

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.SB/18
30 October 1991

Special Distribution

Surveillance Body

REPORT BY THE CHAIRMAN OF THE
SURVEILLANCE BODY TO THE TNC

1. In December 1990, a report by the Chairman of the Surveillance Body (MTN.SB/14) was transmitted to the TNC meeting at Ministerial level in Brussels. Following consultations with participants, the Chairman has updated the report to take account of the developments and discussions held since Brussels. The report provides the TNC with a brief summary of the implementation of the standstill and rollback commitments and views expressed in the matter. A more detailed account is provided in the Annex.

(1) Standstill

2. Since the standstill commitment took effect in September 1986, a total of 26 notifications, by 11 individual participants and a group of participants against 9 participants, were submitted to the Surveillance Body. These notifications covered 24 cases, as two measures were, each, subject to two notifications.

3. Twenty-four notifications were made during the period October 1986 to November 1988. One notification was submitted in 1990 and one in 1991.

4. According to the information provided to the Surveillance Body, in nine of the 24 cases participants have taken action with a view to ensuring the withdrawal of measures contrary to the standstill commitment. Three of these actions were in response to recommendations of GATT Panel reports adopted by the CONTRACTING PARTIES; in the other six cases, the measures concerned were lifted autonomously. In a tenth case, a participant expressed its intention to act upon the notified measure in the light of the outcome of the Uruguay Round.

5. The remaining 14 cases notified under standstill were also discussed at meetings of the Surveillance Body. Some actions were reported concerning the measures in question. However, the views of the participants remained divided as to the consistency or inconsistency of the measures with the standstill commitment.

6. Participants also engaged in "early warning" discussions on proposed legislation and other actions affecting trade. Altogether 35 cases were subject to discussions, some being discussed at several meetings. The discussion in the Surveillance Body served to ensure that the concerns brought up by participants were duly shared and transmitted, in an appropriate fashion, to the authorities concerned.

(2) Rollback

(a) Rollback consultations

7. A total of twenty rollback requests covering a wide range of measures were made by eight participants, addressed to seven participants. In some cases, there was some overlap of the measures notified. Most requests concerned quantitative restrictions considered by the notifying participant to be inconsistent with the General Agreement.

8. Nineteen requests were made during the period June 1987 to October 1988. One request was made in 1990.

9. Fifteen requests were the subject of consultations. A total of twenty-one consultations were held. There have been no notifications concerning consultations on the remaining five requests.

10. Three participants to which requests were addressed (the EC, Japan and the United States) notified undertakings already implemented or intended. In some cases, the undertakings covered only part of the measures contained in the rollback requests made by other participants. The other four participants addressed have not submitted any information on undertakings in response to the rollback requests.

11. In one case, the requesting participant indicated that the measure notified had been removed.

(b) Implementation of Panel recommendations

12. Four participants (Canada, Japan, the Republic of Korea and the United States) notified the Surveillance Body of their actions on certain measures which had been ruled GATT-inconsistent by the CONTRACTING PARTIES, following Panel recommendations.

(c) Autonomous trade liberalization actions

13. Some participants (Australia, Argentina, Canada, Colombia, the EC, Finland, Indonesia, the Republic of Korea and Venezuela) informed the Surveillance Body of autonomous trade liberalization actions. Most of the

measures affected by these actions had not been subject to rollback requests from other participants. The actions included the elimination of discriminatory import restrictions, changes in import licensing régimes, progressive liberalization of import restrictions and removal of other non-tariff measures. Most of these notifications were made without prejudice to the question of GATT-consistency of the measures concerned. In discussing these autonomous actions, the point was made that the rollback commitment was only related to GATT-inconsistent measures and therefore a distinction should be made between the autonomous liberalization of GATT-consistent measures and that of GATT-inconsistent measures. However, many participants recognized the difficulties in determining the GATT-inconsistency of the trade measures concerned.

(3) Considerations for the full implementation of the rollback commitment

14. The Surveillance Body has given active attention to the development of procedures for promoting rollback action and to proposals made by individual participants to this end. The Surveillance Body has also made an effort to assess the extent to which GATT-inconsistent measures continue to be maintained by individual contracting parties. Upon request of the Surveillance Body, the Secretariat prepared a note on measures which, following Panel findings, had been found by the CONTRACTING PARTIES to be inconsistent with the General Agreement. Forty-two cases were listed, covering the period 1951-90. In general, full information on the follow-up action taken to implement Panel findings is not available. It was found that in a number of the more recent cases implementation of the Panel recommendations remained pending.

15. In this connection, the Surveillance Body has considered proposals by some participants for action on the rollback of measures inconsistent with GATT or related instruments. Particular reference was made to measures found inconsistent by the CONTRACTING PARTIES following panel reports, and in this context, to a timeframe for the phasing out of such measures.

16. Participants identified two difficulties in establishing the full picture of outstanding GATT-inconsistent measures. First, in a strict legal sense, the GATT-inconsistency of a particular measure maintained by a participant can only be determined by the CONTRACTING PARTIES. Second, the Punta del Este Ministerial Declaration requires that each participant implement the rollback commitment, taking into account multilateral agreements, undertakings and understandings reached in the Uruguay Round.

17. Against this background, the Surveillance Body has considered ways by which the full implementation of the rollback undertaking could be facilitated. The Surveillance Body notes that it is difficult for it to proceed further, in view of the fact that final agreements or decisions in

individual negotiating areas of the Uruguay Round, including agreements on procedures to phase out, or bring into conformity, measures henceforth inconsistent with the provisions of the General Agreement or Instruments negotiated within the framework of GATT or under its auspices, have yet to be reached. In the circumstances, the Surveillance Body requests the TNC to consider, including in the light of all information regarding agreements or decisions reached in the Uruguay Round Negotiating Groups, the further action that may be needed to ensure that the rollback undertaking is fully met.

ANNEX

1. The Punta del Este Ministerial Declaration contains the following commitments on standstill and rollback:

"Standstill

- (i) not to take any trade restrictive or distorting measure inconsistent with the provisions of the General Agreement or the instruments negotiated within the framework of GATT or under its auspices;
- (ii) not to take any trade restrictive or distorting measure in the legitimate exercise of its GATT rights, that would go beyond that which is necessary to remedy specific situations, as provided for in the General Agreement and the Instruments referred to in (i) above;
- (iii) not to take any trade measures in such a manner as to improve its negotiating positions."

"Rollback

- (i) that all trade restrictive or distorting measures inconsistent with the provisions of the General Agreement or Instruments negotiated within the framework of GATT or under its auspices, shall be phased out or brought into conformity within an agreed time-frame not later than by the date of the formal completion of the negotiations, taking into account multilateral agreements, undertakings and understandings, including strengthened rules and disciplines, reached in pursuance of the Objectives of the Negotiations;
- (ii) there shall be progressive implementation of this commitment on an equitable basis in consultations among participants concerned, including all affected participants. This commitment shall take account of the concerns expressed by any participant about measures directly affecting its trade interests;

(iii) there shall be no GATT concessions requested for the elimination of these measures."

2. A consolidated text of the Ministerial commitments on standstill and rollback, and of the procedures agreed by the TNC and by the Surveillance Body, is contained in document MTN.TNC/W/10/Rev.1.

3. The Surveillance Body held fifteen meetings to examine and monitor the implementation of the standstill and rollback commitments. Detailed reports of its activities are contained in MTN.SB/1-17. The latest list of notifications and communications on standstill and rollback is contained in MTN.SB/W/3/Rev.12.

(1) Standstill

4. Since the standstill commitment took effect on 20 September 1986, a total of 26 notifications, by 11 individual participants and a group of participants against 9 participants, were submitted to the Surveillance Body. Twenty-four notifications were made during the period October 1986 to November 1988. There was no notification in 1989. In 1990 and in 1991, one notification was each submitted.

5. The 26 standstill notifications covered a total of 24 cases, as two measures were, each, subject to two notifications.

6. Ten notifications, referring to nine different subjects, were addressed to the United States; six notifications, referring to five different subjects, to the European Communities; three notifications were addressed to Canada; two to Brazil; and one each to Greece, Indonesia, Italy, Sweden and Switzerland. The notifications covered quantitative restrictions, tariffs, import levies, import controls and prohibitions, export restrictions, internal taxes, production and export subsidies, and government procurement.

7. Sixteen notifications cited violations of paragraph (i) of the standstill commitment. Two notifications cited violations of both paragraphs (i) and (ii). Twelve notifications referred to paragraph (iii) of the commitment, three to paragraphs (i) and (iii), and two to paragraphs (ii) and (iii). One notification did not specify any particular paragraph.

8. In two cases, concerning a ban on imports of almonds into Greece (MTN.SB/SN/10) and Brazil's expansion of the list of products for which the issue of import licences was temporarily restricted (MTN.SB/SN/2), the notifying participant (United States) withdrew its notifications, following

the lifting of the ban by Greece and the abolition of the practices in question by Brazil.

9. Seven notifications under standstill addressed a total of five measures which, at the same time, were subject to Article XXIII:2 Panel proceedings. These measures were the United States customs user fee (there were two notifications on the issue), the United States Superfund tax, the EC apple import quota system (there were two notifications), Canada's import controls on dairy products, and United States restrictions on imports from Brazil. As for the last case, the United States measures reflected in the notification were terminated effective 2 July 1990 and Brazil withdrew its complaint under Article XXIII:2 before the Panel proceeding was completed. In the other four cases, the measures were found by the Panels to be inconsistent with the General Agreement. The Council adopted the Panel reports. The EC measures concerning imports of apples had expired before the adoption of the Panel report. The United States amended the Superfund tax in accordance with the Panel recommendations. The United States also revised the customs user fee to bring it into conformity with the GATT. With respect to Canada's restrictions on some dairy products, Canada expressed its intention to implement the Panel recommendation in the light of the outcome of the Uruguay Round.

10. The decision taken by the TNC at its Mid-Term Review in April 1989 emphasized the need to take appropriate action to ensure withdrawal of all measures contrary to the standstill commitment, taking into account that there were a number of measures which had been ruled GATT-inconsistent by Panel reports adopted by the CONTRACTING PARTIES. There have been two notifications of actions to bring measures into conformity with the General Agreement (the United States amendment of the Superfund tax, MTN.SB/RBN/2; and the United States revision of the customs user fee, MTN.SB/RBN/8).

11. According to the information provided to the Surveillance Body, participants have taken action with a view to ensuring the withdrawal of measures contrary to the standstill commitment with respect to nine (MTN.SB/SN/1 (i) and (ii), 2, 3, 7, 10, 12 (and 15), 17, and 19) of the 24 cases covered by the 26 notifications; in a tenth case (MTN.SB/SN/9), it was indicated that action would be taken in the light of the outcome of the Uruguay Round. The remaining 14 cases were discussed at the meetings of the Surveillance Body. Some actions were reported concerning these measures. However, no consensus was achieved as to the inconsistency of the measures concerned with the standstill commitment.

12. In the Surveillance Body's "early warning" discussions on proposed legislation and other actions affecting trade, 35 cases were subject to discussions, some being discussed at several meetings. Seventeen cases were related to actions by the United States, including the Omnibus Trade

and Competitiveness Act of 1988, and the "Super 301" and "Special 301" provisions under the Act (MTN.SB/1-7, 9-13). Twelve cases concerned EC actions, including the "Television without Frontiers" Directive, and increases in certain agricultural aids (MTN.SB/2-5, 7, 10-13). Other countries concerned were Australia (MTN:SB/6), Finland (MTN.SB/9), Brazil (MTN.SB/11), and the Republic of Korea (MTN.SB/13).

13. The Surveillance Body has limited information on the current situation with respect to the proposed measures. Among actions known to the Surveillance Body are that the 1988 Textile, Apparel and Footwear Trade Bill of the United States was vetoed; that the President of the United States vetoed again a textile and footwear bill in October 1990; and that the EC's proposed measures on oils and fats were not pursued.

(2) Rollback

(a) Rollback consultations

14. In accordance with the agreed procedures and arrangements on rollback consultations, a total of twenty rollback requests covering a wide range of measures were notified. These requests were made by eight participants and addressed to seven participants. Nineteen requests were made during the period June 1987 to October 1988. There was no request in 1989 and in 1991. One request was made in February 1990.

15. One half of the requests came from developed participants (seven from Canada, two from the United States, and one from Japan), and the other half from developing participants (four from Argentina, three from Uruguay, and one each from Chile, Hong Kong, and Romania). Five requests each were addressed to the European Communities, Japan and the United States, two to Sweden, and one each to Brazil, Finland and Norway.

16. Most requests concerned quantitative restrictions considered by the notifying participant to be inconsistent with Articles XI and XIII of the General Agreement. Other measures covered by the requests included import licensing systems, sanitary and phytosanitary regulations, prohibition of imports, export subsidies, and voluntary export restraints.

17. Fifteen requests were the subject of consultations. Altogether, twenty-one consultations took place. There have been no notifications concerning consultations on the remaining five requests (RBC/5, 10, 15, 20, and 21).

18. The Surveillance Body had agreed on a target of 30 days for beginning the process of consultations following receipt of requests. In many cases, this target was not met. The frequency of consultations greatly diminished

after 1988 (five consultations in 1987, thirteen in 1988, three in 1989 and no consultations in 1990 or in 1991).

19. The decision taken by the TNC at its Mid-Term Review in April 1989 emphasized the need for timely action on rollback, and prompt response to rollback requests, so as to ensure progressive implementation of the rollback commitment on an equitable basis. The Surveillance Body, at its meetings of March and July 1990, agreed that reports on the status and outcome of the rollback consultations should be submitted by participants within an agreed time limit.

20. In response, the Surveillance Body received written notifications from the EC, Japan and the United States on undertakings resulting from, or relating to, their rollback consultations or on the status of their consultations. The other four participants addressed have not submitted any information on undertakings in response to the rollback requests. As for participants requesting rollback action, Canada, Hong Kong, Japan and the United States reported on the status and outcome of their rollback consultations.

21. The European Community reported on its consultations with Japan (RBC/17/Add.2). As a result, the EC had eliminated a range of quantitative restrictions notified by Japan under RBC/17.

22. In its communication (RBC/22), Japan reported on the termination of import allocation systems for eight categories of agricultural products, which were subject to rollback consultations with Argentina, Hong Kong, the United States and Uruguay. Japan also reported that some measures subject to rollback consultations with the United States had been removed through other autonomous market-opening measures contained in document L/6370. With respect to consultations with the EC requested by Japan, Japan noted the measures taken by the EC (see paragraph 21 above) and stated that bilateral contacts were continuing with regard to the EC's remaining quantitative restrictions maintained against Japan.

23. In its communication (MTN.SB/RBN/8), the United States reported on the status of rollback consultations which had been requested by other participants (RBC/4, 7, 15, 16 and 20) or had been requested by the United States (RBC/1 and 18). With respect to Section 337 legislation (RBC/15), the United States had indicated at the time of adoption of the Panel report on the issue that it would take steps to make the necessary modifications in domestic legislation and that it regarded the Uruguay Round implementing legislation as the most appropriate legislative vehicle for accomplishing such modifications. An active consultative process was on-going in the United States to seek the ~~comments~~ comments of all interested parties on implementation issues and interested foreign governments had been able to

participate in this process. With respect to other United States measures concerned, the United States reported that, in most cases, it considered the consultations completed with participants concerned. As regards requests to Japan and the EC, the United States took note of the actions announced by these participants and looked forward to further action. However, the United States did not seek additional consultations on the remaining items.

24. Canada informed the Surveillance Body orally of the outcome of rollback consultations with other participants, which Canada had requested (MTN.SB/13). In Canada's view, the original cause for Canada's communication on Brazil's "law of similarity" (RBC/9) appeared to have been removed by recent changes in Brazil's international trade régime. With respect to Japan's import quotas on fish products notified by Canada in 1987 (RBC/12), Canada considered that the current conditions of access to Japan permitted Canadian products to be exported to Japan. According to the statement of Canada, other issues contained in Canada's rollback requests had not been resolved.

25. In its communications (RBC/8/Add.5 and 6), Hong Kong reported the outcome of its consultations with Japan concerning Japan's import quota system on 13 items and the Prior Confirmation System on imports of silk fabrics. Hong Kong accepted Japan's justification in respect of the import quota system on six items, noted that Japan was implementing Panel recommendations on three items, and received further information and clarification from Japan for restrictions on the four remaining items. Hong Kong did not intend to follow up consultations on these remaining items. Consultations remained inconclusive on the question of the GATT-consistency of the Prior Confirmation System maintained by Japan on imports of silk fabrics.

(b) Implementation of Panel recommendations

26. Some participants considered the implementation of GATT Panel reports adopted by the CONTRACTING PARTIES an integral part of the rollback process. In their view, the rollback commitment provided an additional means of encouraging participants to fully and speedily implement Panel reports. They drew attention in this regard to MTN.SB/W/11, dated 26 October 1990, which contained a note by the Secretariat on actions taken regarding measures which were found by the CONTRACTING PARTIES to be inconsistent with the GATT. Some other participants thought that the implementation of Panel reports adopted by the CONTRACTING PARTIES had no direct relevance to the rollback commitment, as it should follow the normal GATT dispute settlement procedures.

27. Three notifications by Canada, Japan and the Republic of Korea (MTN.SB/W/6, MTN.SB/RBN/1 and MTN.SB/RBN/5) referred to the liberalization of some measures which had been ruled GATT-inconsistent by Panel reports. The United States made rollback notifications on legislation to amend the Superfund tax and the customs user fee in pursuance of Panel recommendations (MTN.SB/RBN/2 and MTN.SB/RBN/8). These United States measures were the subject of standstill notifications from other participants.

(c) Autonomous trade liberalization actions

28. Some participants informed the Surveillance Body of autonomous trade liberalization actions with respect to certain trade measures earlier maintained by them. These measures had not been subject to rollback requests from other participants. In most cases, the notifications were made without prejudice to the question of GATT-consistency of the measures concerned, and the notifying participants did not specify whether the actions constituted undertakings of the rollback commitment on GATT-inconsistent measures.

29. A notification by the European Community (RBC/19/Rev.1) contained autonomous rollback measures related to the elimination of specific quantitative restrictions and the suspension of non-specific quantitative restrictions on imports from Hungary and Poland. Seven other participants (Argentina, Australia, Canada, Colombia, Finland, Indonesia and the Republic of Korea) submitted written notifications on autonomous trade liberalization actions which they had recently taken (MTN.SB/RBN/3 and Rev.1, MTN.SB/W/7, MTN.SB/W/6, MTN.SB/RBN/4, 5, 6, 7 and 9 L/6868 and L/6869 respectively). Venezuela reported orally to the Surveillance Body on its recent trade liberalization measures (MTN.SB/17).

30. In the context of these autonomous actions, the point has been made that the rollback commitment was only related to GATT-inconsistent measures. Therefore, it was suggested that a distinction should be made between the autonomous liberalization of GATT-inconsistent measures and that of GATT-consistent measures, such as autonomously reducing an applied m.f.n. tariff further below its bound rate. However, many participants recognized the difficulties in determining the GATT-inconsistency of the measures concerned.

(3) Proposals for implementation of rollback action

31. On the whole, with respect to rollback consultations, only a few undertakings have been reported to the Surveillance Body. Some participants reported the implementation of Panel recommendations as

rollback undertakings; but a number of measures have remained in force which have been ruled to be GATT-inconsistent by the CONTRACTING PARTIES, following Panel reports. Some participants pointed out that measures which had been notified under the standstill commitment and which had not yet been withdrawn should also be subject to rollback. As noted above, while some participants have notified autonomous trade liberalization actions without prejudice to the question of GATT-inconsistency of the measures concerned, views have been divided whether these actions should be considered rollback measures as provided for in the Punta del Este Ministerial Declaration.

32. The Surveillance Body has given active attention to the development of procedures for promoting rollback action and to proposals made by individual participants to this end. Following the Mid-Term Review, Australia (MTN.SB/W/7) and New Zealand (MTN.SB/W/8) put forward proposals on ways to ensure the fulfilment of the rollback commitment. Australia proposed that the TNC agree on the full implementation of all outstanding Panel reports adopted by the CONTRACTING PARTIES. New Zealand proposed that the Surveillance Body should agree on the following ways in which the rollback commitment might be evaluated:

- (i) without prejudice to the decisions on dispute settlement procedures taken in the Uruguay Round, contracting parties maintaining measures which have been ruled GATT inconsistent by the CONTRACTING PARTIES, following Panel recommendations, would communicate within an agreed timeframe their programmes for the phasing out of such measures, or for bringing them into conformity with the provisions of the General Agreement or Instruments negotiated within the framework of GATT or under its auspices, within a timeframe which would also be mutually agreed;
- (ii) in light of the results of the Uruguay Round, contracting parties would review trade policy measures other than those described in paragraph (i) above, that are being maintained by them, with a view to determining the extent to which their rollback commitments under the Punta del Este Declaration are met. Contracting parties would communicate the result of such a review including any further action that they intend to take in this matter to the CONTRACTING PARTIES within an agreed timeframe.
- (iii) The CONTRACTING PARTIES would review the situation in light of the communications received by them. Without prejudice to the existing rights and obligations of contracting parties under the GATT or Instruments negotiated within the framework of GATT

or under its auspices, contracting parties would recommend such action as may appear appropriate for facilitating the phasing out of, or the bringing into conformity of measures inconsistent with the provisions of the General Agreement or Instruments negotiated within the framework of GATT or under its auspices.

33. The Surveillance Body discussed these proposals on a number of occasions. While there was considerable support for these proposals, there was no consensus on their adoption. Views remained divided about the ways in which autonomous trade liberalization actions and the implementation of Panel reports should be evaluated.

34. Mexico proposed that the burden of proof concerning the GATT-consistency of particular measures notified under the rollback procedures should be shifted to the participant applying such measures.

35. The Surveillance Body has also made an effort to assess the extent to which GATT-inconsistent measures continue to be maintained by individual contracting parties. In this connection, the Secretariat was asked to prepare a list of measures which, following Panel findings, had been found by the CONTRACTING PARTIES to be inconsistent with the General Agreement. The Secretariat also added available information regarding actions taken in response to such findings (MTN.SB/W/11). In general, full information on the follow-up action taken to implement Panel findings is not available. In the majority of the 42 cases listed (covering the period 1951-90), actions appear to have been taken in response to the recommendations. However, in a number of the more recent cases, implementation of the Panel recommendations remained pending.

36. In this connection, the Surveillance Body has considered proposals by some participants for action on the rollback of measures inconsistent with GATT or related instruments. Particular reference was made to measures found inconsistent by the CONTRACTING PARTIES following panel reports, and in this context, to a timeframe for the phasing out of such measures.

37. Participants identified two difficulties in establishing the full picture of outstanding GATT-inconsistent measures. First, in a strict legal sense, the GATT-inconsistency of a particular measure can only be determined by the CONTRACTING PARTIES and, therefore, there are no other means available for participants to definitively determine the GATT-inconsistency of measures maintained by other participants. Second, the Punta del Este Ministerial Declaration requires that each participant implement the rollback commitment, taking into account multilateral agreements, undertakings and understandings reached in the Uruguay Round.

38. The Punta del Este Ministerial Declaration requires that the implementation of the rollback commitment be made within an agreed time-frame not later than by the date of the formal completion of the negotiations, taking into account multilateral agreements, undertakings and understandings, including strengthened rules and disciplines, reached in pursuance of the Objectives of the Negotiations. In this respect, the view has been advanced by some participants that agreement on a time-frame does not necessarily imply that all measures subject to the commitment should be phased out, or brought into conformity with the provisions of the General Agreement or Instruments negotiated within the framework of GATT or under its auspices, before the end of the Uruguay Round. This view is based on the consideration that the full details of multilateral agreements, undertakings and understandings might emerge only towards the end of the Uruguay Round. Some other participants did not share this view.