
Spring 1979

A Practitioner's Guide to the Tokyo Round Trade Negotiations

Thomas R. Graham

Follow this and additional works at: <https://scholarship.law.unc.edu/ncilj>



Part of the [Commercial Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Thomas R. Graham, *A Practitioner's Guide to the Tokyo Round Trade Negotiations*, 4 N.C. J. INT'L L. 225 (1978).

Available at: <https://scholarship.law.unc.edu/ncilj/vol4/iss3/2>

This Article is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Journal of International Law by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

A Practitioner's Guide to the Tokyo Round Trade Negotiations

by Thomas R. Graham*

Few, if any, communities in America are untouched by international trade. Small and large manufacturers across the country import parts, export, or struggle with import competition. Workers who have read of massive layoffs in Youngstown, Johnstown, or other steel-making communities, or who have watched the U.S. color television industry move its plants abroad, are understandably concerned with the effects that imports may have on their jobs. Consumers are exhorted (on television made in Taiwan) to "look for the union label" in resisting the onslaught of imported clothing offered by local retailers, along with imported shoes, watches, automobiles and cameras. Farmers' crops may feed the hungry in Bangladesh under U.S. food-aid programs or be purchased by the middle class in Japan provided our farm imports have not met insurmountable foreign import barriers or been undersold by producers from other nations who are benefiting from government subsidies.

There are numerous such examples of the interaction between international trade and ordinary economic life. Not surprisingly, this interaction raises many legal issues: what recourse has a small manufacturer who is threatened with ruin by import competition? Does it make any difference whether the competition is "fair" or "unfair," and what do these terms mean? What rights have workers before or after their employer's business fails as a result of import competition? To whom can a producer turn if he is shut out of a foreign market, either directly by high tariffs or quota limits, or more subtly by customs red tape or the inability to meet foreign product standards? What can be done for an exporter who loses his foreign markets due to unfair competition by a third country's exporters? What can the United States government do about such matters, and what can private persons or their attorneys do to make the government act?

* Deputy General Counsel, Office of the Special Representative for Trade Negotiations, Executive Office of the President. Adjunct Professor of Law, Georgetown Law Center. B.A. 1965, Indiana University; J.D. 1968, Harvard Law School. The views expressed herein are solely those of the author, and do not necessarily reflect the views of the Office of the Special Representative for Trade Negotiations.

Despite the fact that these issues directly affect lives from Spokane to Spartanburg, international trade law must seem a rarified specialty to the general practitioner. There are good reasons for this. As in other legal fields, one must stay abreast of the latest interpretations, congressional developments, and uses of executive discretion. International trade actions and interpretations are also overlaid with complex issues of foreign relations and delicate questions of executive versus congressional prerogatives. Actions frequently are requested, resisted, and taken, moreover, on behalf of whole industries or other aggregations such as the American Footwear Industries Association, the American Textile Manufacturer's Association, the American Retail Federation, or the American Importers Association. Most of these organizations, as well as the agencies that review their petitions, are located in Washington, D.C. It should come as no surprise, then, that most international trade practice is handled by a small group of Washington-based specialists.

The general practitioner, nevertheless, needs to be prepared to answer his clients' questions on international trade matters, to know where he can find further information on particular issues, and to appreciate when to seek help from the specialist. This article attempts to serve these needs by bringing generalists up to date on major revisions of the international trading system which will shortly be agreed to by the United States and other nations as a result of the "Tokyo Round" of multilateral trade negotiations. It also attempts to indicate the types of extensive changes in U.S. legislation that are likely to be effected as the Tokyo Round agreements are approved and implemented.

I. BACKGROUND¹

A. *What is the Tokyo Round?*

1. *In a nutshell*

The Tokyo Round of multilateral trade negotiations—known generally either as the "Tokyo Round" or as the "MTN"²—constitutes the most ambitious effort in the past thirty years to reduce barriers to international trade and to redefine which practices are to be considered fair or unfair among trading nations. For more than five years, representatives of ninety-eight nations have been meeting in Geneva³ to bargain

¹ Portions of parts I and II of this article are based upon a manuscript that was prepared by the author for submission to the CORNELL INTERNATIONAL LAW JOURNAL. That manuscript, in an edited and expanded form, was published as Graham, *Reforming the International Trading System: The Tokyo Round Trade Negotiations in the Final Stage*, 12 CORNELL INT'L L.J. 1 (1979). Permission has been granted by the editors of the CORNELL INTERNATIONAL LAW JOURNAL for the reprinting of material used in the article cited above.

² The terms "Tokyo Round" and "MTN" are used interchangeably in this article.

³ The name of the Tokyo Round is derived from the fact that the declaration of foreign ministers that inaugurated the negotiations was made in Tokyo in September 1973. See note 10, *infra*. Virtually all of the negotiations have in fact been held at the offices of the GATT secretariat in Geneva.

down each other's tariff rates and to draft new international rules governing government subsidies that aid exports, product standards that discriminate against foreign goods, government purchasing practices that exclude bids by foreign suppliers, and several other "non-tariff" matters. The results of these negotiations are expected to be translated into law in the United States and other nations, where they will influence, perhaps for a generation, concepts of fair and unfair international trading practices and the actions that nations might choose to take to offset the effects of those practices.

The Tokyo Round's international agreements are expected to be concluded in April and to be approved and implemented by the U.S. Congress during the summer and early fall. Before dealing in detail with the emerging MTN agreements and the prospects for implementing legislation, however, it would be useful to briefly describe how the negotiations came about in the first place.

2. *Historical Context*

The General Agreement on Tariffs and Trade (GATT) was formulated in 1947 as a body of rules accepted by trading nations for the promotion and maintenance of an open post-war international trading system.⁴ In a sense the GATT rules represent an international effort to unify national laws and practices with respect to the treatment of exports and imports. The GATT, however, goes beyond unification and also provides methods for dispute settlement and enforcement of its rules. Moreover, the GATT maintains a relatively small international secretariat to facilitate meetings of the "Contracting Parties" and to oversee the operation of the GATT rules.

Since the creation of the GATT, the secretariat and Contracting Parties have sponsored periodic "rounds" of negotiations aimed at reducing barriers to the international movement of goods.⁵ Until recently, these "multilateral" or multi-nation negotiations have concentrated al-

⁴ GATT, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. No. 1700, 55 U.N.T.S. 194. The Agreement has been modified in several respects since 1947. The current version is contained in 4 GENERAL AGREEMENT ON TARIFFS AND TRADE, BASIC INSTRUMENTS AND SELECTED DOCUMENTS (1969) [hereinafter cited as GATT, BISD]. The GATT was formulated in 1947 as a framework of rules designed to promote an open and fair post-war international trading system. The GATT rules were to be one component of a more comprehensive International Trade Organization, which in turn was to have joined with the World Bank and the International Monetary Fund to form the pillars of the post-war international economic system. When the ITO collapsed in 1949, principally as a result of the failure of the U.S. Congress to ratify the treaty establishing it, the GATT rules became the nucleus of a small international organization. For more information about the background of the GATT, see J. JACKSON, *WORLD TRADE AND THE LAW OF GATT* 35-57 (1969).

⁵ The first round after the formation of the GATT took place in 1949 at Annecy, France. The second round was held in 1951 at Torquay, England. The third, fourth, and fifth rounds took place in 1955, 1960-61, and 1962-67 at Geneva, Switzerland. See J. JACKSON, *supra* note 4, at 217-19. See also J. EVANS, *THE KENNEDY ROUND IN AMERICAN TRADE POLICY: TWILIGHT OF THE GATT?* (1971).

most exclusively upon the reciprocal lowering of tariff barriers. Beginning with the "Kennedy Round" in the mid-1960s, however, there was general recognition that tariffs had become less of an obstacle to international trade than more subtle "non-tariff barriers" used by many countries. Examples of non-tariff barriers include the exclusion of foreign suppliers from bidding for government contracts and the failure to certify foreign products as meeting domestic health or safety standards. Such practices are inadequately covered by the current GATT rules. Clarification of the international rules pertaining to these practices has seemed to be in the best interest of all trading nations.

Beginning in the late 1960s there was also growing recognition that the GATT rules were outmoded, ignored, or in need of strengthening in several key areas. The most important of these areas are: government subsidies that may confer unfair competitive advantages upon exported goods; temporary restrictions on imports under the "escape clause,"⁶ which is designed to give domestic industries harmed by import competition a breathing space in which to adjust; government restrictions on exporting; and the settlement of disputes among nations over international trade questions.

Other events also indicated that fundamental adjustments to the international trading system were needed. First, the European Economic Community (E.E.C.) emerged as a trading entity with bargaining strength approximately equal to that of the United States, and thus challenged the virtual hegemony of the United States in postwar trading relationships. Second, developing countries gained a unified international voice with the establishment of the United Nations Conference on Trade and Development (UNCTAD) in 1964.⁷ The LDCs⁸ have used this forum to vigorously promote their trading interests, some of which conflict with basic tenets of the GATT system such as the "most-favored nation" (MFN) principle of equal treatment among all trading nations regardless of their relative economic strengths.

These factors, combined with fear that the GATT might go the way of fixed exchange rates after the collapse of the Bretton Woods system,⁹ led nearly one hundred foreign ministers, meeting in Tokyo in September of 1973, to initiate negotiations to " . . . cover tariffs, non-tariff barriers and other measures which impede or distort international trade in both industrial and agricultural products. . . ."¹⁰ This "Tokyo Declara-

⁶ Trade Act of 1974, §§ 201-203, 19 U.S.C. §§ 2251-2253 (1976).

⁷ For a full report on the 1964 UNCTAD Conference, see UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, Proc., 1st Sess., U.N. Doc. E/CONF. 46/141, Vol. I (E/CONF. 46/139).

⁸ The term "LDCs" refers to the less developed countries.

⁹ For a concise history of the Bretton Woods System, see B.J. COHEN, ORGANIZING THE WORLD'S MONEY 89 (1977).

¹⁰ Declaration of Ministers Approved at Tokyo on 14 September, 1973, para. 4, *reprinted in* GATT, BISD (20th Supp.) 19, 21 (1974). For the text of the Tokyo Declaration, see also J. JACKSON, LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS 489-91 (1977).

tion" gave the name to the Tokyo Round and also established its terms of reference.

Although the Tokyo Declaration formally inaugurated the negotiations, several years passed before serious bargaining began. The first reason for delay was the U.S. Administration's lack of legal authority, at the time of the Tokyo Declaration, to implement within the United States the obligations that it was expected to undertake in trade agreements. A few words about the special implementation problems of the United States are in order.

B. How Will the Tokyo Round Affect U.S. Trade Laws?

The President and members of the Executive branch obviously need no authorization from the Congress to confer with representatives of foreign governments or to reach formal agreements with them. These activities clearly fall within the foreign affairs power of the President.¹¹

The Executive cannot, however, carry out international agreements calling for changes in U.S. domestic laws that regulate foreign commerce, and thus fall within the Constitutional authority of the Congress,¹² without some type of congressional participation. That participation may take several forms. First, a two-thirds majority of the Senate could ratify the agreement as a treaty; second, the Congress could delegate to the President (under sufficiently precise terms) advance authority to agree upon and proclaim certain changes in U.S. law; or, third, the Congress could stand aside while the President negotiated, and, after an agreement was concluded, decide whether to enact legislation altering U.S. law in ways necessary to implement the President's agreements.

All three of these approaches, in their pure forms, were unacceptable for congressional implementation of Tokyo Round trade agreements. If the agreements were implemented as treaties the House of Representatives would have no opportunity to consider possible alterations in the conditions under which the United States assesses penalty duties against various types of "unfair" foreign trade practices. Such a result would be not only politically unacceptable but might also create an unconstitutional exclusion of the House from consideration of "revenue" matters.¹³ Delegation to the Executive of a "blank check" in the form of unrestricted advance discretion to negotiate and implement very controversial changes in U.S. trade legislation simply was not politically acceptable to the Congress, and delegation by the Congress of authority to reach trade agreements with precisely-specified terms probably would have made the negotiation of such agreements impossible because other

¹¹ L. HENKIN, *FOREIGN AFFAIRS AND THE CONSTITUTION* 37 (1972).

¹² U.S. CONST. art. I, § 8, cl. 3, grants to the Congress the power to "regulate Commerce with foreign Nations, and among the several States . . ."

¹³ U.S. CONST. art. I, § 7, cl. 1, provides that "[a]ll bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with the amendments as on other bills . . ."

countries would view such a delegation as an ultimatum. Finally, a "wait and see" approach by the Congress with possible enactment as ordinary legislative amendments of any changes in U.S. law that might be mandated by agreements would have been a stance acceptable to the Congress but not to other countries with whom the United States might negotiate. Understandably, they remember the League of Nations, the Havana Charter,¹⁴ and other agreements that were negotiated but not accepted and implemented by the U.S. Congress. They are for the most part unwilling to make the painful and politically risky internal compromises necessary to reach trade agreements with the United States unless there is a strong likelihood that the agreements will be accepted and implemented by the Congress.

These factors created a clear-cut dilemma: the Congress must maintain its ultimate right to accept or reject legislative changes needed to carry out obligations undertaken in trade agreements, yet other countries will not negotiate seriously unless they have reasonable advance assurance that the United States will in fact carry out its obligations.

In the Trade Act of 1974,¹⁵ which provides the legislative framework for U.S. participation in the Tokyo Round, the Congress attempted to get U.S. negotiators off the horns of this dilemma by enacting a unique set of expedited ("fast-track") procedures for considering and implementing non-tariff agreements.¹⁶ In these provisions, the Congress urges the President to negotiate agreements ". . . reducing, harmonizing, or eliminating non-tariff barriers to and other distortions of international trade . . ."¹⁷ and calls for close consultations between the Executive and interested Congressional Committees as the negotiations proceed.¹⁸ At least ninety days before signing any non-tariff agreement to be implemented under these expedited procedures, the President is required to formally notify the Congress and the public of his intention to do so. After any such agreement has been signed, the President is to submit to the Congress the following information:

- a. a copy of the agreement;
- b. a description of administrative action (*i.e.*, Executive orders or regulations) anticipated in implementing the agreement; and
- c. a proposed implementing bill, containing—
 - (i) express congressional approval of the agreement and the description of administrative action; and
 - (ii) changes in existing law, or new statutory authority needed

¹⁴ The Havana Charter embodied the treaty that would have founded the International Trade Organization, had that treaty been ratified by the U.S. Senate.

¹⁵ Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified in scattered sections of 5, 19, 26 and 31 U.S.C.).

¹⁶ Trade Act of 1974, §§ 102, 151, 19 U.S.C. §§ 2112, 2191 (1976).

¹⁷ Trade Act of 1974, § 102(a), 19 U.S.C. § 2112(a).

¹⁸ Trade Act of 1974, § 102(c), 19 U.S.C. § 2112(c).

to implement the agreement.¹⁹

The most significant features of legislation proposed under these procedures are that such legislation cannot be amended and must be voted upon by each house of the Congress within a specified period.²⁰ These procedures are intended to assure insofar as possible that non-tariff trade agreements are formulated by U.S. negotiators in such a way as to be acceptable to the Congress, and that the agreements and their implementing legislation will receive prompt attention in the form in which they were submitted. This assurance has been sufficient to induce other nations to work seriously toward a conclusion of Tokyo Round agreements.

On January 4, 1979, President Carter notified the Congress of his intention to sign Tokyo Round agreements covering a wide variety of subjects.²¹ Accordingly, the first step for setting in motion the Trade Act's special implementing procedures has been taken. It is now anticipated that the signed agreements²² together with legislation necessary to approve and implement them will be submitted to the Congress in April or early May.

C. Does the Private Sector Influence the Results?

Throughout the negotiations the Administration has maintained a wide network of advisory committees representing different segments of the private sector. These committees, which were mandated by the Trade Act of 1974,²³ are run by the Special Trade Representative's Office²⁴ in conjunction with the Departments of Agriculture, Labor and Commerce. At the top of the pyramid-like structure of committees is a single "Advisory Committee for Trade Negotiations," composed of forty-five prominent persons representing government, labor, industry, agriculture, small business, service industries, retailers, consumer interests, and the general public.²⁵ Next in the hierarchy are committees representing

¹⁹ Trade Act of 1974, § 102(e), 19 U.S.C. § 2112(e).

²⁰ The period for a vote in the Congress is sixty Congressional working days unless legislation submitted under these procedures is considered to be a "revenue bill," in which case the period for voting is ninety Congressional working days. These periods are divided as follows: committees in the Senate and the House are to have forty-five working days in which to consider the bill, after which it is discharged automatically from committee unless it has been reported earlier; each house of the Congress is then to have fifteen working days to vote on the bill, except that if the bill is a revenue measure then only the House is to vote within that fifteen day period—and the Senate is to vote on the bill within thirty additional working days after the House has voted on it.

²¹ This notice was published in 44 Fed. Reg. 1933 (1979) (to be codified at __ C.F.R. __).

²² The content of the agreement is discussed in part II, *infra*, and some indications of how the implementing legislation may change existing law are given in part III.

²³ Trade Act of 1974, § 135, 19 U.S.C. § 2155 (1976).

²⁴ Inquiries with respect to the structure or operation of these committees should be addressed to the industry liaison officer, Office of the Special Representative for Trade Negotiations, 1800 G Street, N.W., Washington, D.C. 20506.

²⁵ The act specifically provides, "The President shall establish an Advisory Committee for Trade Negotiations to provide overall policy advice The Committee shall be composed of

agriculture, industry, and labor policy respectively. Finally, within each of these three sectors a large number of technical committees represent the interests of particular industries or unions—such as the committees representing the textile, tobacco, steel, and chemical industries; the grains, meat and dairy agricultural sectors; and the clothing and auto workers unions. The members of these committees, who are spread throughout the country, receive the latest confidential information concerning the state of negotiations, and provide government negotiators with advice as to U.S. bargaining positions.

Through these advisory committees, the private sector undoubtedly has influenced the Tokyo Round negotiations by sharpening U.S. negotiating goals and by providing virtually immediate feedback as to the acceptability of various possible agreements. These committees will shortly draft reports for the Congress on each of the Tokyo Round agreements. No doubt these reports will significantly influence the congressional view of the agreements' acceptability. In addition, the advisory committees currently are being consulted intensively with respect to initial Administration drafts of proposals to implement the results of the Tokyo Round.

II. THE TOKYO ROUND AGREEMENTS

By February 1979, negotiators had reached agreement on all but a few of the most difficult points,²⁶ and the Administration was actively preparing to implement U.S. commitments. This section briefly discusses the status of negotiations at that time with respect to the principal subjects.

A. *Industrial Tariffs*

Periodic reduction of tariff rates does not have the real effect upon trade flows that it once did, largely because the six multilateral negotiating rounds prior to the Tokyo Round did their work so well. Not only is the average incidence of industrial tariffs already relatively low in most industrial countries, but negotiated tariff reductions are also phased in, or "staged," over a period of years in order to reduce their impact upon domestic industries.²⁷ Because tariff reductions traditionally have been the subject of trade negotiations, however, and because the results of tariff negotiations are readily identifiable and quantifiable, the average

not more than forty-five individuals, and shall include representatives of . . . (those listed in text)." See Trade Act of 1974, § 135(b)(1), 19 U.S.C. § 2155(b)(1) (1976).

²⁶ It was agreed during the summer of 1977 that agricultural products would not be included among those subject to the general tariff formula, but rather would be negotiated on the basis of specific requests for tariff reductions extended from some governments to others, which then would respond with offers.

²⁷ The Trade Act's "staging" requirements specify that duty-rate reductions, pursuant to trade agreements, must be phased in at not more than three percentage points per year, or one-tenth of the total reduction called for by the agreement, whichever is larger. All such staging must be completed within ten years following the initial reduction. Trade Act of 1974, § 109, 19 U.S.C. § 2119 (1976).

reduction of industrial tariffs that emerges from the MTN will be cited by many as a yardstick of the negotiations' success.

The most convenient way yet found to negotiate tariff rates on thousands of individual products from scores of countries is for the participants to first adopt a general mathematical formula, or hypothesis, specifying the percentage by which all tariffs are to be reduced, and then to bargain hard about which products are to be exempt from tariff reductions or subjected to higher or lower reductions than those called for by the formula. The formula that was adopted by MTN participants after years of haggling would, if applied to all products, result in an average worldwide tariff reduction of about forty percent. This formula also was designed to reduce higher tariffs by a greater amount than lower ones, and thus contained a significant element of tariff "harmonization."²⁸

The negotiating parties have also agreed that tariff reductions, once settled, would be phased in over a period of eight years with a review to take place after the first five years to determine whether external economic conditions warrant a continuation of the reductions. This "conditionality" factor was politically important for acceptance of the formula within the E.E.C. Its real importance may be questioned, however, in view of the relatively minor tariff reductions involved.

The tariff negotiations have been virtually completed. Although their precise results remain confidential, the Administration has made it known that (taking into account exceptions to the general formula) these negotiations are expected to result in an average worldwide reduction of tariff rates on industrial products of about thirty percent.²⁹ Several industries in which the United States has strong export interests, such as paper, computers, office machines, scientific instruments, and chemicals, are expected to benefit from these reductions.

B. Non-Tariff Matters

1. Subsidies and Countervailing Duties

As a system designed primarily to promote open and fair competition among *private* industries, the GATT has always had difficulty coping with government aids to industry. Those relatively few subsidies that are imposed directly for the purpose of promoting exports do not create the difficulty because the GATT rules and settled practice generally regard such practices as unfair methods of competition. Problems arise, instead, with respect to the myriad forms of subsidies that are viewed by the governments granting them as legitimate instruments of domestic socio-economic policy, but that may almost incidentally confer advantages upon

²⁸ See Office of the Special Representative for Trade Negotiations, "Briefing Paper," Feb. 9, 1979, on file with the NORTH CAROLINA JOURNAL OF INTERNATIONAL LAW AND COMMERCIAL REGULATION.

²⁹ See "Briefing Paper," *id.*

the recipient industries in the international marketplace: nationalizations; tax holidays to invest in economically-depressed regions; concessional loans or direct grants to maintain full employment during recessions; and grants for research and development of new technology. Such practices raise a central dilemma for the international trading system: how to balance the freedom to make these sovereign national policy choices against the collective rights of the international trading system.

The present GATT rules on subsidies and countervailing duties seem reasonably straightforward. "Export subsidies" for industrial products are prohibited if they result in a lower price for the export than is charged for the same product domestically.³⁰ Any "bounty or subsidy" that causes or threatens material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry may be subject to a countervailing duty by the importing nation sufficient to offset the effect of the subsidy.³¹

These deceptively simple rules create a number of legal and political problems. Legal problems arise from the lack of definition of "export subsidies." The difference between "export subsidies" and other "domestic subsidies" is in many cases wholly unclear. An overriding source of international political friction has been the fact that the U.S. countervailing duty law does not require a showing of "material injury" to a domestic industry, as is required by the GATT rules.³² U.S. law requires the Secretary of the Treasury to impose countervailing duties upon any *dutiable* imports³³ that he finds to be benefiting from a "bounty or grant." Understandably, other nations have sought in the MTN to secure adoption by the United States of an injury standard. Equally understandably, the United States has sought to ensure that the GATT rules impose greater discipline over the increasing tendency of foreign

³⁰ GATT art. XVI(4), 4 BISD at 27, provides:

Further, as from 1 January 1958 or the earliest practicable date thereafter, contracting parties shall cease to grant either directly or indirectly any form of subsidy on the export of any product other than a primary product which subsidy results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market. Until 31 December 1957 no contracting party shall extend the scope of any such subsidization beyond that existing on 1 January 1955 by the introduction of new, or the extension of existing, subsidies.

³¹ GATT art. VI(6)(a), 4 BISD at 11. See text accompanying note 32 *infra*.

³² *Id.* This article provides that,

No contracting party shall levy any . . . countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the . . . subsidization, . . . is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

³³ 19 U.S.C. § 1303(b) (1976). This section provides that when the Secretary determines the bounty to be paid with respect to any article that is free of duty, he shall advise the Commission, and after investigation the Commission shall determine whether the industry, "is being or is likely to be injured or is prevented from being established." If the determination of the Commission is affirmative, the Secretary shall make an order directing assessment and collection of duties.

governments to aid their industries in ways that, indirectly at least, confer internationally competitive advantages.

The draft agreement on subsidies and countervailing duties that has emerged from the Tokyo Round seeks to reconcile these positions by providing greater discipline over the use of subsidies and by ensuring that all nations subscribing to the agreement require a showing of "material injury" before applying countervailing duties to subsidized imports. Greater discipline over subsidies is to be provided in a number of ways. Non-agricultural primary products (such as minerals) as well as industrial products are to be included within the flat prohibition on export subsidies. An "illustrative list" of prohibited export subsidies that the GATT has maintained for some years will be updated. Also, recognizing that politically sensitive domestic subsidies "... are intended to promote important objectives of national policy but may have adverse effects, which signatories should seek to avoid, on the trade and production interests of other signatories,"³⁴ the agreement provides that types of domestic subsidies that may have adverse effects on international competition are to be listed as "indicative guidelines."

The agreement stipulates two methods by which importing countries may offset the effects of subsidized imports. The first method is the traditional one of applying countervailing duties to subsidized imports that are causing or threatening material injury to a domestic industry.³⁵ The second authorized "track" for offsetting the effects of subsidized import competition is the imposition of "countermeasures" against any subsidy practices that result in "serious prejudice" to an industry in another signatory country. These countermeasures may take the form of trade retaliation based on an international complaint to the GATT that a subsidy rule has been violated and a review and authorization of such trade retaliation by a GATT dispute settlement panel convened under the GATT procedures for complaint resolution.³⁶ Serious prejudice, moreover, might be presumed in cases where the exporting country violated the express prohibition on export subsidies. The concept of serious prejudice includes not only adverse effects upon domestic industries through the increase of subsidized *imports*, but also covers the loss of *export* markets if the subsidized products of one country displace non-subsidized goods of another either within the subsidizing country ("import-substitution subsidies") or in third countries where the subsidized and non-subsidized exports compete ("third-country market displacement").

In addition, the new agreement on subsidies and countervailing du-

³⁴ MTN Outline of An Arrangement with respect to Subsidies and Countervailing Duties (on file with the NORTH CAROLINA JOURNAL OF INTERNATIONAL LAW AND COMMERCIAL REGULATION).

³⁵ Thus the United States would accept a "material injury" standard for dutiable goods in its countervailing duty law. See text accompanying note 32 *supra*.

³⁶ The procedures for complaint resolution are found in GATT arts. XXII-XXIII, 4 BISD at 39-40.

ties would permit "provisional measures," consisting of temporary penalty duties or other import restrictions. Such measures are to be taken almost immediately in cases where there is a preliminary finding of injury caused by subsidized imports, and where serious harm is threatened unless rapid action is taken.

Considered together, these increased disciplines over subsidy practices appear to represent a significant victory for U.S. negotiators, and a reasonable price to pay for a limited injury standard in the U.S. countervailing duty law.

2. *Safeguards*

Every country needs a socio-political safety valve when import competition seriously injures a domestic industry and idles its workers. Article XIX of the GATT and corresponding provisions in U.S. legislation contain such an "escape-clause," permitting import barriers to be raised temporarily in such cases, ostensibly to allow the domestic industry breathing space to adjust, provided that certain conditions are met.³⁷

The most important issue in the safeguards negotiations—and the most significant issue that is still unsettled in the MTN—involves the possible use of "escape-clause" safeguard actions on a "selective," or country-specific, basis. The history of the GATT safeguards provision clearly establishes that escape-clause actions are to be taken only on an MFN basis; a country's temporary import restrictions on a particular product are to be applied equally to the imports of the product from all sources. U.S. legislation permits, but does not require, the President to impose escape-clause import relief on a non-MFN basis.³⁸

The problem with the GATT's MFN requirement for escape-clause actions lies in the fact that countries have in recent years found it politically imperative to restrict imports selectively—from one or two countries only—either because one or two countries had accounted for most of an import surge (and the action thus could be billed as "minimally" trade-restrictive), or because they feared the consequences of limiting imports from a major trading partner. In taking these selective actions, countries either have circumvented GATT discipline by imposing (under threat of more severe unilateral restrictions) "orderly marketing agreements"—or agreed quotas—upon one or two trading partners, or have surreptitiously secured "voluntary" export restraint commitments by one

³⁷ In the GATT, these conditions are that "as a result of unforeseen developments and of the obligations incurred by a contracting party under [the GATT] . . . any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury. . . ." GATT art. XIX(1), 4 BISD at 36. The U.S. "escape clause" law, which is set forth in the Trade Act of 1974, §§ 201-203, 19 U.S.C. §§ 2251-2253 (1976) does not require the link between injury and a past trade concession, and uses the standard of "substantial cause of serious injury."

³⁸ Trade Act of 1974, § 203(k), 19 U.S.C. § 2253(k) (1976).

or two exporting countries.³⁹ These arrangements escape the normal GATT discipline of reporting, consulting, and settling amicably or suffering retaliation because the Contracting Party against whom such agreements are imposed usually "agrees" to waive these GATT rights, which it is formally free to do even though the agreement is in fact a "contract of adhesion."

After much preliminary sparring, it now has been agreed (at least among developed countries) that some form of selectivity will be allowed. The conditions for imposing such selective restrictions, however, have not yet been settled. It is not yet clear whether import restraints against one or two countries will be permitted only upon their agreement to such restraints, only with the consent of the GATT safeguards review body if agreement of the affected country or countries is not secured, or unilaterally if neither agreement nor international consent can be secured promptly.

3. *Government Procurement*

Government agencies buy for their own use everything from spacecraft to paper clips. Nations ensure that most of this multi-billion dollar market is reserved for domestic producers. Techniques for accomplishing this purpose range from formal "margins of preference" (requirements that domestic bids be accepted unless they are a specified percentage above foreign ones), such as the Buy America Act,⁴⁰ exclusions of foreign bidders from eligibility lists, failure to advertise contracts or solicit bids, and awarding of contracts without disclosure of the criteria on which the award was based. By limiting market access of foreign manufacturers, all these practices constitute significant non-tariff barriers to trade. The GATT rules at present do not expressly deal with government procurement practices, except to exempt preferences for domestic manufacturers from the "national treatment" principle, which calls for non-discrimination in the conditions of sale as between domestic and foreign products.⁴¹

The MTN agreement on government procurement is intended to eliminate "buy national" preferences and to require open procedures with respect to bidding for a specified list of government entities in signatory countries. The exact entities to be covered by these requirements are still a subject of negotiation at this writing. Government defense con-

³⁹ In general trade usage, a "voluntary restraint agreement" or "voluntary export restraint" is an imposed agreement by the exporting country to restrain its exports of the product in question to the country that is imposing the agreement. Such agreements may be publicly announced, or may be confidential. For a discussion of their domestic legality (prior to enactment of the Trade Act), see *Consumers Union v. Kissinger*, 506 F.2d 136 (D.C. Cir. 1974). "Orderly marketing agreements," by contrast, is a term of art in U.S. law, meaning a public agreement pursuant to an escape-clause action under the Trade Act with restraint at both the importing and the exporting ends.

⁴⁰ 41 U.S.C. §§ 10a-10c (1976).

⁴¹ Article III of the GATT embodies the national treatment principle and article III(8)(b) exempts government purchasing. GATT art. III (8)(b), 4 BISD at 7.

tracts involving national security clearly will not be covered. Questions remain, however, about such quasi-governmental bodies as publicly-owned utilities, transportation facilities, and post, telegraph, and telephone facilities. Not surprisingly, national viewpoints have tended to reflect the degree to which such entities are owned by governments within the various MTN participant countries.

4. *Technical Barriers to Trade (Standards)*

A U.S. anti-pollution standard could be written in technical terms that in fact excluded Toyotas from the U.S. market. The E.E.C. could require that U.S.-made radios be certified by an E.E.C. authority as conforming to Community electrical safety standards—and then could decline to certify the U.S. products. Japan could refuse to accept foreign test results on the safety of gas stoves, and then could subject U.S.-made stoves to more stringent or expensive tests than those applicable to the same products made in Japan.

These hypothetical examples illustrate in somewhat exaggerated form the way in which product standards and related testing and certification practices can be used as non-tariff barriers to trade. In reality, the line between legitimate regulation of health, safety, the environment, or the consumer, on one hand, and the illegitimate exclusion of imports, on the other, tends to be less clear. At present the GATT does not address the effect of standards practices upon the movement of goods.

The standards negotiations have moved slowly, in part because of the political sensitivity of any international agreement that even appears to surrender some degree of national sovereignty over national rule-making in the areas of health, safety, environment, and consumerism. Negotiators have handled these politically-charged problems by developing an agreement that is purely *procedural*. The agreement does not dictate to any signatory the substantive standards that it must adopt. Instead, the standards code would establish the principles that standards and related testing and certification should not be used to create unnecessary obstacles to international trade, that open procedures including the publication and receipt of comments on drafts be used, that international standardization be promoted to the extent possible, and that foreign testing and certification of conformity with product standards be permitted where feasible.

A further difficulty with the standards code revolves around the fact that the code calls for signatories to use "all reasonable means within their power" to ensure compliance with its provisions by local governments and private-sector standardizing organizations. The Administration still is in the process of developing legislation that would carry out this obligation.

5. Customs Valuation

The main purpose of the MTN negotiations on customs valuation is to develop a new set of international rules that will harmonize divergent national valuation systems and reduce the possibility of artificially inflated customs appraisals. Another purpose of the negotiations is to introduce more objective valuation criteria which will thus allow traders to predict with more accuracy and certainty the value of their products for customs purposes.

The current U.S. system for customs valuation is an example of both the unpredictability and the artificially "inflating" characteristics that many systems contain. Under the American system, there are nine different methods for determining customs value, depending on the product being valued and the circumstances under which the product is imported. One of these nine valuation methods is the controversial American Selling Price system, by which certain products are valued for tariff purposes at the level of the domestically-produced articles with which they compete.⁴² This American Selling Price system was first enacted in 1922 and thus is protected by "grandfathering" against the GATT admonition that customs appraisals should not reflect "the value of merchandise of national origin . . . or fictitious values."⁴³ The valuation systems of most other nations also have controversial protective features that create problems for U.S. exporters.

The current draft customs code that is under consideration in the Tokyo Round establishes the "transaction value"—defined as the price actually paid or payable with additions for certain costs possibly not reflected in that price—as the most preferred valuation method. In many cases, however, such as those involving non-arm's-length transactions between a subsidiary and a parent company, transaction value cannot be used. Accordingly, the draft code establishes alternative bases of valuation, to be used in the following order of precedence when the transaction value is inappropriate: the transaction value for an "identical good" preferably made by the same manufacturer but sold in a different transaction; the value of "similar goods" that are produced in the same country and that are commercially interchangeable; a "deductive value" based on the price of the good on resale after importation minus expenses involved in the resale; and a "computed value" based on the estimated cost of production.

⁴² 19 U.S.C. § 1401a(e) (1976). The products subject to the American Selling Price system include benzenoid chemicals, rubber footwear, and certain types of shellfish. For a detailed description of the system, see *Tariff and Trade Proposals: Hearings Before the House Comm. on Ways and Means*, 91st Cong., 2d Sess. 5 (1970) (statement of Ambassador Carl J. Gilbert, Special Representative for Trade Negotiations).

⁴³ GATT art. VII(2)(a), 4 BISD at 12.

6. *Import Licensing*

This negotiation constitutes an effort to adopt international rules to limit and regulate the instances in which countries may require import licenses as a condition of importation by ensuring "that licensing systems are employed by all countries only when necessary, are not designed to distort trade, are transparent and are administered in a fair and equitable manner."⁴⁴ Separate draft texts currently cover automatic licensing (licensing used not to restrict imports but instead for such purposes as the collection of statistics) and restrictive licensing (the use of import licenses to administer import quotas). At present automatic licensing can cause unnecessary burdens for importers, and restrictive licenses frequently are administered arbitrarily and without disclosure of the permitted quota amounts.

7. *Commercial Counterfeiting*

The sale of counterfeit goods, ranging from fake "Levis" to spurious Swiss watches is a serious and growing problem. This practice costs genuine producers both money and good will, and defrauds consumers through the use of bogus trademarks and other indicia of identification. Most countries wish to end these deceptive practices by strengthening the existing international rules set forth in Article IX of the GATT⁴⁵ and in Article 9 of the Paris Convention on Industrial Property.⁴⁶ At present the Paris Convention requires only seizure of offending goods. One means of tightening these rules is to amend the Paris Convention to require *forfeiture* of these goods as well. This possibility, among others, is currently under consideration in the Tokyo Round.

8. *Sectoral Negotiations: Steel and Aircraft*

The recent worldwide recession in the steel industry, and intense competition between the E.E.C. and the United States in the aircraft industry within the past eighteen months, have given considerable significance to negotiations concerning these two industries. With respect to steel, widespread layoffs of workers and idle capacity during the past three years generated such strong protectionist pressures in the E.E.C. and the United States that a global understanding regarding trade in steel appeared to be the only alternative to an international "steel war." Such an understanding was developed in the Organization for Economic Cooperation and Development (OECD);⁴⁷ this development was closely

⁴⁴ Statement by Several Delegations on Current Status of Tokyo Round Negotiations, GATT Doc. MTN/INF/33 (July 13, 1978) (on file with the NORTH CAROLINA JOURNAL OF INTERNATIONAL LAW AND COMMERCIAL REGULATION).

⁴⁵ GATT art. IX, 4 BISD at 15.

⁴⁶ Paris Convention for the Protection of Industrial Property, *revised at* Stockholm, July 14, 1967, 21 U.S.T. 1583, T.I.A.S. No. 6923.

⁴⁷ New York Times, Dec. 1, 1977, at D 12, col. 4.

related to the Tokyo Round negotiations.

The OECD steel agreement establishes a Steel Committee under OECD auspices. The objectives of that Committee are to encourage the continuation and extension of free trade in steel, and to provide a means of disseminating information and coordinating policies among governments with respect to trade in steel. In addition to the establishment of this OECD Steel Committee, MTN tariff negotiators are exploring the possibility of tariff equalization for steel on a product-by-product basis among the major developed countries.

With respect to aircraft, delegations are studying the possibility of eliminating import duties on aircraft and aircraft parts, as well as possibly eliminating the U.S. duty on repairs performed abroad on U.S. aircraft. In addition, the United States would like to broaden the scope of this agreement to include some limitation of "predatory" aircraft financing practices.

9. *Agriculture*

Agricultural trade presents some of the most intractable but, for the United States at least, most politically important issues of the Tokyo Round. As the world's largest exporter of agricultural products, the United States has several objectives: gaining greater access to foreign markets now nearly closed to many important U.S. agricultural exports; obtaining assurances that competition between the United States and other exporting nations for the markets of third countries is reasonably fair; and improving the overall application of the GATT rules to agricultural trade.

The United States is concerned in the MTN both about market access for our agricultural exports, and about subsidies that other trading nations use to increase exports of their farm products. Such agricultural subsidies, like their industrial counterparts, give the subsidized products an unfair advantage in the competition for world markets. The GATT exercises little discipline over agricultural subsidies, specifying only that Contracting Parties should "seek to avoid the use of subsidies on the export of primary products."⁴⁸ In addition, subsidies that increase the subsidizing country's exports "shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product."⁴⁹ Not only is the obligation not to subsidize agricultural exports precatory rather than mandatory, but "an equitable share of world export trade" is such an imprecise concept that the provision is little more than an exhortation. In both the negotiations on subsidies and those on agricultural trade, the United States is attempting to strengthen this GATT provision.

⁴⁸ GATT art. XVI 3, 4 BISD, at 26.

⁴⁹ *Id.*

The MTN negotiators are also discussing the possibility of a commodity agreement establishing minimum world prices for certain dairy products. The dairy agreement would create a consultative body under the auspices of the GATT for considering problems in world dairy trade. The moving forces behind the dairy negotiations have been the E.E.C. and New Zealand. The United States, however, has not placed a high priority on these negotiations, because the minimum prices would probably be well below current U.S. domestic support prices for dairy products⁵⁰ and thus would have no direct effect on the U.S. dairy industry.

An international meat arrangement, which would cover trade in live cattle and most types of beef and edible cattle products, is also being considered by negotiators. It would create another advisory council to facilitate consultations and the flow of information about international trade in meat. In its present form, the arrangement would not contain economic provisions.

Finally, the negotiators have reached a "general understanding on agriculture" that "could provide a framework for avoiding continuing political and commercial confrontations in this highly sensitive sector"⁵¹ This understanding would probably begin with the establishment of a GATT consultation committee, which may ultimately produce greater international supervision of agricultural trade.

10. *Other Measures for Reforming the GATT rules*

a. *An "Enabling Clause" for Developing Countries*—One of the pillars of the post-war trading system has been the most-favored-nation principle embodied in GATT article I, which stipulates that ". . . any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties." For years developing countries have sought some modification of this principle that would permit some forms of special treatment for LDC exports. One milestone in this effort was international acceptance of the Generalized System of Preferences (GSP), by which selected exports from developing countries are allowed to enter the markets of developed countries at lower duty rates than those applicable to the same products from developed countries.⁵²

The GSP, however, is but one small facet of North-South trading relations. Moreover, it was given international legitimacy only by a

⁵⁰ 7 U.S.C. § 1446 (1976).

⁵¹ Statement by Several Delegations, *supra* note 35, at 6.

⁵² See GATT art. XXXVI, 4 BISD, at 53.

temporary waiver provided by the GATT Contracting Parties.⁵³ The developing countries have sought in the MTN to provide a permanent basis for the GSP, and to broaden the possibilities for special treatment in other areas. They achieved a fundamental victory in this respect at the outset of the MTN by securing recognition in the Tokyo Declaration that "special and more favorable" treatment might be provided in appropriate cases.⁵⁴

A second fundamental achievement which developing countries may gain from the MTN is the suggested adoption of an "enabling clause" making the possibility of special treatment for LDCs a permanent feature of the international trading system. Such a clause would provide not only for possible future special treatment for LDC products, but also would incorporate a principle of "graduation" from LDC status, whereby developing countries would take on increasing responsibilities under the GATT rules as their levels of development advanced. As the clause is currently being drafted, there would be other qualifications as well. It would, for example, prohibit "special deals" between developed countries and selected LDCs; any special treatment provided by one or more developed countries would have to be afforded to all developing countries in similar economic circumstances (a formula for permitting some benefits to go only to the least-developed developing countries). The GSP would be recognized as the only legitimate form of *tariff* preference, and intra-LDC preferential arrangements would be brought under greater GATT discipline.

b. Dispute Management—Under the current GATT rules, the first step toward resolving international trade disputes consists of consultations between the complaining government and the government(s) against which the complaint is lodged.⁵⁵ If such consultations do not settle the matter, then it may be referred to the Contracting Parties (in the form of the GATT Council, the general steering body) which generally will provide for review of the issue by

⁵³ The waiver by which the GATT Contracting Parties permitted the most-favored nation principle to be abrogated for a ten year period in order to permit the Generalized System of Preferences to Operate, is set forth at GATT Doc. L/3545 (1971), *reprinted in* GATT, 18th Supp. BISD, at 24. For an extended discussion of the Generalized System of Preferences, see Graham, *The U.S. Generalized System of Preferences for Developing Countries: International Innovation and the Art of the Possible*, 72 AM. J. INT'L L. 513 (1978).

⁵⁴ Tokyo Declaration, Sept. 14, 1973, GATT Doc. MIN(73)1 *reprinted in* GATT, 20th Supp. BISD, at 21.

⁵⁵ Such consultations may be requested under GATT art. XXII, 4 BISD, at 39, which provides only for consultations among the parties to a dispute with a view toward amicable settlement. Alternatively, consultations may be held under GATT art. XXIII(1), 4 BISD, at 39-40, as the required first step toward referring the dispute to the Contracting Parties for adjudication.

a small panel of independent experts or a larger "working party" of country representatives. The panel or working party will then hear the parties out, ask questions and attempt to mediate an amicable settlement. If such a settlement is impossible, the panel or working party will issue a finding which, if it sustains the complaining government's claim, may or may not include a recommendation that an offending practice be changed or repealed. The GATT rules authorize trade retaliation against recalcitrant offending countries as a last resort. This weapon, however, has been used only once—twenty-seven years ago—in the history of the GATT,⁵⁶ largely because of concern that it would start a chain of retaliation and counter-retaliation that would defeat the system's basic purposes. Since the thrust of authorized retaliation is not in fact credible, the principal affect of an adverse finding by a GATT panel or working party is the application of international "peer pressure" against the offending government. Such pressure can, of course, have the practical effect of costing the offending country bargaining leverage in future trade disputes or negotiations.

This process has become increasingly ineffectual in recent years. It specifies neither procedures nor time limits, with the result that even the selection of panelists, not to mention the adoption of procedures and settlement of the disputes, may take years.⁵⁷ This potential for delay is increased by the absence of any recognized roster of potential panelists. The legal standards for reviewing complaints have become cumbersome and obscure,⁵⁸ and this problem is complicated by confusion and disagreement over the role of mediation versus judicial decision-making in the dispute-settlement process. It is unclear, for example, whether panels should attempt to mediate the dispute while they are judging it or should confine their activities to produc-

⁵⁶ The one case in which trade retaliation took place involved a complaint by the Netherlands against U.S. trade restrictions on dairy imports. The Contracting Parties authorized the Netherlands to impose import quotas upon U.S. wheat exports. See J. JACKSON, *supra* note 4, at 172, citing the decision appearing at GATT, 1st Supp. BISD, at 33.

⁵⁷ A recent dispute involving complaints by the EEC against the U.S. tax provisions for "domestic international sales corporations" took some three and one-half years from the time the complaint was filed until the issuance of the reports by the panels.

⁵⁸ Under article XXIII(1) of the GATT, a Contracting Party may complain on the ground that

any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of

(a) the failure of another contracting party to carry out its obligations under the Agreement, or

(b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or

(c) the existence of any other situation. . . .

GATT, art. XXIII(1), 4 BISD, at 39-40.

ing a well-reasoned judicial opinion, letting the diplomatic chips fall where they may and leaving the function of mediation to occur, if at all, after a clear decision has been rendered with respect to the alleged infraction. Finally, the dispute-settlement bodies lately have appeared to become somewhat timid in their findings. Among the measures being developed as possible improvements to the GATT dispute-settlement process are remedies for each of these ills: the introduction of time limits for each stage of a procedure; the establishment of procedures and the creation of a standing roster of potential panelists; and a clarification of the respective roles of mediation and judicial decision-making.

In addition, the relationship of the dispute-settlement procedures in Article XXIII of the GATT to each of the non-tariff codes is still unsettled. At present the codes on subsidies/countervailing duties, standards, and other non-tariff subjects contain their own dispute-settlement provisions, which are closely modeled on those of GATT Article XXIII with the main reforms incorporated. It remains somewhat uncertain, however, whether this approach will be retained or whether ultimately disputes arising under any of the codes will utilize the centralized procedures set forth in (a reformed) GATT Article XXIII.

III. IMPLEMENTATION OF THE TOKYO ROUND AGREEMENTS

The manner in which the Tokyo Round agreements are implemented into U.S. domestic law will affect the future course of U.S. international trade practice at least as much as the content of the agreements themselves. Domestic implementation will include not only those changes in U.S. law and administrative rules that are "necessary" to carry out U.S. commitments in the MTN agreements, but will also include some changes that are "appropriate" to implement MTN commitments. Among the appropriate changes may be significant reforms of the procedures for handling countervailing duty complaints, escape-clause petitions, and other private-sector complaints concerning unfair foreign trade practices. Long-standing "Buy America" preference legislation will need to be waived for qualifying imports, and a new relationship between the federal government and private standards-making and product-testing organizations will be created.

Five years were required to negotiate these agreements. Their implementation must be accomplished in six to nine months. Current plans call for the Administration's proposed implementing bill, *which cannot be amended* after it has been formally submitted, to be sent to the Congress in mid-April. This submission would set the "fast-track" implementation

procedures into motion:⁵⁹ Committees reviewing the bill will have not more than forty-five congressional working days in which to report the bill out of Committee; the House will have fifteen working days thereafter to vote the bill up or down; and if the House acts favorably the Senate will have another thirty working days to vote on the bill.⁶⁰ These time periods—forty-five days in Committees, fifteen days in the House, and an additional thirty days in the Senate—add up to a maximum of ninety congressional working days for consideration of the Administration's non-amendable proposal. Thus, if the current intention to submit the bill in mid-April is maintained, the Congress probably will enact the Tokyo Round results some time in September.

Because the bill cannot be amended after it has been submitted, the Administration has been taking pains to consult with members of the Congress and their staffs and with the official private-sector advisory committees to the greatest extent possible prior to putting the proposed bill into final form. Obviously the purpose of these consultations is to take into account as many views as possible so as to gain the maximum possible support for the bill prior to its submission.

Some tactical and policy lines are beginning to emerge. The implementing legislation will be a single bill, with different sections covering subsidies, safeguards, and the other subjects to be implemented. To do otherwise would subject the Tokyo Round agreements, which are seen internationally as a delicately balanced whole, to the possibility of piecemeal defeats in the Congress. By submitting the entire implementation in a single package, the results of the negotiations must stand or fall as a whole.

Perhaps most important to practicing attorneys, the legislation will probably contain greatly strengthened procedures for complaining of alleged unfair foreign trade practices, including foreign violations of the new MTN agreements, and for securing a review of such practices by the Administration. This review will include possible institution of formal international complaint procedures under the GATT and of trade retaliation by the United States, as well as a requirement for periodic reports to the complainant and the public on the progress of the action. These procedures will be designed to ensure that the United States is in a position to take advantage of its newly-acquired rights under the Tokyo Round's non-tariff agreements.

Nothing in the U.S. implementing procedures prevents the Administration or the Congress from submitting separate legislation, on the same or related subjects, that is not formally MTN implementing legislation and thus is not subject to the rule against amendments or the fast-

⁵⁹ The "fast-track" implementing procedures may be used for any legislation that is "necessary or appropriate" to implement a trade agreement. 19 U.S.C. § 2191(b)(1)(C) (1976). For a discussion of these procedures, see text accompanying note 20, *supra*.

⁶⁰ 19 U.S.C. § 2191(e) (1976).

track procedures. Possibilities for such legislation range from increased "adjustment assistance" for workers or firms threatened by import competition, to vigorous stimulation for U.S. exports and reorganization of the Administration's trade-policy structure.

As February draws to a close the prospects for congressional enactment of the Tokyo Round results must be regarded as good, not only because there is much in the agreements of benefit to U.S. exporters, importers, and consumers, but also because failure to accept the results could have catastrophic consequences for the international trading system. Such a failure would indicate a lack of political will to resist narrowly-focused economic nationalism, and could start a chain reaction that would result in increased protective trade barriers in all trading nations to the further detriment of the world economy. Fortunately for all of us, the likelihood of that failure seems to be receding.

