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DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
1	PAPER	CENTRAL AMERICAN ACCESSION TO THE GATT, PAGE 1 ONLY, PARTIAL	1	8/19/1987	B5
2	PAPER	CENTRAL AMERICAN ACCESSION TO THE GATT, P.2-3	2	8/19/1987	B5
3	PAPER	CENTRAL AMERICAN ACCESSION TO THE GATT, P.6, PARTIAL	1	8/19/1987	B5
4	PAPER	CENTRAL AMERICAN ACCESSION TO THE GATT, P 9-11, PARTIAL	3	8/19/1987	B5
5	PAPER	CENTRAL AMERICAN ACCESSION TO THE GATT, P. 12	1	8/19/1987	B5
6	PAPER	SECTION 337 CONSENT ORDER: CERTAIN GARMENT HANGARS, 2 P, PARTIAL	2	8/20/1987	B5
7	PAPER	GSP/HARMONIZED SYSTEM CONVERSION, PAGE 1, PARTIAL	1	8/21/1987	B5

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DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
8	PAPER	URUGUAY ROUND NEGOTIATING GROUP ON GATT ARTICLES: U.S. PAPER ON MODALITIES, P. 1-2, PARTIAL	2	8/24/1987	B5
9	PAPER	URUGUAY ROUND NEGOTIATING GROUP ON GATT ARTICLES: U.S. PAPER ON MODALITIES, P 3	1	8/24/1987	B5

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OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

TPSC

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August 19, 1987

TO : Members of the Trade Policy Staff Committee
FROM : Donald M. Phillips, ^{DM}Chairman
SUBJECT: Central American Accession to the GATT

Attached is TPSC Draft Document 87-127 containing instructions for initial meetings concerning Central American Accession to the GATT. The paper has been reviewed by the TPSC Subcommittees on GATT Affairs and Central America.

Please phone your clearance to Carolyn Frank (395-7210) by 4:00 p.m., Friday, August 21. Substantive questions or comments should be phoned to Ceilia Klein (395-3063).

Attachment

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TRADE POLICY STAFF COMMITTEE

DRAFT Document 87-127

SUBJECT:

Central American Accession to the GATT:
Initial Meetings

SUBMITTED BY:

Office of the United States
Trade Representative

DATE: August 19, 1987

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MTN 4/9/98

CENTRAL AMERICAN ACCESSION TO THE GATT

PROBLEM

The Government of Costa Rica has applied for full accession to the GATT, and the Governments of Guatemala, El Salvador, and Honduras have applied for provisional accession. The USG must develop a position concerning the terms of GATT accession we believe appropriate for these four countries.

PRIVATE SECTOR ADVICE

The Private Sector Advisory Groups (Industry, Agriculture, and Labor) have reviewed Costa Rica's Memorandum of Foreign Trade and the written questions the USG submitted to elicit further information. This advice has been incorporated in the RECOMMENDATIONS below. Further advice will be sought on this accession after our first bilateral meeting. The advice of the private sector on the other three accessions will be sought after these countries have provided further information on their current regimes.

RECOMMENDATIONS

- 1) The USG should meet with Costa Rican officials prior to the initiation of Working Party deliberations in order to begin bilateral negotiations on the terms of Costa Rica's accession to GATT. At this meeting the U.S. delegation should indicate our interest in facilitating Costa Rican GATT accession, within the frame work of ensuring that the Costa Rican trade regime moves towards greater GATT compatibility in the areas outlined below.
- 2) The U.S. delegation should indicate that an important objective of the negotiations from the U.S. perspective is to determine the total effective level of protection afforded by tariffs and non-tariff charges applied to Costa Rican imports, to obtain agreement that these charges will be converted to tariffs, and that these tariffs be bound in the following manner:
 - o Costa Rica should be encouraged to bind its entire tariff schedule at a ceiling rate commensurate with its level of development.
 - o In addition, a portion of its import tariffs should be bound at lower rates on a request basis appropriate to its level of development and in recognition of the benefits it will obtain through GATT membership. These concessions should include, where appropriate, a guarantee of relief from the application of further import charges or non-tariff barriers.
- 3) The U.S. delegation to the initial meeting with Costa Rican officials should make clear the elements of undertakings that Costa Rica will need to make in order to bring its current trade regime into conformity with basic GATT obligations. The elements we have identified are as follows:

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- o Remaining discriminatory taxes and charges on imports: Costa Rica should be encouraged to eliminate non-tariff import charges if they cannot be justified under specific GATT Articles (e.g. Article VIII or XVIII:B), incorporate them in the general tariff schedule and bind them as described above, or generalize their application to domestic production as well. Tariff items bound in Costa Rica's GATT schedule should be exempt from any charges in excess of the bound level of tariff.
- o Subsidies: Costa Rica should commit to notify its subsidies under the provisions of Article XVI. In addition, the U.S. delegation should press for additional information on subsidies not adequately described in the Foreign Trade Memorandum and the written answers, and seek a fuller explanation of Costa Rica's intentions to conform its subsidy practices to Article XVI and to phase-out current subsidy programs that violate its provisions. It should be made clear that the USG considers a number of current Costa Rican subsidies inconsistent with Article XVI, and that we will continue to invoke Article VI in this regard, where appropriate.
- o The operation of state trading entities: Costa Rica should declare that its state-trading operations in the agricultural, cement, fertilizer, and liquor areas are covered by Article XVII of the GATT, and that these entities will be notified and operated in accordance with the provisions of Article XVII. The U.S. delegation should make it clear that we view such entities as "state trading enterprises" within the meaning of Article XVII, and not encompassed by the government procurement exception.
- o The administration of customs valuation practices, licencing requirements, and quantitative restrictions within GATT rules: In order to ensure that Costa Rica maintains its customs valuation system under GATT discipline and maintains a GATT-consistent administration of licencing regulations, it should sign the Customs Valuation and Licensing Codes. Costa Rica should also commit to notify, consult, and negotiate with contracting parties specific GATT Articles (i.e., XII, XVIII, and XIX), concerning quantitative restrictions taken for balance of payments, safeguard, or infant industry purposes.
- o Safeguard, anti-dumping, and anti-subsidy measures: Costa Rica should commit to following the provisions of Article VI in the imposition of barriers against unfair trade practices, and the provisions of Article XIX in safeguard actions.

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- o Foreign exchange conservation practices that affect trade, and other trade measures taken for balance of payments protection purposes: In the Working Party report, Costa Rica should list all current measures taken to defend its balance of payments and foreign currency reserves that effect trade under the appropriate provisions of GATT Articles XII and XVIII, and should commit to consult with the CPs in the Balance of Payments Committee about these and any future trade restrictive measures taken for balance of payments purposes.
 - o Preferential treatment of trade with third countries: Prior to completion of the Working Party deliberations, Costa Rica should declare for the record the ways in which its trade policies vary vis-a-vis its preferential trading partners, so these preferences can be examined by the Contracting Parties. In particular, the USG should indicate that preferential exemption from non-tariff taxes, quantitative restriction, and other non-tariff barriers is not consistent with normal GATT exemptions for regional trading areas. Costa Rica should also notify any preferences other than those already notified in its GATT submissions.
 - o The operation of Free-trade Zones: We should secure more information concerning the operation of the Zones, with particular reference to confirmation that tariffs and other charges are applied if output of Free Zone enterprises is eventually "imported" into Costa Rica.
- 4) The USG should also meet with officials in the Guatemalan, Honduran, and El Salvadoran Governments dealing with their request for provisional GATT accession to offer USG assistance in this effort, and to discuss the following aspects of their request:
- o to encourage them to change their request to full accession;
 - o to outline aspects of GATT obligations that may need to be addressed as the accession negotiations proceed; and
 - o To discuss the scope and timing of the bilateral and multi-lateral phases of GATT accession negotiations.

The U.S. presentation at these discussions should track the points being made with Costa Rican officials, in order that the four countries should accede to the General Agreement with essentially similar obligations.

BACKGROUND

COSTA RICAN ACCESSION

Costa Rica's current and past interest in accession to GATT as a contracting party has been focused less on the benefits and obligations of GATT membership than on its value in U.S.-Costa Rican bilateral trade relations. Costa Rica wants full GATT contracting party status in order to create an international legal obligation with the United States that will activate certain provisions of U.S. countervailing duty law. Specifically, as a full GATT CP, U.S. imports from Costa Rica that enter duty free, but are subject to a U.S. countervailing duty (CVD) investigation, would be eligible for an injury test prior to imposition of CVD duties. Since about three-quarters of U.S. imports from Costa Rica enter duty free as a result of normal tariff treatment, GSP, and CBI provisions, Costa Rica believes that application of the injury test in CVD cases would help avoid imposition of CVD duties on a number of products.

Costa Rica applied for "provisional" accession to GATT in July 1985. Since that time, it has submitted its Foreign Trade Memorandum describing its trade policy and administration (L/6050), and has answered written questions submitted by the GATT Contracting Parties (CPs) its foreign trade regime (L/6185). At the June 16, 1987, meeting of the GATT Council of Representatives, Costa Rica changed its request for provisional GATT accession to a request for full accession. This clears the way for the Working Party established in October 1986 to negotiate the terms of Costa Rica's accession to focus on a Protocol of full accession right from the start. It also ensures that a successful completion of the negotiations will entitle Costa Rican exports to the United States involved in CVD investigations an injury test if the imports normally enter duty free, since only full accession to GATT will satisfy the requirements of U.S. law in this regard.

Elements to be Addressed in the Negotiations

In the examination of the materials supplied by Costa Rica for GATT CP review, as well as information developed by the U.S. Embassy in San Jose and Washington trade agencies, the following aspects of Costa Rica's trade regime appear to be inconsistent with GATT obligations or incorporate an unacceptable level of protection vis-a-vis the trade interests of the United States:

I. Taxes and charges on imports in excess of the tariff duties, that are not applied to domestic products, or are not applied to imports from all countries.

In recent years, Costa Rica has maintained extensive non-tariff border charges on imports, both for protective and for revenue purposes. Customs duties and charges on imports constitute a

significant portion of the Costa Rican Central Government's total revenue, almost one-third over the period 1984-86, or 5.4 percent of the Gross Domestic Product (GDP). Non-tariff import charges from all sources accounted for slightly less than one-fifth of total Government expenditures in this period.

Within the last two years, Costa Rica has greatly reduced the level and scope of import charges, however, for both tariffs and non-tariff elements. Non-tariff charges currently applied exclusively to imports by Costa Rica are as follows:

-- The 3 percent tax on customs value.

This tax has evolved from its original purpose in 1976 to fund library construction into a funding measure for public health and welfare. The tax is imbedded in law and would require legislation to change. According to the World Bank, Costa Rica has agreed to introduce legislation that would exempt final consumer goods from this tax, and in effect, roll it into the agreed import tariff levels for raw materials, inputs, and capital goods. CACM products appear to be exempted, but the status of Panamanian and Dominican Republic imports is uncertain. Costa Rica should be asked to clarify the current status of this tax, the scope of its application, and its relation to the tariff schedule.

-- Taxes of 8 and 10 percent on imported liquors and wines (CACM wines are exempted), and a tax of 10 percent on imported beer.

These taxes are charged on top of all other tariffs and taxes. The proceeds are dedicated to agrarian and municipal development. Unless there exist domestic taxes (so far unreported) on domestic alcoholic production, the taxes are a clear violation of Article III.

- Surcharges levied by the Central Bank to defend foreign exchange reserves.

These levies, stated to be phased out, currently range from 0 percent on consumer goods, 2-12 percent on inputs and capital goods, and either 100 or 150 percent on automobile imports. Costa Rica has stated that the lower rates are applied only to equalize the effective rate of protection, while the exceedingly high rate on automobiles remains an explicit balance of payments measure. These charges are apparently applied to all imports (on about half the tariff lines), without discrimination by origin. The administrative flexibility of this measure has led in the past to its selective application for apparently protective purposes.

It is unclear on what schedule the taxes will be phased out, or that they cannot be reapplied in the future. We should seek commitments on the phase out schedule and on compliance with Article XII and XVIII provisions if reapplied for conservation of exchange reserves in the future. Surcharges applied for other purposes should be justified under specific GATT provisions, or incorporated in the general tariff rate. No surcharges in excess of tariff rates bound in Costa Rica's GATT schedule should be applied unless justified under specific articles

-- Miscellaneous border charges.

The Embassy has noted a number of "minor" border charges, including a stamp tax, a gasoline import tax, consular fees, and a levy on imports by special tax-exempt enterprises that are applied to all imports, regardless of options. The delegation should ask for more specific information on the application of these charges to determine their incidence and GATT-consistency.

Other levies, which Costa Rica claims are applied to domestic production as well as all imports include:

-- the selective consumption levy.

This is, essentially, a luxury tax applied to "non-essential or superfluous" final consumer goods, applied both to imports from all sources (about 55 percent of imports are subject to the levy) and to domestic products. Rates range currently from about 10 to 75 percent depending on "how necessary they are." Rates can be temporarily raised to 100 or 200 percent by the Executive, but the selection of goods taxed is fixed by law. Even at the statutory rate, in combination with import tariffs the total levy on imports can exceed 200 percent. A large number of Government organizations and individuals associated with the government are exempt from the payment of this tax. This tax reportedly supplies roughly 13.5 percent of Government revenue, with about 45 percent coming from imports.

-- 10 percent sales tax.

This tax is applied to the sale of all goods and services, regardless of origin. It is a "general levy," applied to the "value added" or "final price" of articles. For imports, this means it is levied on top of all other import and internal taxes and charges. A wide variety of "essential" consumer goods (e.g., school supplies, some foods, agro-raw materials) and a long list of Governmental entities are exempted.

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GATT Articles III and VIII mandate that non-tariff charges in excess of tariffs that are not related to the cost of customs services that are applied to imports but not to domestic production violate national treatment and are therefore inconsistent with the General Agreement. Such charges that are not addressed during accession negotiations are effectively "grandfathered" for the acceding country, i.e., GATT-legal at the rate applied on the date of accession.

II. Administration of Duty Free Zones

Costa Rica exempts enterprises operating in Free Zones from all tariff and tax charges described above. How (or if) such charges are collected on products eventually destined for sale in Costa Rica is not reported. In addition, there is very little information available to the GATT CPs at this time on how the zones operate to ensure that they do not violate the MFN provisions of the GATT.

III. Customs valuation practices that artificially inflate the dutiable value of the import.

There is no evidence that Costa Rica maintains an artificial valuation system inconsistent with Article VII. Valuation adjustments are made to prevent under or over invoicing by traders, and artificial valuation in trade between related entities. Adherence to the Customs Valuation Code would help to prevent development in the future of GATT-inconsistent valuation practices.

IV. Subsidies

The Costa Rican Government offers an array of export incentives under the auspices of the Export Promotion Law No. 5162 of 22 December 1972, and the law on the Financial Equilibrium of the Public Sector, Decree No. 6955 of 24 February 1984. These incentives are granted to exporters of non-traditional products to markets outside of Central America. Several of these incentives constitute countervailable subsidies within the provisions of GATT Articles VI and XVI.

Costa Rica's submissions fully describe the Tax Credit Certificate Program (CAT), created by the Export Promotion law. However, of the several subsidies included in the Export Contract program (Financial Equilibrium Law) only one is described in detail-- exemption from import duties on imports and machinery for exporters. Other subsidies mentioned in the Financial Equilibrium Law (but not in Costa Rica's GATT submissions) that are available to the Export Contract beneficiaries include: a 100 percent income tax deduction for profits obtained by exporting non-traditional products; exemption from sales taxes for inputs and machinery for

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exported products; special port rates; bank credit with preferential rates; tax rebates; and accelerated depreciation. It is not clear which, if any, of these latter incentives are currently in force.

Another program, CIEX (Certificates for Increasing Exports) provides grants to companies that increase their exports from one year to the next. It has not been funded since 1984, but it has never officially been abolished.

The USG, whose CVD regulations are in full compliance with GATT provisions and with the Subsidies Code, has found three Costa Rican subsidies to be countervailable. These are Tax Credit Certificates (CAT), exemption from import duties on inputs and machinery for exporters, and forgiveness of internal sales tax on inputs for exported products. The other programs outlined above have not been used by companies under U.S. investigation. Therefore, the USG has not made an official determination on whether they are countervailable under U.S. law.

V. The operation of state trading entities, particularly in the agricultural sector.

Costa Rica's GATT submissions indicate that it monopolizes trade in certain agricultural products. A stated aim of GOCR agricultural policy is to increase production in order to achieve self-sufficiency in the domestic production of "basic foodstuffs," and to increase domestic consumption of these products where it is currently insufficient. Other aims include export diversification towards non-traditional agricultural products, import substitution where possible, and income support of the farmers producing these goods.

The full scope of the trading monopoly, which we believe constitutes a state-trading operation within the meaning of GATT Article XVII, is unclear from Costa Rica's responses, but it encompasses, at the very least, trade in wheat, maize, sorghum, rice, and kidney beans. Trade in these products rests exclusively with the National Production Council, which operates in such a way as to stabilize prices. Trade is not "prohibited, but it is likely that price stabilization and import quantity are closely related. Other agricultural products identified as "basic foodstuffs" and that may be state-traded include (under wheat) bread, biscuits, noodles, and pasta; cane sugar and sugar cane products; bovine meat and meat products; milk and milk products; fish and marine products (including sardines, tuna, shrimp, and lobster); and animal and vegetable oils and fats.

Costa Rica also monopolizes the production and distribution (for both domestic production and imports) of all alcoholic beverages through the National Liquor Distillery, which is owned by the National Production Council. Sales prices are set by the Council.

Imports of petroleum are also reserved to State entities, as is trade in cement and fertilizers, and a number of services, including energy, telephone, water, insurance, and banking. There is no evidence that Costa Rica operates any other manufacturing entities or confers industrial trading monopolies that would be covered by GATT Article XVII.

In its GATT submissions, Costa Rica variously declared these entities in conformity with, or not covered by Article XVII, and this issue must be resolved prior to accession if the operation is to be brought under GATT discipline, rather than be "grandfathered." In addition, it will be useful to tie this system into Article XVII, since a GATT tariff concession granted on a state-traded item limits the level of protection permitted to that specified in the concession.

VI. Maintenance and administration of quantitative restrictions

Costa Rica claims it does not currently operate an import licensing system that restricts imports, or quantitative restrictions other than the state trading practices previously mentioned. Costa Rican law permits the imposition of emergency quantitative restrictions for safeguard or balance of payments purposes, or to defend Costa Rica against dumped or subsidized imports. Under the circumstances, Costa Rican adherence to the Licensing Code would be useful as a barrier to future imposition of trade distorting import licensing practices that are not consistent with GATT obligations.

VII. Foreign exchange conservation practices that affect trade.

The Central Bank of Costa Rica has extensive administrative powers to restrict imports during a foreign exchange or balance of payments crisis. These powers include the application of surcharges, multiple exchange rates, prior deposits, import quotas and restrictive import licensing, with the duration of the measure decided by the Central Bank. Of these measures, only prior deposits (10 percent on capital and construction goods, 100 percent on all other goods) and surcharges are currently in effect. Costa Rica does not currently use multiple exchange rates to regulate trade.

Previously, Costa Rica used foreign exchange permit requirements to selectively allocate foreign exchange availability for imports. In recent commitments to the IBRD in the context of an Economic Stabilization loan, Costa Rica has indicated that it will fill foreign exchange requests on a first-come, first-served basis. This should be confirmed with Costa Rica, as well as its plans for reducing the overall level of import deposit requirements.

VIII. Preferential treatment of trade with third countries.

We do not have a good, comprehensive description of Costa Rica's trade policy vis-a-vis the CACM as it relates to non-tariff preferences, and this aspect of the regional agreement needs to be clearly described prior to completion of the accession negotiations. We will also need to examine closely its separate arrangements with Panama, Honduras, and the Dominican Republic, arrangements that are not truly consistent with Costa Rica's CACM commitments. The only measures that Costa Rica has declared to be exempted under the CACM, in addition to tariff-free trade, are exemption from taxes on imported wines and from the 3 percent tax on customs value. It is uncertain if the measures currently applied for balance of payments purposes are applied to preferential trading partners equally with other import supplying countries.

Costa Rica also is a beneficiary of country specific, item specific preferences under the ALADI partial scope agreements. We should ask if Costa Rica receives other than tariff preferences under these arrangements.

IX. Safeguard, anti-dumping, and countervailing duty measures.

The Ministry of Economy is charged with applying additional tariffs as a safeguard measure, or against unfair trade practices, such as dumping and subsidies. Although Costa Rica has stated that its laws in this matter are consistent with Article VI (i.e., the calculation of countervailing charges and determination of injury), this is not evident from the descriptions given in the Foreign Trade Memorandum and in the written responses to CP questions. A World Bank publication states that "high rates of 40 percent on certain goods are levied to counter anti-dumping practices." Costa Rica should commit to applying charges for these purposes in conformity with the provisions of Article VI.

Establishment of Costa Rica's GATT Tariff Concessions: Parameters of the USG Request

Costa Rica's tariff system has undergone substantial rationalization since the early 1980s. Most of this was done in connection with the renegotiation of the Central American Common External Tariff under the auspices of the CACM. Costa Rica, Guatemala, Nicaragua, and El Salvador began phasing in the new tariff in 1986. The new tariff structure abolishes specific rates, unifies the tariff nomenclature in a CCCN -based system, and reduces rates on imports that do not compete with internal production essentially to revenue charges of no more than 10 percent ad valorem (with surcharges maintained on some capital goods to bring down the effective rate of protection on some items). For competing imports, the new tariffs range from a maximum of 30 percent on raw materials, intermediate and capital goods, up to 90-100 percent on finished consumer goods. This restructuring has

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resulted in sharply lower nominal tariff rates, with average rates dropping from over 50 percent to less than 30 percent.

Costa Rica's tariff schedule is divided into three parts. The rates of duty in Part I, covering 55-60 percent of imports or 1800 lines, correspond to the rates agreed to in the new common regional tariff. These rates cannot be changed without the agreement of the Central American Customs and Tariff Council, the Ministerial-level regional body of the CACM that manages the functioning of the tariff regime. Part II, covering about 20 percent of imports, covers sensitive items (e.g., selected textile and paper products), where exact agreement is not currently possible on all items. The nominal tariff rates in this part of the tariff are quite high, ranging from 70-100 percent on most items. CACM countries are still negotiating to unify these rates, and it is not certain how much leeway there is for unilateral change without Tariff Council approval. Part III tariffs are applied to goods for which CACM members prefer to set tariffs independently for balance of payments and revenue purposes. There are 69 goods in this category, including automobiles, petroleum products, and liquors, comprising 20-25 percent of total Costa Rican imports. Costa Rica is free to unilaterally alter these tariffs.

Costa Rica has declared that it cannot unilaterally violate the common CACM tariff so recently negotiated, and that "any schedule of tariff concessions by Costa Rica would have to be approved by the Central American Tariff Council."

Given the ongoing development of a coordinated tariff approach in the Central American region, a ceiling binding on Costa Rican imports that corresponds to the overall level of Costa Rica's development and that did not impinge on Costa Rica's commitments under the common tariff of the CACM would become a base from which most of the trade in the region could be brought into the GATT system. The ceiling rate selected, and eventually negotiated, would have to encompass the nominal rate agreed to within the CACM tariff structure, as well as take into account the other USG objective of incorporating existing non-tariff import taxes into the general GATT tariff schedule. In addition, Costa Rica should be able to make tariff bindings at rates of duty below the ceiling, covering a level of U.S.-Costa Rican trade commensurate with Costa Rica's level of development, and taking into account the reductions already made by Costa Rica in the context of its recent tariff restructuring. Such bindings should be absolute, and not violated by non-tariff charges, now or at a later date.

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PROVISIONAL GATT ACCESSIONS OF GUATEMALA, HONDURAS, AND EL SALVADOR

In April and May 1987, three other Central American countries, Guatemala, Honduras, and El Salvador, applied for provisional accession to the GATT. It is probable that their decision was encouraged by Costa Rica's application, Mexico's accession in August of last year, and by a desire to participate in the Uruguay Round in which participation is limited to CPs and acceding countries. None of these countries appear to fully appreciate the implications of GATT accession, or the practical differences between provisional and full accession. The USG discussions with these countries, at such an early stage of their preparations for GATT accession, should be helpful to their negotiating teams in clarifying the issues that will form the basis of the negotiations on terms of accession.

As a first point, the differences between provisional and full accession need to be discussed, with a view to encouraging a shift to full accession negotiations for the applicant countries (see attached paper). Provisional accession does not secure full rights for the acceding countries since tariff negotiations are delayed, yet the process requires full negotiations for terms of the provisional declaration and a second set of negotiations for the final terms in the protocol, when full accession is completed. Extensions of provisional accession require annual GATT CP approval, a tedious if not difficult process. There is no benefit to the acceding country, even in the area of tariffs, to provisional v.s. full accession, since under full accession, tariff negotiations can easily be delayed until the substantive terms of the protocol have been completed.

Secondly, the nature of the upcoming negotiations, provisional or full, seem a bit fuzzy to the applicants. The USG position in these negotiations will be the basis of whatever terms are eventually negotiated, so it is important to outline early the sorts of things that we normally consider in forming our ultimate negotiating stance. None of the applicants have submitted information for the GATT record, as yet. U.S. Embassy reports and available data indicate that trade policies and procedures in these countries have problems similar to those in Costa Rica, and the sorts of issues we are discussing with Costa Rica will be replicated to a grater or lesser extent in the negotiations with Guatemala, El Salvador, and Honduras. The Central American accession negotiations should be addressed as a group conceptually, given the close inter-relation of their trading regimes through the Central American Common Market (CACM).

Finally, it would be useful to initiate discussion with these countries concerning their proposed timing for the negotiations, and to outline for their negotiators the main outlines that the GATT Working Party and bilateral negotiations will follow.

PROVISIONAL ACCESSION TO THE GENERAL AGREEMENT
ON TARIFFS AND TRADE (GATT)

The General Agreement makes no reference to "provisional" accession, only to accession under the terms of Article XXXIII. The institution of provisional accession developed in the early 1960s to deal with the situation where a country wished to participate in the work of the GATT prior to its ability to complete its accession requirements. John Jackson's reference to provisional accession classifies it as a step on the way to full accession, intended only as a temporary status for a "limited period of time (such as one or two years) pending the completion of negotiations for full membership."¹ He also indicates that a provisional CP would use the time to adjust its trading practices to bring them into conformity with GATT.

BACKGROUND

There are nine references in the Index of the BISD to provisional accession.² In some cases, these countries wished to participate in multilateral trade negotiations, but were not prepared to complete tariff negotiations for full accession. They therefore requested "provisional" accession, granted for a short period of time, during which tariff negotiations would be completed in the context of the larger tariff negotiations of the trade round. In other cases, a request for provisional accession allowed the contracting parties more time to evaluate the applicant's trade regime and develop the terms of the accession finally included in the Protocol.³

Rights and Obligations: The operational differences between full and provisional accession for a contracting party are relatively small. For full accession:

--the new contracting party is entitled to all GATT rights (both tariff bindings and substantive obligations) from all CPs, even if they do not vote in favor of the accession, unless Article XXXV (nonapplication) is invoked;

--the new CP can vote; and

¹. John Jackson, World Trade and the Law of the GATT, 1969, pp. 93-95.

². Argentina, Colombia, Egypt, Iceland, Israel, the Philippines, Switzerland, Tunisia, and Switzerland.

³. There are three cases (Japan, Spain, and Portugal) listed in the BISD Index where the Contracting Parties approved a country's participation in GATT without reference to provisional accession, and full accession followed after a short period of time. The reasons for the delay are similar to those in provisional accession cases.

--although the CPs may review certain aspects of the accession commitments after the negotiations are completed, the new CP's GATT membership is final and is not subject to review.

In the case of provisional accession:

--only those CPs that sign the Declaration apply the GATT to the acceding country;

--the acceding country receives the benefit of GATT concessions granted by other CPs, but has no rights to compensation if the bindings are exceeded;

--provisional CPs may not vote, and their CP status must be regularly extended by the CPs after the initial period of provisional accession.

In all other respects, including the budgetary contribution, full and provisional CPs participate as equals in GATT fora.

Procedures: There are noteworthy similarities and differences in the procedures normally followed by the CPs in their consideration of the nine provisional accessions listed in the BISD Supplements. Similarities include:

--The applicant's foreign trade regime is examined by a working party which forwards a report, recommending approval of provisional accession, to the Contracting Parties.

--The provisional accession is implemented by a Decision of the Contracting Parties, approved by a two-thirds vote, inviting the applicant's participation under terms negotiated terms contained in a document, signed by the applicant, setting them out.

--When the time comes to complete the accession process, the formalities of a full accession are observed, almost without regard for the previous provisional negotiations. Another working party is convened to draft the Protocol of Accession, the tariff negotiations produce a consolidated schedule of concessions, and the Contracting Parties vote to approve the accession, which becomes effective 30 days after its signature by the acceding country.

The procedural differences between the two forms of accession are significant, however:

--Tariffs are not negotiated under provisional accession procedures; that will follow only if full accession is eventually negotiated.

The terms of accession are contained in a Declaration (rather than a Protocol) that must also be signed by other contracting parties if it is to bind them to extend GATT obligations to the applicant. In addition, each extension of provisional accession must also be signed by CPs wishing to implement it.

--The period of provisional accession normally does not exceed two years, and must be extended.⁴

From the point of view of the CPs conducting the negotiations, there are a number of weaknesses to the provisional accession process. First, although it is the norm that countries applying for provisional accession circulate a memorandum of foreign trade and written answers to CPs written questions, the CPs have not always required it. Second, although the working party reports of such negotiations have frequently recorded aspects of the foreign trade regime of the applicant that are inconsistent with GATT obligations, the terms of the Declarations implementing the provisional accessions have not heretofore required any changes or commitments to change that would correct this. It is not clear from the subsequent working party reports on full accession negotiations, or the Protocols they developed, that the CPs ever attempted to require that these lapses be corrected. Third, the reports of "provisional" working parties have been, in general, briefer and less detailed than full accession WP reports. It is unclear if this reflects less rigorous deliberations in "provisional" working parties.

POINTS TO BE ADDRESSED

1. Although the broad outlines of the reasons for and the mechanics of the provisional accession process are reasonably standard, each provisional accession, like full accessions, has had unique characteristics and has been more, or less, elaborate depending on the circumstances that have compelled the accession request.

2. A "provisional" working party covers much the same issues as a full accession working party, and full opportunity is available to identify problems in the acceding country's trade regime.

3. The standard terms of provisional accession, contained in the Declaration, embody a "grandfather clause" like those in Protocols of full accession. It appears, however, that no attempt is made at the time of provisional accession to extract

4. Tunisia has the dubious distinction of the longest series of extensions of the Declaration of provisional accession, 17 times since 1960. Most applicants require only two or three extensions before completing tariff negotiations and acceding fully.

commitments to changes in the applicant's trading regime. The cut off point for the "grandfather" clause contained in the Protocol ignores the many years of provisional application.

4. None of the Declarations contained in the BISD Supplements contain substantive commitments as can often be found in Protocols of full accession. One Declaration contained an exemption, however, and it is unclear if there is anything to prevent commitments from being included in the Declaration if the CPs wish to do so.

5. A provisional accession typically has lasted about 5 years and has needed to be extended 2-3 times after an initial two year period.

6. Comparisons of the provisional and final accession working party reports of the nine countries listed in the BISD Index does not indicate that, in practice as opposed to theory, much emphasis was placed on using the provisional period to improve the consistency of the foreign trade regime of the applicant country to the GATT. Indeed, in practical terms, most countries that acceded by the provisional route appear to have received less thorough scrutiny of their trade regimes and to make fewer commitments to bring their regimes into conformity with GATT than do countries that fully accede directly.

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

TPSC

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August 20, 1987

TO : Members of the Trade Policy Staff Committee
FROM : Donald M. Phillips^{DMP}, Chairman
SUBJECT: Section 337 Consent Order

Attached is TPSC Draft Document 87-128 concerning the section 337 consent order in certain garment hangers. The paper has been reviewed and approved by the TPSC Subcommittee on Section 337.

Please phone your clearance to Carolyn Frank (395-7210) by close-of-business, Tuesday, August 25. Substantive questions or comments should be phoned to Warren Maruyama (395-6800).

Attachment

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TRADE POLICY STAFF COMMITTEE

DRAFT Document 87-128

SUBJECT:

Section 337 Consent Order:
Certain Garment Hangers

SUBMITTED BY:

TPSC Subcommittee on Section 337

DATE: August 20, 1987

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MTB 4/17/88

CC 11/9/00

Issue

Whether the President should take action to approve or disapprove a consent order issued by the U.S. International Trade Commission (Commission) in investigation No. 337-TA-255, Certain Garment Hangers.

Recommendation

The President should take no action to approve or disapprove the consent order issued in this investigation, thus allowing the order to go into effect.

Private Sector Advice

Although we received no direct comments from the private sector, the U.S. firms involved in the section 337 investigation support the issuance of the consent order.

Background

On September 23, 1986, the Commission instituted an investigation into the following alleged unfair acts: (1) infringement of claims of four U.S. patents owned by complainant Batts, Inc., of Zeeland Michigan; and (2) misappropriation of trade secrets. The Commission named nine respondents in its notice of investigation, 51 Fed. Reg. 32,973 including Kaung Kai Industrial Co., Ltd. of Taiwan.

The product that is the subject of the patents and trade secrets at issue is a clip-type garment hanger used primarily for skirts and slacks. Kaung Kai manufactures garment hangers and imports them into the United States. There is a manufacturing license between Batts and Kaung Kai but the license requires Kaung Kai to produce solely for Batts or Batts' customers. It is alleged that the Kaung Kai hangers infringe Batts' patents.

The ITC consent order prohibits Kaung Kai from "participating in any way in the importation into and/or sale in the United States of any garment hanger which infringe[s] any of the claims of U.S. Letters Patents 3,698,607; 3,767,092; 4,197,274; and 4,123,864." In addition Kaung Kai may not induce or contribute to the infringement of these patents or participated in the importation into and sale in the United States of garment hangers which are manufactured through means of confidential business or trade secret information disclosed to Kaung Kai by complainant Batts.

Discussion

Pursuant to Section 337(g), the Commission must transmit an order to the President for review. The President has 60 days to determine whether to disapprove the order for policy reasons.

These policy reasons may include, inter alia, the effect of the order on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive items in the United States, and the effect of the order on U.S. consumers. See 19 U.S.C. 1337; S. Rep. No. 1298, 2d Sess., at 198-99 (1974).

The consent order issued in this investigation appears to be fully consistent with the public interest. Termination of this investigation with respect to this respondent is consistent with the public interest because it will avoid unnecessary expenditure of resources in continued litigation against this respondent. There is no evidence that issuance of this consent order will have an adverse effect on the public health or welfare. This type of skirt or slacks hanger is not essential to public health or welfare and there are numerous sources and types of garment hangers that compete with the patented product. Accordingly, we recommend that the consent order be permitted to go into effect.

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

TPSC

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August 21, 1987

TO : Members of the Trade Policy Staff Committee
FROM : Donald M. Phillips, ^{*DM*}Chairman
SUBJECT: GSP Conversion to the Harmonized System

Attached is TPSC Draft Document 87-129 concerning the conversion of the GSP to the Harmonized System. The attachments to the paper have been reviewed and approved by the TPSC Subcommittee on GSP. The attachments to the paper will be supplied upon request.

Please phone your clearance to Carolyn Frank (395-7210) by close-of-business, Wednesday, August 26. Substantive questions or comments should be phoned to Jon Huenemann (395-6971).

Attachment

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TRADE POLICY STAFF COMMITTEE

DRAFT Document 87-129

SUBJECT:

GSP/Harmonized System Conversion

SUBMITTED BY:

Office of the United States
Trade Representative

DATE: August 21, 1987

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MSH
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LS 11/4/00

Issue

The United States expects to implement the new Harmonized System tariff nomenclature (HS) on January 1, 1988. As a result, those items currently eligible for the GSP program (about 3,000) must be converted to the HS. This paper requests approval of the attached proposed conversion of the GSP program.

Recommendation

The TPSC approve the attached conversion of the GSP program to the HS and direct the U.S. International Trade Commission (USITC) to incorporate the attached conversion in the HS tariff schedule.

Private Sector Advice

As part of the HS conversion process, three Federal Register notices (December 8, 1986, March 6, 1987 and April 15, 1987) were published soliciting public comment on all aspects of the conversion of the GSP program. The total comment period extended from December 8 of last year through June 3 of this year. The GSP Subcommittee reviewed all those comments received.

Background

The U.S., the developed and a number of developing countries are expected to implement their respective HS tariff schedules by January 1, 1988. As part of this process, the GSP program must be converted to the new HS.

GSP eligible articles are currently identified at the 5-digit TSUS level and under the HS nomenclature will be identified at the 8-digit level. Furthermore, under the current TSUS there are about 7,000 legal tariff lines of which approximately 3,000 are GSP eligible. Under the proposed HS, there are about 9,000 legal tariff lines of which approximately 4,000 are GSP eligible. Even though the number of legal lines has expanded under the HS, the proposed product coverage of the GSP program under the HS is virtually the same as is the case under the current TSUS.

As approved in TPSC document 86-91, the overriding policy in developing the conversion of the GSP program has been "trade neutrality." In other words, within the limits of sound nomenclature principles, products that have been GSP eligible should remain eligible and products that have not been GSP eligible should remain ineligible. In addition, tariff line "break-outs" were kept to a minimum so as not to proliferate the number of new subheadings in the HS.

USTR in cooperation with the ITC and the Department of Agriculture prepared an initial conversion of TSUS GSP eligible articles to the HS tariff schedule. This initial conversion was published as part of the draft October 1986 HS tariff schedule for public comment. As part of this process, USTR published three Federal

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Register notices, beginning on December 8, 1986, soliciting private sector and beneficiary country comments on the October proposal. The initial December 8 notice solicited comments primarily on GSP product coverage. The other two Federal Register notices solicited comments on beneficiary country eligibility with respect to GSP eligible products and a proposed conversion of the additions to the list of GSP eligible articles that resulted from of the 1986 Annual Review of the GSP program. The public comment period ended on June 3 and the GSP Subcommittee has reviewed all the comments received as well as the ITC advice provided on June 13 prior to preparing the attached documents which convert the GSP program to the HS.

Description of Attached Documents

Attachment A is the list of subheadings in the HS that are proposed for GSP eligibility. As was mentioned in TPSC document 86-91, about 90 percent of currently GSP eligible TSUS categories have become part of new HS subheadings that are comprised entirely of items that were GSP eligible or MFN-duty free under the TSUS. The remaining 10 percent involved so-called "mixed" lines where both GSP eligible and ineligible trade was included in a single HS subheading. This situation was simply unavoidable due to nomenclature changes. Prior to making decisions on these mixed lines, the ITC advice was reviewed as well as the relevant public comments to ensure to the extent possible a trade neutral conversion.

As was mentioned above, the number of legal tariff lines that are proposed for GSP eligibility has expanded from about 3,000 to about 4,000. However, this was expected since the entire HS tariff schedule will have about 9,000 legal tariff lines as compared to the 7,000 in the current TSUS. In any case, the actual product and trade coverage of the GSP program will remain virtually same in the HS.

Attachment B is based on ITC advice and is the proposed list of HS subheadings where there is no like or directly competitive U.S. production. Under the law (Section 504(d) of the Trade Act of 1974, as amended), the percentage competitive need limit does not apply where there is no like or directly competitive U.S. production. Under the current TSUS, there are 220 5-digit tariff lines where it has been determined there is no like or directly competitive U.S. production. However, under the HS, the number of HS subheadings where it has been determined there is no like or directly competitive U.S. production has been reduced to about 110. This resulted largely from the structure of the HS nomenclature which incorporated these items under HS subheadings where there is like or directly competitive U.S. production. Traditionally the trade in these articles has been very small.

Attachment C is the list of HS subheadings/countries which are proposed as subject to the reduced competitive need limits (i.e.,

25% and \$28 million). As part of the General Review of the GSP program which was completed on January 2, the President determined nine countries "sufficiently competitive" on specific GSP eligible articles in the current TSUS. The law, as a result, required him to reduce the competitive need limits from the traditional limits of 50% and an indexed dollar figure which was \$71.4 million in 1986 to the limits mentioned above. These determinations have to be converted to the HS.

A basic rule was adopted in order to convert these determinations in a manner that was both equitable and defensible from the standpoint of the private sector and beneficiary countries, particularly when considering the hundreds of items that were affected by these decisions. Where 50% or more of a country's 1986 trade in an HS subheading is subject to the reduced competitive need limits in the current TSUS category(s) allocated to that HS subheading, that country should be subject to the reduced competitive need limits on that HS subheading. On the other hand, where less than 50% of country's 1986 trade in an HS subheading is subject to the reduced competitive need limits in the current TSUS category(s) allocated to that HS subheading, that country should not be subject to reduced competitive need limits on that HS subheading.

Attachment D lists those HS subheadings/countries that are proposed for competitive need waivers. As part of the General Review of the GSP program, the President granted competitive need waivers to 10 countries on a number of GSP eligible items. These waivers need to be converted to the HS. A Federal Register notice was published on March 6 soliciting public comments on proposals to convert those waivers previously granted by the President. After reviewing the public comments as well as the ITC advice, Attachment D was prepared by the GSP Subcommittee.

Under the current TSUS, about 95 items were granted waivers. However, the number of HS subheadings proposed for waiver has been unavoidably expanded to about 125, although the actual product coverage is virtually the same. As was discussed previously, this was the expected outcome when considering the fact that the HS contains nearly 2,000 more legal tariff lines than the current TSUS.

Attachment E lists those HS subheadings/countries that have exceeded the statutory competitive need limits based on 1986 trade. This list incorporates those subheadings/countries that exceeded the reduced competitive need limits in Attachment C as well as the determinations of where there is no like or directly competitive U.S. production listed in Attachment B. Under the law, countries/products must be excluded from receiving GSP duty-free treatment if they exceed the competitive need limits.

As a result of the conversion to the HS, the value of competitive

need exclusions from GSP eligibility has been reduced from about \$18 billion to about \$12 billion based on 1986 U.S. imports. This results in large part from HS nomenclature changes. However, virtually all those country/items which are excluded from GSP eligibility under the current TSUS that are not listed on this Attachment will be listed on Attachment G and thus will continue to be denied GSP eligibility.

Attachment F lists those HS subheadings/countries that are eligible for the de minimis waiver. In addition, it lists those items/countries where it is proposed the de minimis waiver be denied, as indicated by an "*." Under the law, when total U.S. imports are below an indexed dollar figure, which was \$8.4 million in 1986, and a beneficiary country exceeds the percentage competitive need limit, the President may waive the percentage competitive need limit.

Under the current TSUS, the President has denied the de minimis waiver on a number of items for particular countries. These exclusions from GSP eligibility need to be converted to the HS. Where feasible, we have carried over these denials into the HS and they are included among the "*" items. However, in some instances, due to nomenclature changes, items that were denied the de minimis waiver in the current TSUS do not show up on this list. But, the denial of GSP duty-free treatment for these items will be continued under the HS because they are included in the items listed under Attachment G.

The value of trade eligible for the de minimis waiver has increased from about \$280 million in the TSUS to \$450 million in the HS. This result stems from changes in tariff nomenclature.

Attachment G lists those HS subheadings/countries where it is recommended GSP eligibility be denied by the President through the use of his plenary authority under Section 504(a) of the Trade Act of 1974, as amended. This list incorporates all those articles/countries that are currently excluded from GSP eligibility under the TSUS for various reasons, but may not be listed on Attachment E (competitive need list) or F (de minimis list) as excluded from GSP eligibility under the HS. As a result, if the President did not use his authority to deny GSP eligibility on these subheadings for the listed countries, products that have not been eligible for GSP would become eligible when the HS is implemented. Therefore, the President's use of his authority to deny GSP eligibility on these items/countries is in keeping with the TPSC approved "trade neutrality" policy approach to the conversion.

The same basic rule that was applied to those items listed in Attachment C, the reduced competitive need limit HS subheadings, was applied to these subheadings. In other words, where more than 50% of a country's 1986 trade in an HS subheading was, for

any reason, denied GSP eligibility in the TSUS items allocated to that HS subheading, the country would be denied GSP eligibility for that HS subheading. Where less than 50% of a country's 1986 trade in an HS subheading was, for any reason, denied GSP eligibility in the TSUS items allocated to that HS subheading, the country would not be denied GSP eligibility with respect to that HS subheading. In those cases where an HS subheading contained items that had been subject to petition graduation (i.e., a specific request for removal of the product/country's GSP eligibility by U.S. industry in a past GSP Annual Review), care was taken to ensure that all of the trade which is currently "graduated" will remain GSP ineligible for the respective country.

The following explains the meaning of the various "flags," or indicators, that appear next to the HS subheadings and TSUS items in Attachment G:

When a "flag" exists parallel to the HS subheading

D = This subheading also appears on the HS de minimis list (Attachment F).

C = This subheadings also appears on the HS competitive need exclusion list (Attachment E).

When a "flag" exists parallel to the TSUS item

R = This item/country is currently removed from GSP eligibility as a result of the application of the reduced competitive need limits.

1 = This item/country is currently removed from GSP eligibility as a result of a specific request (i.e., a petition) by U.S. industry.

2 = This item/country is currently removed from GSP eligibility as a result of non-redesignation.

3 = This country is currently removed from GSP eligibility with respect to this item as a result of being "graduated" when the product was originally added to the GSP program.

D = This item/country is currently GSP ineligible as a result of the denial of the de minimis waiver.

C = This item/country is currently GSP ineligible as a result of exceeding competitive need limits.

Attachment H lists all those HS subheadings which are proposed for "break-outs." The proposed break-outs were developed for the purpose of carrying out the conversion to the HS in as trade neutral a manner as possible. The countries that are excluded

from GSP eligibility with respect to the specific subheadings, as well as the reasons they are excluded, are also provided. The break-outs and country eligibility decisions proposed in this Attachment supersede the other Attachments where relevant.

Dsk

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

UNCLASSIFIED with
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August 24, 1987

TO : Members of the Trade Policy Staff Committee
FROM : Donald M. Phillips, ^{DM}Chairman
SUBJECT: Uruguay Round Negotiating Group
on GATT Articles

Attached is TPSC Draft Document 87-130 containing a U.S. Paper on Modalities for the Uruguay Round Negotiating Group on GATT Articles. The paper has been reviewed and approved by the TPSC Subcommittee on GATT Affairs.

Please phone your clearance to Carolyn Frank (395-7210) by close-of-business, Thursday, September 3. Substantive questions or comments should be phoned to Wendy Silberman (377-3681).

Attachment

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TRADE POLICY STAFF COMMITTEE

DRAFT Document 87-130

SUBJECT:

Uruguay Round Negotiating Group
on GATT Articles:
U.S. Paper on Modalities

SUBMITTED BY:

Department of Commerce

DATE: August 24, 1987

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06.49/00

ISSUE

At the May meeting of the Negotiating Group on GATT Articles the U.S. delegation stated its intention to table a paper on the organization of the group's work for discussion at the September meeting.

RECOMMENDATION

The U.S. delegation should table the attached paper prior to the September 14-15 meeting of the GATT Articles Negotiating Group.

BACKGROUND

At the first two meetings of the Negotiating Group on GATT Articles, delegations requested reviews of specific GATT Articles and provided brief explanations on why these Articles merited review. We expect a similar procedure to be followed at the upcoming meetings of the group through 1987, with more detailed discussion on certain GATT Articles.

In the U.S. view, the discussions at these meetings could have been more productive if the group had agreed to organize its work in a more systematic manner. A U.S. statement at the May meeting to this effect was met with interest by the Chairman, Secretariat and certain delegations, but with strong resistance from India. The U.S. del stated that the U.S. would table a paper on how the group should organize its work prior to the September 14-15 meeting of the Negotiating Group.

The purpose of the attached proposal is to provide a structure to the work of the group, both during the review and the negotiation phases. The U.S. objective for the review process is to have, by the end of 1987, an agreed-upon list of articles which would be subject to negotiation. To achieve this, we propose that the Secretariat put together a list of articles that have been tabled and discussed by the participants during 1987. This list would serve as the list of articles to be negotiated. By having the Secretariat develop the list we would avoid a possible confrontation with certain developing countries on which articles are ripe for negotiation and which are not. This would also be an automatic process, which would ensure that the group would be ready to enter the negotiating phase at the beginning of 1988.

During the negotiation phase we propose that the Chairman circulate an agenda prior to each meeting listing which articles would be negotiated at that meeting. The Chairman would do this in consultation with interested contracting parties. Those articles on the agenda would be allotted adequate time for negotiation during the meeting.

Of course, we envision a scenario whereby most of the drafting work would be done on an informal basis with interested contracting parties on the fringes of the formal meetings. Proposals emanating from these informal meetings would then be tabled and discussed at the formal meetings. The above proposal in no way prevents this

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from happening. It purposely does not mention the possibility of holding informal meetings to avoid an expected debate with the hardline developing countries over our "right" to hold these type of meetings outside the rubric of the formal meetings.

The objective of the discussions at the formal meeting would be to develop texts with bracketed language, as necessary, which would be revisited at a later stage of the negotiations. This would allow countries to view the proposed changes as a package (and possibly in the broader context of the Uruguay Round negotiations) to determine whether these changes were in their interest.

Potential Problems

India, perhaps with support from other hardline LDCs, is likely to argue that our proposal, specifically with regard to the review process, is inconsistent with the language of the negotiating plan. They may contend that an article is not eligible for review by the virtue of its being tabled by a participant. Rather, they may insist that the list of Articles tabled must be narrowed down to a sub-list of articles which are appropriate for negotiation.

Our position is that the review entails three elements. First, the article must be tabled by a participant; second, the country tabling the article must provide an explanation as to why the article should be reviewed and; third, countries have the opportunity to discuss the article. In our view, as long as an article has met these three criteria, it is eligible for negotiation.

Another potential problem which may surface regards the word "issue" in the negotiating phase of the negotiating plan. The plan states that texts should be based on the issues identified for negotiation. It is conceivable that the argument could be made that if an issue relating to an article was not identified for negotiation during the review phase, it would be "out of order" to raise it during the negotiating phase. The best way for us to prevent this type of argument from being raised at a later date would be to revise the language of the draft Chairman's Understanding (copy attached) to explicitly refer to the ability of participants to raise additional issues in the course of negotiations even if they were not raised in the review stage.

The U.S. should circulate this paper in Geneva prior to the September 14-15 meeting. We should actively seek support from the key developed and developing countries, as well as from the Chairman and Secretariat, and be prepared to make modifications, as necessary to secure their support.

PROPOSAL FOR ORGANIZATION OF WORK
FOR THE URUGUAY ROUND NEGOTIATING GROUP ON GATT ARTICLES

The delegation of the United States proposes that the work of the Uruguay Round Negotiating Group on GATT Articles be organized in the following manner in accordance with its negotiating plan:

The initial phase of the group's negotiating plan consists of "Requests by interested contracting parties for review of GATT Articles, provisions and disciplines, indicating why they consider that these should be the subject of negotiations. Factual background papers by the secretariat on these Articles, provisions and disciplines. Review, following requests by participants, of GATT Articles, provisions and disciplines, with a view to determining issues on which negotiations are appropriate."

1. To fulfill the mandate of the Negotiating Group's initial phase, the United States proposes that, during the remaining meetings in 1987, contracting parties continue to table requests for review of GATT Articles of interest to them, providing explanations of why these articles should be subject to negotiations.

2. At the Negotiating Group's last meeting to be held in 1987, the Secretariat will develop a list of articles that have been tabled and discussed during 1987. This list will constitute the articles which will be subject to negotiations, beginning at the group's first meeting in 1988.

3. Contracting parties will be able to add articles to this list during the group's negotiating phase in accordance with the Chairman's Understanding.

The subsequent negotiating process of the Negotiating Group's negotiating plan will consist of "Tabling of specific texts by contracting parties on issues so identified for negotiation. Review and analysis of these proposals" and; "Negotiations on the basis established."

To fulfill the mandate of the Negotiating Group's subsequent negotiating process, the United States proposes that, prior to each meeting, the Chairman circulate an agenda listing articles to be negotiated during that meeting, based on consultations with interested contracting parties. Each article on the agenda should be accorded adequate time for negotiation.

23.7.87
DCII/ajf

CALLED FOR PICK-UP
DATE:
TIME:
BY:

GATT ARTICLES GROUP - CHAIRMAN'S UNDERSTANDING

DRAFT

Some participants have reserved the right to request the review by this Group, after the Initial Phase, of GATT Articles which are initially being addressed by other Groups. Articles which have been mentioned in this connection include, for example, Articles VI, XI, XIII and XVI. Other participants have pointed out that, given the impossibility of predicting all issues which may arise during the Uruguay Round, or of appreciating possible inter-relationships between Articles, it would be undesirable to foreclose, at this stage in the Negotiations, the possibility of reviewing any Article, ^{or issue.} provision. It is therefore my understanding that it will remain open to the Group to continue the review of GATT Articles, provisions and disciplines during the Subsequent Negotiating Process. ✓

CALLLED FOR PICK-UP
DATE: 8/6
TIME: 10:30
BY: MA

TELECOPIED TO USTR/WASH
LOG # _____
DATE: 8-6-87
TO: Doug Munkie / Cecilia Aker
FROM: Dick Mattheisen
SUBJ: _____
#PAGES: 1