

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## Preparatory Committee

### STANDBY AND ROLBACK

#### Note by the Secretariat

1. At the Preparatory Committee's meeting on 28 January the Chairman stated that the secretariat would prepare for circulation to the Committee a short note summarising the main points emerging from the Committee's discussion on the nature and content of a standstill commitment in the context of a new round. The note which follows is intended to help focus the next stage of the Committee's discussions on the content of a recommendation on standstill. It should be noted that in its paragraph 3(vi), the note also deals with the question of the phase-out of measures not in conformity with the General Agreement. It is hoped that the secretariat paper will provide a useful input to any papers on the subject which delegations may intend to submit.

2. The second part of the note incorporates a description of some previous standstill commitments, undertaken either in the context of earlier rounds of negotiations or in other contexts.

#### Part I: Main points arising from discussion in the Preparatory Committee on standstill and rollback

3. The following are the main points arising during the Committee's discussion on standstill and rollback on which it appears that agreement would be needed for the purposes of a commitment in the context of a new round.

#### A strengthened standstill commitment

i. Acceptance of the GATT entails an obligation on all contracting parties not to introduce trade restrictive measures not in conformity with the General Agreement. Furthermore, in paragraph 7(i) of the 1982 Ministerial Declaration contracting parties undertook to refrain from taking or maintaining any measures inconsistent with GATT and to make determined efforts to avoid measures which would limit or distort international trade. Nevertheless, it is vital that at the time of the launching of the new round all participants should reaffirm at Ministerial level the existing obligation on contracting parties not to introduce any restrictive measures not in conformity with GATT, and should undertake not to improve their negotiating position during the negotiations by increasing levels of protection or trade distorting measures.

#### Coverage of the standstill commitment

ii. It follows from the above that the commitment should cover all types of measures which restrict or distort trade, and all sectors of trade.

The standstill commitment and GATT rights

- iii. It should also embody a firm undertaking that any measures taken in the exercise of GATT rights, for example under Articles VI, XII, XVI, XVIII, XIX, and XXVIII, will not go beyond what is necessary to remedy specific situations provided for in those Articles and will in no case be taken in such a manner as to improve national negotiating positions. These considerations would apply with particular force to products and sectors of special importance to the export trade of developing countries.

Acceptance of the commitment

- iv. The commitment should be accepted by all participants in the negotiations and applied without discrimination. It has been suggested that where necessary it should be supported by appropriate national legislation or executive action.

Entry into force

- v. The additional commitment not to improve national negotiating positions by increasing levels of protection or trade-distorting measures should come into force on the date of the launching of the round or that of the opening of the preparatory process and should remain in force until the end of the negotiations.

Phase-out of non-conforming measures

- vi. A commitment on standstill should be accompanied by an undertaking that existing measures which are not in conformity with the General Agreement would be phased out according to an agreed programme, or brought into conformity with GATT, before the end of the negotiations.

Surveillance

- vii. The implementation of the standstill and phase-out commitments should be ensured by strict observance of notification obligations and by effective monitoring. It is widely felt that monitoring should be done in a special body [under the authority of the GATT Council]. Violations of the commitments could be notified to the surveillance body by any contracting party, whether or not its trade interests were directly affected. The rôle of the secretariat in this regard might also be strengthened.

Part II: Standstill Arrangements in Connection with Previous Negotiations

4. This section of the paper examines standstill commitments adopted in the context of the launching of past rounds of negotiations in GATT.

5. The Rules and Procedures for the early GATT tariff conferences, including the Dillon Round Negotiations 1960/62, contained a standstill paragraph that appeared in very similar form in all the texts. The relevant paragraph, VII (e), of the Dillon Rules reads:

"The participating governments shall refrain from increasing tariff and other protective measures inconsistently with the principles of the General Agreement and with the object of improving their bargaining position in preparation for the negotiations" (BISD, 8S/118).

6. In the Programme of Action adopted by the Ministerial Meeting of 21 May 1963, which also set the ground rules of the Kennedy Round, there is under the heading "Measures for the Expansion of Trade of Developing Countries as a Means of Furthering their Economic Development" a standstill provision reading:

"No new tariff or non-tariff barriers should be erected by the industrialized countries against the export trade of any less-developed country in the products identified as of particular interest to the less-developed countries. In this connection the less-developed countries would particularly mention barriers of a discriminating nature" (BISD, 12S/36).

7. The standstill commitment in the Programme of Action was, however qualified by the following statement:

"Ministers of industrialized countries, other than those of the EEC, stated that they would conform to the standstill provision except where special and compelling circumstances rendered departure from it unavoidable, in which case adequate opportunity for consultation would be afforded to the developing countries mainly interested in the products concerned. Such consultation would occur prior to the introduction of measures constituting a departure from the standstill unless this were impossible or impracticable" (BISD, 12S/38).

8. The Ministers of the EEC "stated that, while they recognized that some of the points contained in the Programme could be regarded as objectives to which, to the fullest extent possible, concrete policies should be adapted, the first seven points<sup>1</sup> of the Programme referred only to measures for the elimination of barriers to trade, whereas, in their view, more positive measures were required to achieve the marked and rapid increase in the export earnings of the developing countries as a whole, which was the fundamental objective" (BISD, 12S/39).

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<sup>1</sup>These points included the standstill provision.

9. Under the heading "Trade in Tropical Products", the Programme of Action contained a further standstill provision:

"The Ministers, other than those of the EEC and the States associated with the Community ..... agreed that governments should not erect any new or non-tariff barriers against trade in tropical products. If, in practice, a government for compelling reasons felt that it had to take any measures which would have such effects, it should afford adequate opportunity for prior consultations with the exporting countries mainly interested in the products affected" (BISD, 12S/41).

10. The commitments in the Action Programme were taken over and made permanent, in qualified form, in Part IV of the General Agreement, which entered into force in 1966.

11. The Principles and Procedures for the Kennedy Round Negotiations, (adopted at the same occasion as the Action Programme) did not contain any standstill provision. Nor did the Resolution adopted on 6 May 1964 by the Meeting of the Trade Negotiations Committee at Ministerial Level include a standstill commitment.

12. The need for a standstill rule in the procedures for the Kennedy Round was obviously less strong than in the previous negotiations. The tariff cuts by industrialized countries were to be made on a linear basis, and a base date (for most participants July 1964) for the calculation of cuts was established. Any exceptions from the agreed linear cut would be "the subject of confrontation and justification".

13. There was no standstill commitment in the Tokyo Declaration. In so far as tariff cuts were concerned, the same considerations as in the case of the Kennedy Round (base date and exceptions) applied in the Tokyo Round.

Commitments undertaken outside the context of negotiations

14. In most industrialised countries over 90 per cent of customs duties are bound in GATT, and to this extent, for all practical purposes, a permanent standstill arrangement is already in force. It seems generally agreed that the main instruments of trade policy relevant to a standstill today are those non-tariff measures which restrict or distort trade. In paragraph 7(i) of the Ministerial Declaration of November 1982, the contracting parties undertook "individually and jointly:

(i) to make determined efforts to ensure that trade policies and measures are consistent with GATT principles and rules and to resist protectionist pressures in the formulation and implementation of national trade policy and in proposing legislation; and also to refrain from taking or maintaining any measures inconsistent with GATT and to make determined efforts to avoid measures which would limit or distort international trade."

This commitment has however been interpreted in various ways, and has not prevented the subsequent introduction of measures which, whether consistent with GATT or not, have limited or distorted trade.