

PANEL ONE: GENERAL DISCUSSION

Mr. Sohn

Thank you very much for those remarks, because they show us something very important. Congress is playing a crucial role in this whole process and the negotiators for the United States dealing with those problems should always remember that. I would suggest that there seems to be agreement, at least in principle, that the purpose of this round of negotiations, particularly with respect to services, is progressive liberalization. The examples that were given indicate that countries are liberalizing slightly; for instance, Canada which has liberalized slightly its regulation of the insurance industry. Every one of those steps might be small but they add up if you add them for some hundred countries of the world that are involved. Such liberalization always impacts favorably on somebody in the United States, and that is why the importance is on doing it in the multilateral fashion, because this way if you make a concession to one country, that concession often means a concession to everybody on the subject. The result is a liberalization all around. In the long run, Georgia in particular benefits very much from liberalization abroad because the British may have offered something, to the Polish Government, for example, which Georgia also provides. There is liberalization throughout because the negotiations have not only a reciprocal effect but a multilateral one.

Mr. Kakabadse

We in the GATT Secretariat are particularly interested in the mechanics of these negotiations. There is a general willingness that was clearly expressed at Montreal to reach a framework agreement and to agree on a number of sectors for liberalization before the end of the round if possible, but more probably afterwards.

How will this come about? What has to be done? This is a further success of the statement made at Montreal by the Ministers, who specified a detailed timetable for negotiations when they resume. Let us assume that the service negotiations as in the other areas will resume after the TNC meeting in April. What does this time table consist of? First, the Ministers instructed the GATT Secretariat to draw up a reference list of sectors that could help to limit the universe of sectors for negotiation. Participants were invited before the summer of this year to come up with what was called an indicative list of

sectors, sectors that countries would either like to include in the process of liberalization or perhaps exclude. Also, Ministers said the rules and principles of a framework should be assembled in such a way as to allow a draft to be completed by the end of the Round. At the same time, and this is more ambitious, the concept will not be agreed upon until a process of sectoral testing has taken place. For example, how do concepts such as national treatment, non-discrimination, most favored nation treatment or transparency apply to various sectors? What are the implications of these concepts for various sectors? This work will be taken up simultaneously when these indicative lists are submitted, and all that will take place this year. The mechanics of how this process will go ahead have to be decided in the group negotiating on services. So far over the two years, the group has been talking in general terms of what could be the context of a framework agreement.

One of the problems is that because trade in services is different from trade in goods, many of the familiar GATT concepts are not really directly transferable from the latter context to the former, and the services negotiations are technically outside the GATT. The services negotiations are a separate group and are parallel to the group on negotiations on goods, although GATT procedures apply to the services negotiations, they take place in the same framework as the Uruguay Round, and the group on negotiations and services also reports to the body which carries out the negotiations, the Trade Negotiations Committee ("TNC"). The point is that transferring or translating a general willingness into the kind of provisions that are going to be necessary to make a framework meaningful and to make at least some sectoral liberalization take place requires a great deal of work.

Mr. Hunnicutt

Just a brief comment or response to several of the other speakers. The discussions by Mr. Barfield, Congressman Jenkins and Professor Sohn of the accretion of trade triggered issues of unilateral action in my mind, particularly Mr. Barfield's discussion of 301 as opposed to Congressman Jenkins's discussion. It is important to keep some historical perspective. I am certainly not an advocate of unilateral action in the trade field when it can be avoided and when we can take actions in concert. But it is useful to remember that the first dumping actions, or countervailing duty actions, in particular, that were taken were not taken under international agreements. They were taken by countries protecting their tariff schedules. Eventually as

these actions became a large enough distortion to international trade, international agreements were reached as to how and when they could be used. The same thing can happen in other areas such as services. Unilateral actions are not necessarily pretty or nice, but they can lead to international reactions that can allow multilateral agreements to result which eventually allow fair, rule-of-law-oriented procedures to govern the disagreements.

Mr. Barfield

I think we are playing a dangerous game. The way that the Super 301 is currently structured, it almost forces political leaders in other countries to defy you if they have the strength, because it is very difficult for an executive of a developing country to be perceived as knuckling under to the United States. If we were to go against the Brazilian President or if we keep beating on the Koreans you will have a reaction. Rather fragile democratic processes exist in many countries. You are already beginning to see that kind of reaction. It is ultimately an irresponsible act on our part for reasons that I went into before, because we are talking about what I consider not very large issues in relation to ultimate reasons for trade flows. It is a particularly irresponsible act on the part of the United States to do what I think we are inevitably going to do because Ambassador Hills considers herself in a trap. I would hope, and Mr. Jenkins has said he read some of my pieces on the issue, that the Administration would follow suggestions that the President use the great deal of discretion granted him in Section 301. The President should now announce publicly that he will use the Escape Clause at the end of the negotiating process if it is in the United States' national interest, and that he will not be bound by the timetable. Alternatively, he could publish the entire list of trade barriers. We now currently publish a piece of trash called Trade Estimates Barriers. It is a piece of nonsense that purports to quantify the impact of individual trade barriers. It is based on neither an economic nor a statistical foundation and would not hold up in any reasonable court of law in which you had to bring evidence. The President could, however, publish the entire list and say, "Okay, here it is guys. You have asked me to talk about trade barriers. However, I can not quantify it." The point is that if you go through the process as you have it now, you put other political leaders, particularly in developing countries, in a very awkward position. It could not have come at a worse time as we go into the most detailed discussions in the GATT Round where the United States is supposedly leading a multinational negotiation. It is

like saying, "Okay guys, these are my marbles and this is the way we are going to play the game, or I'll take my marbles and go home."

Mr. Jenkins

I am in agreement with all the panel that the potential for a decrease in the U.S. trade deficit would be very small as far as eliminating in the short run what we perceive to be unfair trade barriers. Most of the problem is in the field of macro-economics. Our deficit is a problem which I acknowledge as the single most important problem that the nation continues to face. Having said that, and also being a member of the Budget Committee, and working under the constraints that there can be no increased revenues, and working under the constraints that 300 billion dollars is as low as we can go in defense spending if we are going to continue to defend the free world, and that we can not cut any social security, which takes up another 280 billion dollars, there is little likelihood that we are going to do better than meeting Gramm Rudman targets for the next four years. If we meet those targets, our current account balance would probably decrease by 50 to 60 billion dollars, and inflation along with interest rates ought to decrease during that period of time. We shall continue to work in that vein, but I am not so naive as to believe that we are necessarily going to meet all of those targets.

The importance of the elimination of trade barriers, it appears to me, is not whether or not it helps us temporarily by 10%, but that it gives the opportunities for expanded trade and growth in the future, rather than any temporary assistance. Therefore, any action including the Super 301, which, incidentally, Congress does not look upon as Super 301, but rather as their weak 301, that we can take without destroying or permanently harming the world trade system, obviously Congress would push in that direction.

Mr. Jonathan Aronson

This resembles the debates about arms control that centered around brinkmanship. If the system does not work, then there is a giant problem. It is like speeding through a series of red lights. You might make it through any one of them, but the chances of successfully traversing say ten busy intersections in a row without a major accident is slim.

Congressman Jenkins and foreign countries face similar pressures. Recently, I visited with a member of the Japanese Diet for a rural district. He was talking positively about liberalizing Japanese trade barriers when we were interrupted by a group of his constituents

who happened to be cattlemen. My host asked me to excuse him for a moment, turned to his constituents and started to lambast me, promising to protect them from unfair U.S. demands to open the Japanese beef market further. The farmers left happy; we went on talking about freer trade.

What happens if Super 301 locks the United States in? If it forces the United States to act precipitously, might it provoke a trade war accidentally?

Mr. Jenkins

First, under the Super 301 action, you have so many outs that I do not want to even count them all. You have three years of negotiations to try to get the barriers removed or reduced, and at the end the President can say, "Well I just don't want to take any action anyway, it's not in the best interest of the nation", and walk away from it. From the Congressional viewpoint that does not really sound very strong. I guess it is not very strong as compared to the previous 301 proposal that was for the House and was watered down at the request of the Administration to the present 301 definition. I grant you the argument made by Mr. Barfield and a host of others, that it appears that you are singling out someone looking like the big, tough country, demanding that all of these things occur and that it is going to alienate a variety of countries for no cause; you can do it in a better way, a different way. Well, that is what the Congress has been waiting for, that it be done in a different way. How long must we wait? The House has turned over 50% in the last eight years. Maybe there is a different way. We are open to suggestions, but when the Administration comes forth on this issue, they will say, "If y'all would just balance the budget, that'll solve all the problems." The next day they will ask for a 10% increase in foreign assistance and a 15% increase in the defense budget. You can not do all of these things. By the same token, I understand Smoot-Hawley not going through an act of the Congress. From the last depression, we have heard all of that. A lot of people ignore the fact that Smoot-Hawley was passed eight months *after* the banks went broke in the big crash of the 1930's.

Mr. Barfield

Let me ask you this, in talking about the Congress—what would the Congress do if the EC announced to the United States that they wanted us to come to the negotiating table and change our current banking and securities laws so that they would be in compliance with

EC regulations and further, that we should do it in 3 years or they will retaliate and every American bank would be excluded from the European Community? In response to that kind of fiat, I'm sure the Congress would use some sort of Italian gesture that starts with the elbow. That is really what I am concerned about. It is not Section 301 per se. I have no problem with the United States going one-on-one with countries, but we are bound to create problems when we say they are our rules.

There is one other point to note in terms of what the Congressman said about our balance of payments. Sooner or later we are going to have to run trade surpluses with individual countries and individual regions. The last three or four years witnessed the most free trade administration that we have had; Reagan was a man with very few ideas, but free trade was one of them fixed in his mind. In the last five or six years, we have laid out a primer for other countries to compete against us when we begin to turn this around and our corporations and the United States starts running surpluses with other countries. We should remember that until 1983 we were running major surpluses with the EC. We are teaching them how to bring legal actions against our corporations. The largest amount of anti-dumping really comes against U.S. corporations. Ultimately, anti-dumping and unfair trade legislation will be used against us when we are competitive. What worries me is that we have created a primer for other nations to bring against us when our trade deficit begins to turn around.

Mr. Sohn

What you are pointing out is a basic rule of international law, which is what you do to somebody, somebody else may do to you later. This is a very dangerous position. We have seen it, because for a while we were the masters of the antitrust proceedings and we were bringing one foreign corporation after another before our courts. Then, other countries learned it too, and when the EC started bringing our corporations before their tribunals, we started screaming and they simply responded by saying, "but you told us that this can be done". They were right. Either it is legal or not legal. If it is legal, everybody can do it; if it is not legal, we should not do it. In these types of negotiations we must establish the ground rules, for once you establish the ground rules it is much easier to see who is breaking them, and that is when the panoply of sanctions can come in.

I was very interested that they have here the basic idea that they have to establish a variety of principles, rules, concepts and definitions

because that is where all the legal problems arise. As a result, we have found out very quickly that trying to define what we are doing in this particular business puts us in the most difficult position. Even such a simple thing as "cross-border trade" what does that mean, if a student is coming to an American university to learn something which he is going to take home where they might compete with us? This is cross-border trade in fact. If a tourist comes here and buys some things and takes them home and then someone says, "Oh, a very nice thing to copy." Problems immediately start to arise.

Mr. Hunnicutt

Mr. Chairman, I do not want this to become a 301 discussion, but I have a few reactions and feel like I have settled into a moderate position here. I just wanted to say that the execution of 301 against a foreign trade barrier does not require the U.S. position to be that the foreign government has to adopt the U.S. system of regulation in that particular area. Our negotiators can be considerably more sophisticated than that. All they really want from the foreign government is appropriate access and treatment for the U.S. manufacturer.

Secondly, the idea that the Reagan Administration was free trade is so incredible to me that I can hardly accept it, except that you are probably right that Reagan himself may have been a free trader (consider it as a point of irony). The point is that we had a 301 provision and an escape clause provision both of which in the early years of the Reagan Administration and in the Carter Administration were essentially closed for business. It was only when the Congress became agitated to the point of threatening the Reagan Administration with even more drastic action that the Administration was willing to entertain 301 or 201 actions. At that point they were teaching the U.S. private sector that the way to get relief in Washington is to work Congress into a lather and then the Administration will do what could have been done more easily with a higher degree of refined thought if they had done it earlier under the provisions which already existed. That is why provision of an adequate and effective 201 mechanism and reasonable use of a 301 mechanism are ways that we can address real problems without causing any damage to the overall structure of the trade system.

Mr. Gakunu

I think we all agree that the main aim of trade liberalization in the context of the GATT is to benefit all countries, developed and

developing. But on the many issues that are the subject of this conference, it appears to me that the majority of the developing countries are consumers and not producers of services, intellectual property, and investment. My question is: How would you justify the participation of these developing countries in the current negotiations in the event that these countries stand to gain little or nothing? Is it really necessary to bring these matters within the framework of GATT?

Mr. Cloney

You are right about who is consuming or the balance of trade in these areas would not be a favorable one for the industrial country side of the ledger and a deficit on the outgoing side for many developing countries.

Here, there are a couple of things that need to be explored and understood more thoroughly than they have been. One is, from the perspective of the developing country, what is the price you pay if you are interested in liberalizing trade in services? There are different developing countries in terms of the economic situation they are in. Some "developing" countries are well into the economic realm of some of the lesser "industrial" countries. If you take that group, one can make a good argument that the rate of economic growth in that group of developing countries could absorb changes and benefit if the service sector is modernized. Their economy is probably being held back by an antiquated service sector while other industry is being advanced by international assistance and industrialization pressures. I can not prove this statistically, and I do not think it has been analyzed, but if you took the situation of an economy like the Brazilian economy, they must be paying a high price for an antiquated, inefficient and, thus, costly service sector.

The developing countries are going to have to build their service sectors, and the question to ask is, what is the best way to do that? Liberalization is one.

Second, a services framework agreement should not provide GATT-style "special and differential treatment" to the developing countries as they could simply walk away from real obligations. But properly structured, an agreement could give some negotiated "time for accommodation", perhaps via certain special types of reservations which countries could negotiate individually. If the agreement structure itself is creative, there ought to be some procedure for developing countries to weave their way into the system by accepting obligations at a

slower pace, at least in some service sectors, where they feel vulnerable.

Mr. Kakabadse

In response to Mr. Gakunu's question, which is a very good one, I would like to say that after two years, it is fair to say that there is wide agreement that development of the developing countries is one of the aims of these negotiations, together with overall economic growth and expansion of trade in services. There is agreement that it should be an integral part of an agreement that would emerge and should not be reflected in waivers and derogations and exceptions. But what that integral approach should consist of is the practical question that is now occupying participants. We collectively have to search for commercial applications of how to make development more concrete for the developing countries. There is some disagreement about this whole question. There are some who have opposed the view that liberalization per se facilitates access to competitive services and facilitates the more efficient allocation of resources in a country. Many developing countries in the GNS are really looking for a more direct contribution. In the Montreal Declaration, I would like to draw your attention to the part where it says that an agreement should provide developing countries secure access to distribution channels and information networks. Those are two examples of the things that developing countries have particularly been asking for in these negotiations.

The second part of your question is on whether this should be brought into the GATT. A word of caution here. As I said, the Uruguay Round is a two-track process, and although the whole thing is happening under the auspices of the GATT, the negotiations on services are technically separate from the GATT negotiations on goods. The question of what would happen to the services agreement at the end of the round and how it will be incorporated in the total results, and what the role of the GATT Secretariat may be is unclear. It is not necessarily the case that if we get a services agreement it is going to be a GATT agreement. That will have to be decided at the end of the Round.