospects of the Negotiations*

Any evaluation of the Uruguay Round must recognize the profound changes experienced by the international system since the Round was launched. Since 1986, several major events and circumstances have greatly influenced the positions and priorities of the major participants, including: 1) the end of the Cold War and the opening of Eastern Europe and the Soviet Union, creating new challenges and opportunities for the industrialized nations, especially the EC;<sup>15</sup> 2) the reunification of Germany which altered that country's position on agricultural issues; 3) the economic recession (which revived the protectionist sentiments of the major trading partners);<sup>16</sup> 4) the continuing and unresolved debt crisis and the processes of economic stabilization and structural adjustment policies of developing countries, which present enormous economic hurdles; and 5) the Persian Gulf Crisis, which diverted the attention of the world's senior political leaders during a crucial stage of multilateral trade negotiations.

The following section presents a brief assessment of the current state of negotiations in the crucial negotiating groups. It pays special attention to the interests and the position of the Latin American countries. The discussion is divided into three subsections: Market Access, Normative Negotiations, and New Issues.

## III. CURRENT STATE OF NEGOTIATIONS

### *A. Market Access*

Tariff and non-tariff measures, tropical products, natural resource-based products, textiles, and agriculture represent the priority areas for the developing countries of Latin America. Unfortunately, no promising negotiations have taken place.

#### 1. Tariff Negotiations

The contracting parties agreed in Montreal that the tariff reductions should be, at the very least, equivalent to those agreed

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15. Correspondingly, these events have significantly reduced the leverage of the United States in its bilateral negotiations with EC countries.

16. Such attitudes cast doubts about their political commitment to accept any final agreement.

upon during the Tokyo Round. This amounts to a reduction of at least 30% of the 1986 tariff levels. Although there was a proposal to apply a mathematical formula for reducing the tariff levels, the discussions were narrowed to a series of offers and petitions. This result may be partially explained by the refusal of the United States to accept the formulaic approach. Because of the failure to incorporate a formulaic approach, most participants resorted to bilaterally negotiating with their principal suppliers in an offer/petition process. Through this process, it is estimated that the parties managed to reduce tariff levels a mere 15%.

The United States is the most important market for Latin American exporters. In 1988, the United States imported \$43 billion worth of goods, 74.4% of which were subjected to tariffs. The initial tariff cuts offered by the United States, when taken as a whole, represent approximately 27% of the weighted average, which was close to the trade round's goal of 30%. These proposals, however, are deceiving. Each individual prospective reduction is dependent upon the product involved, and contingent upon each country's promise of reciprocity.<sup>17</sup>

The Latin American countries are dissatisfied with the proposals presented by the developed countries. Some of the offers, such as those dealing with agricultural products, are conditional. Others are of limited scope, and fail to address the problems of tariff progression and tariff peaks. These problems must be considered if negotiations are to progress.

Most of the Latin American countries have made important tariff reduction offers, and have even offered to bind their tariff schedules. A number of countries have radically reduced their tariff levels and eliminated all non-tariff barriers. Despite the provisions of the Montreal Agreement, which calls for the recognition of such actions, the major trading partners have neither acknowledged nor shown appreciation for these efforts.

## 2. Tropical Products<sup>18</sup>

Tropical products represent only 3% of world trade. Even so,

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17. SELA, *Evaluación sobre la Situación de la Ronda Uruguay de Negociaciones Comerciales Multilaterales Preparada por los Países de América Latina y el Caribe al 23 de Noviembre de 1990*.

18. Data on this issue has been extracted from *Uruguay Round Revised Offers of Tariffs Concession on Tropical Products (as of July 1990) the Potential Trade Impact*,

they are economically significant to a large number of developing countries, including most of Latin America. Tropical products have been a priority during the Uruguay Round, and there were discussions regarding market access offers even as early as the Montreal meeting.

The offers tabled during the July 1990 round by the industrialized countries would have created an estimated \$746 million in additional trade. This represents a 3% increase in the value of imports from 1986. Interestingly, developed countries would be the principal beneficiaries of the increased trade, in that their exports of processed tropical products would increase by \$457 million. Developing countries would enjoy an increase of only 1.7%, or a net gain of about \$250 million. Ninety-five percent of this increase would be attributable to an increase in market access to the EC. Because coffee accounts for 75% of covered trade, the gains obtained by the developing countries would still not compensate for the losses generated by the collapse of the International Coffee Agreement.

### 3. Natural Resource-Based Products

World trade in natural resource-based products generates about \$140 billion in annual revenues. Because natural resource-based products are of particular concern to developing countries, a separate negotiating group was established, whose objectives are the elimination of trade barriers and the creation of a more predictable market.

Initially, negotiations were to cover nonferrous metals, forestry, and fisheries. The industrialized countries, however, demanded that the scope of the negotiations be expanded to include energy products, domestic policies, access to resources, and more. The United States called for negotiations on such broad topics as dual pricing of natural resources, related export restrictions, local processing requirements, subsidies, and certain government ownership practices. As a result of the broadening of issues, the negotiations collapsed, and the issues were subsumed by the negotiating group on tariffs and non-tariff barriers.

#### 4. Textiles

The Declaration of Punta del Este requires that negotiations in the area of textiles and clothing be aimed at formulating modalities that would permit the eventual integration of this sector into the GATT on the basis of strengthened GATT rules and disciplines, thereby also contributing to the objective of further liberalization of trade. The implicit aim of the agreement is to rescind the Multifiber Agreement (MFA).<sup>19</sup>

The textile and clothing trade generates an estimated \$180 billion in revenues per year. Due to the export potential of the Latin American countries, and the difficulties they have encountered in gaining access to the markets of developed countries, the textile and clothing trade is of great importance to the region.

Because the textile and clothing trades are sensitive topics for developed countries, the negotiators are far from producing a comprehensive agreement. Although the developing countries have already allowed the imposition of a special regime based entirely upon the time needed to restructure the domestic industries of the industrialized nations, the industrialized countries are demanding yet another period of transition.<sup>20</sup>

The integration of the textile and clothing trade into GATT would be achieved in three stages. First, a given percentage would be integrated in each stage.<sup>21</sup> Second, the developed countries demand strong liberalizing commitments and other conditions before they will dismantle the MFA.<sup>22</sup> Third, the Latin American countries demand special treatment for developing countries that are small exporters. This special treatment must account for base levels of exports and differing growth rates. The Latin American countries further demand that the developed countries agree to reduce their own tariff levels. Unfortunately, the developed countries have been reluctant to cooperate. The United States, for example, has offered to reduce a high average tariff of 18.4% by only 7%.

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19. That agreement will subject textile and clothing importations to bilaterally negotiated quotas for nearly thirty years.

20. In fact, industrialized countries are demanding another ten to fifteen years.

21. Some proposals call for 10% to be integrated initially, then 25% in the second stage and finally 55% in the last.

22. The Latin American countries nonetheless maintain that this position is unacceptable because they refuse to give concessions to repudiate an agreement that is itself in derogation of GATT.

## 5. Agriculture

Agricultural trade liberalization is the most conflictive issue in the Uruguay Round. This is explainable, in part, by the fact that agricultural policies operate at a cost of \$250 billion in the OECD countries and distort international trade.

The aim of agricultural negotiations is to achieve greater liberalization of trade. This would be accomplished by bringing all measures affecting import access and export competition under strengthened and more operationally effective GATT rules. Thus far, the emphasis has been on reducing border restrictions, internal support measures, export subsidies, and sanitary and phytosanitary barriers and measures. Estimates regarding the liberalization of agricultural trade suggest such a move would bring an additional \$50 billion of export income to the efficient agricultural producing countries during the next decade alone. Unfortunately, the negotiations have been at an impasse since the midterm review; the United States and the Cairns Group are currently pitted against the EC. This standoff presents a particular threat to the Uruguay Round because the future of the Round depends on agreement in this area.

The United States and the Cairns Group have tabled several proposals for agricultural trade reform. They demand a 75% reduction in internal support measures, tariffing of all existing border measures (and their reduction by 75%), and a 90% reduction in all export subsidies, all to be completed within ten years.

The EC, after much deliberation, produced an offer to reduce the aggregate measures of support to the agricultural sector by 30% within ten years.<sup>23</sup> The EC also introduced the concept of re-balancing, a proposal under which the liberalization of trade policies for one product would be compensated by the development of restrictive measures for others.<sup>24</sup>

The EC seems determined to adhere to its re-balancing theories. During the Brussels meeting, the EC, followed by Japan and Korea, rejected a compromise solution presented by the president of the negotiating group. The solution mandated a 30% reduction

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23. See Plaine & Swindler, *Status of the Uruguay Round GATT Negotiations*, Bus. LAW. UPDATE, Mar.-Apr. 1991, at 11.

24. For example, re-balancing would only produce a 15% reduction of agricultural support from the 1986 levels.



from the 1990 levels in the three areas of negotiation during a ten-year period and discarded the re-balancing concept.

The liberalization of agricultural trade is of foremost importance to Latin American countries.<sup>25</sup> Accordingly, Argentina, Brazil, Chile, Colombia, and Uruguay have participated actively in the Cairns Group.<sup>26</sup> The Latin American countries are thus striving for a quick and comprehensive liberalization of agricultural trade policies. In addition, they demand distinctive treatment for developing countries during the transition period, thus allowing them greater flexibility in applying domestic agricultural policies.

Some countries, particularly Peru and Jamaica, are active members of the group of net food importers. The food importing countries demand that the final agreement consider the negative impact that world agricultural reform will have on their economies. In response, they demand that corrective measures be undertaken during the transition period. Prospective measures may include financial assistance, concessional sales, food aid, and the implementation of agricultural development programs.

The efforts of the Secretary General to reach a basic platform on agriculture have not produced any meaningful results. The EC has reaffirmed its position, demanding that other participants lower their expectations. At the February 20, 1991, meeting, Arthur Dunkel stated, "My consultations confirm that participants agree to conduct negotiations to achieve specific binding commitments on each of the following areas: domestic support; market access; export competition; and to reach an agreement on sanitary and phytosanitary issues." He called for technical work to begin immediately to facilitate these negotiations. Because no country directly refuted the statement, their silence may be considered as a tacit approval. Thus, this "agreement" may be viewed as a minor advance; it may represent an EC desire to negotiate.

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25. It is estimated that the liberalization of agricultural trade will raise the international prices of basic food staples 10%-30% depending on the product.

26. In a joint declaration, the countries stated, "For the success of the Uruguay Round and the consequent acceptance of the results of a final package, it is a required condition that adequate results are achieved in this area that lead to a substantial liberalization of trade." See *Declaration of the Countries of Latin America and the Caribbean at the Fifth Latin American Consultation Meeting of Sela on the Uruguay Round of Multilateral Trade Negotiations*, MTN/TNC/W/22, July 23, 1990.

### *B. Normative Areas*

The delegates must resolve a number of normative issues in order for the Uruguay Round to produce adequate and balanced results. Two issues are of crucial importance for Latin America. First, the Round must consider the issue of dumping, including the ancillary issues of subsidies and countervailing measures. Second, the Round must address the debt problems of developing countries.

Although much discussion has taken place on dumping, subsidies and countervailing measures, negotiations have yet to yield an agreement. In fact, there was no draft text for the Brussels meeting. Strong differences between the participants persist. For instance, some countries demand that the practices and instruments of some of the major trading partners be multilateralized. Other participants focus on anti-dumping measures, calling for the development of investigatory mechanisms and strict enforcement of the rules.

Dumping, subsidies and countervailing measures are of particular interest to the Latin American countries because of the proliferation of these measures and their potential abuse. Such measures can be used to restrict legitimate trade flows, thus amounting to a "new type of protectionism."

Also of importance to Latin America is the attempt by the developed countries to initiate negotiations aimed at limiting their rights under Article XVIII(B), which allows them to adopt corrective measures when confronting balance of payments difficulties. Not surprisingly, the Latin American countries maintain that they will not permit a modification of the balance of rights and obligations under the provision.

### *C. New Issues*

The agenda of the Uruguay Round includes three new and controversial issues: TRIPs, TRIMs, and services. Although these issues are discussed in separate negotiating groups, they are closely linked as structural parts of a single, albeit broad, global issue: the redefinition of the domain of the nation-state at the world level, and the corresponding creation and protection of competitive advantages. The developed countries seek the establishment of a multilateral framework that includes all aspects of transnational

activities and all relevant international transactions. It is this issue and its corresponding sub-issues that most clearly reflect the North-South confrontation.

### 1. Trade-Related Intellectual Property Rights (TRIPs)

Technological innovations may provide certain nations with comparative trade advantages. The economic management of ideas, data information, and overall know-how has therefore become an international business of strategic importance. Consequently, the generation, access, and protection of knowledge have emerged as concerns crucial to all nations.

The industrial countries have tabled proposals which would have changed the system of intellectual property rights protection in several fundamental ways. Under one series of proposals, the current system, which is based on national jurisdiction and loose international conventions, like the Berne Convention and the Universal Copyright Convention (UNESCO), would be replaced by an effective multilateral agreement with wide participation. Proposals include (a) the creation of border controls buoyed by effective penalties against transgressions; (b) the development of national standards that safeguard property rights; (c) measures that ensure that intellectual property rights regulations will not act as obstacles to trade; and (d) the extension of international dispute settlement procedures to provide effective sanctions. GATT is preferred to the World Intellectual Property Organization because of its focus on international trade and wide participation.

Under a second series of proposals, intellectual property rights protection would be extended to new areas not adequately addressed by most national systems. The proposals for increased protection are of major concern for the technological leaders. Because technological advances have outpaced the development of intellectual property laws, high-tech products, such as software, semiconductors, and biotechnology, are not effectively protected at the world level. Other proposals would extend the duration of protection or mandate the stringent enforcement of intellectual property rights on a domestic level.

The inclusion of TRIPs in GATT would have serious repercussions for developing countries. Currently, individual countries determine the degree of protection they will afford technological in-

novations. The establishment of an international system for intellectual property rights protection will force developing countries to follow international norms whose objectives may not coincide with their national interests. The introduction of a new international system and the execution of those rights by the technological leaders would mean the dismantling of those national regulations designed to promote and protect domestic industry, an industry whose technological capabilities are still at infancy. As a result, endogenous technological development will be difficult for developing countries. These countries will be forced into growing technologically dependent on the industrial world. This dependence will be compounded by the monopoly it fosters. The cost of acquiring new technology under a monopolistic price setting would impose a significant cost on the developing countries and widen the international economic imbalances. The U.S. International Trade Commission estimates that U.S. industry alone would receive \$43 to \$102 billion in additional income if intellectual property rights were adequately enforced.

Although a draft text for the negotiation of TRIPs was produced for the Brussels meeting, no agreement has been reached on any of the substantive issues, several of which are still outstanding. First, there is much concern over "Gattability;" that is, copyright decisions covering computer programs must be reached. Second, patent law presents many important challenges. For example, decisions must be reached with regard to patentable subject matter and exclusion, the terms of protection, nonvoluntary licensing, and government use. Third, issues revolving around procedural and enforcement mechanisms must be examined. Fourth, there is strong resistance to the protection of undisclosed information and to the extension of the protection afforded to layout designs of integrated circuits. Nevertheless, TRIP negotiations have not progressed since 1987.

Regardless of what agreements are finally reached, one thing is clear: developing countries will demand an adequate transition period. They maintain that such a period is necessary to allow restructuring of their productive capabilities. Some countries have even linked the proposed transition period with those agreed upon for the agriculture and textiles trades.

## 2. Trade-Related Investment Measures (TRIMs)

Developed countries would like to establish an international investment regime. They argue that Third World restrictions on local content, production, sales, exports, equity, and licensing requirements, as well as exchange and remittance restrictions, distort trade and, therefore, should be banned by GATT. A series of proposals have been submitted, designed to curtail these restrictions. These proposals would drastically alter the traditional relationships, which are based on domestic legislation or, in some cases, on bilateral negotiations with transnational corporations. Geneva TRIM negotiations failed to yield an agreement or even a draft text for the Brussels meeting. The developed countries, particularly the United States and Japan, continue to demand the enactment of general restriction prohibitions, a demand that has created much turmoil.

The Latin American countries maintain that sanctions must be doled out on a case-by-case basis. They argue that the objective of the negotiations is to correct trade distortions produced by restrictive investment measures, and that each situation must be individually examined within this context. They therefore maintain that GATT regulations are sufficient.

## 3. Services

Contrary to all reasonable expectations, much progress has been made in the effort to liberalize the \$600 billion per year service trade. In fact, the negotiators presented a draft agreement which might be acceptable to most of the participants. Agreement is possible because negotiators recently resolved two important issues. In a reversal of policy, the United States initially suggested that it would only confer Most Favored Nation (MFN) status on a conditional country-by-country basis.<sup>27</sup> However, the United States later agreed to grant MFN status automatically in any service agreement, provided that there was an accompanying package of specific market-opening agreements.<sup>28</sup> Additionally, there has been major progress with regard to derogations; it was agreed that derogations would be minimal and subject to revision. The United States also determined that the initial derogations will include civil

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27. Plaine & Swindler, *supra* note 23, at 12.

28. *Id.*

aviation and maritime transport. Although other issues are pending, such as an agreement on financial services and the extent of commitments which can be expected from developing countries, agreement is likely because these issues can be resolved with a minimum of political will.

#### *D. Prospects for the Negotiations*

It is difficult to predict the outcome of future efforts and negotiations because of the very ambitious nature of the Uruguay Round and the rapidly changing dynamics of international relations. Still, the possibilities may be categorized into four possible scenarios.

In the first scenario, the Uruguay Round is deemed an utter failure and the negotiating process is postponed. Two circumstances could prompt this situation. First, if the EC refuses to undertake serious negotiations regarding the liberalization of world agricultural trade, talks will undoubtedly be stalled. The Latin American countries, among others, will not negotiate in the absence of clear and ambitious commitments to fundamental agricultural reforms. After four years of unsuccessful negotiations, the patience of Latin American countries is wearing thin; a further delay could prompt the final collapse of the Round. Second, a U.S. Congressional refusal to extend President Bush's "fast-track" authority would cast serious doubts about the feasibility of enacting any final agreements and would reflect poorly upon the commitment of the United States.

The collapse of negotiations would seriously undermine the international trade regime and irretrievably weaken GATT. Such an occurrence would be a mixed blessing for Latin American countries. Latin American agricultural exporters would suffer because they would lose the opportunity to access new markets, while importers would be forced to pay more for their food. Still, with the exception of agriculture, the Latin American region has little to gain from the Uruguay Round. Nevertheless, a collapse of the multilateral trading system would eliminate one of the few defense mechanisms that Latin American countries may employ in their bilateral trade relations with the United States.

A collapse of the Uruguay Round could lead to the establishment of regional trading blocks. Already, many observers argue

that GATT is obsolete.<sup>29</sup> If the Round collapses, Latin American willingness to accept U.S. terms for participation in the Enterprise for the Americas Initiative would be enhanced. Still, despite the general enthusiasm for the new U.S. initiative, a rapid regional embrace of a new trading block would not be assured. After all, many Latin American countries have taken unilateral measures to restructure their economies and reduce trade barriers under the implicit assumption that the developed countries would reward such efforts.

A collapse of the Uruguay Round would be politically devastating. The failure of enterprise negotiations, especially those regarding TRIMs and TRIPs, would undermine the legitimacy of the region's political leaders who are pushing for closer trade relations. Still, as President Bush clearly indicated during his trip to South America in 1990, hemispheric agreements could fill the void left by the collapse of the Uruguay Round. In fact, because of the difficulties encountered in the Uruguay Round, this second option may provide the best opportunity for success.

In the second possible scenario, a minimum trade liberalization package would be adopted. This scenario is likely to occur if negotiators continue to face serious difficulties during the post-Brussels stage. This minimalist agreement would necessarily reflect a recognition that the objectives set for the Uruguay Round were simply too ambitious.<sup>30</sup> Under this scenario, the more conflicting issues would probably not be addressed; settlement would occur in the six or seven areas in which there is currently some basis for consensus. Other issues would be left for a future round of multilateral trade negotiations.

Unfortunately, this quick-fix scheme could seriously prejudice the Latin American countries. Although they probably would have to concede much ground on agricultural trade and in other areas of primary interest, the developed countries would still expect them to compromise on issues such as services and TRIPs.

In the third scenario, the Uruguay Round would be converted into a permanent process of trade negotiations, in which the different trade issues would be settled without the benefit of any partic-

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29. See G. Hufbauer, *Beyond GATT*, FOREIGN POLICY, No. 77, at 64-76 (1989-90); see also J. JACKSON, *RESTRUCTURING THE GATT SYSTEM* (1990).

30. This kind of outcome was already prophesied by the EC during the discussions previous to the restarting of the negotiations of late February, 1991. See South-North Development Monitor, No. 2532, Jan. 29, 1991.

ular time schedules. This scenario, in which decisions would be made on a periodic basis, would be possible because of an agreement adopted at the TNC meeting of February 26, 1991.

This third scenario has some important shortcomings. First, it would be impossible for any country to apply a cost-benefit framework in evaluating the final results of a series of agreements. This situation would certainly harden negotiating positions; each country would be forced to minimize the cost of its commitments on every issue. Second, it would represent an important departure from the Punta del Este Declaration. Under the Declaration, negotiations are supposed to be considered as a single undertaking. Third, the application of deferential treatment for developing countries as mandated by the Punta del Este Declaration would be virtually impossible to effectively evaluate.

In the fourth scenario, the United States Congress would yield to the overwhelming popularity of President Bush, and approve the extension of his "fast-track" authority. This scenario is highly probable because of the increasing possibility that a free trade agreement will be signed with Mexico, and because of the staggering popularity (and attendant political power) currently being enjoyed by the President in the post-Gulf War period. The likelihood of this extension could even be enhanced through concessions by the Bush administration; although U.S. law provides for a two-year extension, the administration might suggest that it use the procedures for a shorter period of time. This probable outcome, without any formal agreement by the TNC, would necessarily impose a clear time framework for the conclusion of the post-Brussels stage of the negotiations.

If the negotiations are to be successfully completed, countries must negotiate pragmatically, realistically, transparently, and in accordance with the clear mandates of the Punta del Este Declaration. Although it is impossible to accurately predict the actual outcome of the Uruguay Round, it is clear that negotiations must continue, and agreements must be signed.