

PREPARATORY COMMITTEE

Record of Discussions

Discussions of 9-12 June 1986

1. The Chairman said that at this stage of the Committee's work it would be useful to concentrate as far as possible on specific texts rather than to engage in general debate. He proposed, therefore, to spend some of the time available to the Committee in informal meetings and consultations. During the formal meetings, the Committee would consider the subjects of notification and surveillance, ministerial involvement and participation in the Ministerial Meeting in September.

NOTIFICATION AND SURVEILLANCE PROCEDURES

2. The Chairman said that earlier discussions on notification and surveillance had made it clear that the Committee attached great importance to this subject, both in the context of the new round and with reference to the fulfilment of existing GATT obligations. There was agreement that existing arrangements for the notification and surveillance of trade measures needed to be streamlined and made more effective as well as that any commitments on standstill and rollback would have to be subject to effective surveillance. The secretariat document on notification and surveillance (PREP.COM(86)W/31) proposed that responsibility for the surveillance of trade policies be given to a single body which would carry out the surveillance functions currently performed by the Special Sessions of the Council and would also be responsible for monitoring the implementation of standstill and rollback commitments.

3. The representative of Canada said there was a need for streamlining the existing arrangements for notification and surveillance, and making them more effective, particularly in light of any commitments to be undertaken on standstill and rollback. In the interest of efficiency and of avoiding possibly lengthy and difficult discussions of a procedural nature, they considered that this function could be carried out by Special Council Sessions, reinforced by a more effective input from delegations and the secretariat. The deliberations of the Special Council Session could be brought to the attention of the Trade Negotiations Committee for the duration of the new round. Further improvement of the GATT machinery for notification and surveillance, pending a longer-term examination of the question, would need to be continued, whether in the context of the new round or independently of it.

4. The representative of Jamaica enquired whether a new permanent GATT body would have responsibility for functions related exclusively to the General Agreement, or whether it would have responsibilities that would encompass the Codes. Secondly, it would be useful for the Committee to have an exchange of views on what might be included in the regular reviews referred to in the secretariat paper and what might be considered as trade-related policies. A relevant issue here was whether developed and developing countries would be subject to the same review requirements. Thirdly, the Sub-Committee on Protective Measures had been established as a surveillance mechanism to examine trade measures taken by developed countries which adversely affected the exports of developing countries. The Sub-Committee had not worked effectively and it would be useful if the Committee could look at such experiences to see what lessons could be drawn from them. Fourthly, the Council was the appropriate place to examine the question of notification and surveillance as a whole, as related both to the General Agreement and to the Codes. However, the special Council had not been as effective as it should have been. This raised the question whether the notification and surveillance functions associated with standstill and rollback commitments should be the responsibility of a new body.

5. The representative of the European Communities said it was necessary to settle the issue of standstill and rollback before addressing the questions raised in the secretariat document. If the content of the commitment on standstill and rollback was sufficiently detailed, it would make the task of dealing with the surveillance machinery easier. If, on the other hand, the commitments were somewhat flexible, surveillance arrangements would have to be sufficiently precise and dissuasive so as to re-establish a balance. Another issue was whether a new surveillance body would be established for the duration of the new round, or would continue in existence after the negotiations. A third issue related to the notion of balance of rights and obligations among contracting parties, and in particular to how notification and surveillance arrangements would apply in the case of participants in the negotiations who were not yet contracting parties.

6. The representative of Colombia recalled a proposal made by his delegation in 1984 that a committee, similar to the Committee on Balance-of-Payments Restrictions, be set up for the surveillance of trade policies of all contracting parties. Recommendation No. 8 in the report "Trade Policies for a Better Future" was similar to this proposal. The new round would be the appropriate context to create such machinery. There appeared to be general agreement that commitments on standstill and rollback should be monitored in some way. Any mechanisms for notification and surveillance which were established should continue beyond the duration of the new round if they proved to be effective. Information obtained in the proposed surveillance body would be useful to contracting parties in formulating their trade policies in the most appropriate fashion, but it was important to ensure that the surveillance was more effective than that undertaken so far in the Committee on Trade and Development in pursuance of the relevant 1982 Ministerial decision.

7. The representative of Zaire agreed with the representative of the European Communities that a consensus on standstill and rollback was essential in order to establish procedures for notification and surveillance. The same applied with respect to special and differential treatment. Such a consensus could only be achieved if each contracting party approached negotiations mindful of the principle of mutual interest.

8. The representative of India said that ways and means should be explored of strengthening and making more effective the surveillance functions of the Special Council Sessions. Referring to Addendum 1, Table 1, which suggested a low level of compliance in regard to notifications relating to subsidies and import licensing, he said that many contracting parties who were signatories to the MTN Codes may in fact be making their notifications in that context. In regard to the suggestion that a Trade Policies Committee be established he said that a distinction should be drawn between routine notification procedures and the specific notification and surveillance of commitments such as those on standstill and rollback. The intention must be to make procedures more effective, but not more unwieldy. Whatever the arrangements, they should not impair the substance or quality of the notifications themselves.

9. The representative of the United States said that there was general acceptance of the idea that the notification and surveillance aspects of the GATT could be improved. One should distinguish, however, between a monitoring mechanism that would apply to a standstill and rollback undertaking and a more far-reaching notification and surveillance mechanism that would result from the negotiations. With respect to the latter, he said that although there was a recognized obligation for contracting parties to notify measures affecting each other's trade, a strengthened commitment to report and justify such actions was needed. This was an appropriate subject for the negotiations. Suitable language should be incorporated in the Ministerial Declaration, instructing negotiators to devise a more efficient and operative notification and surveillance mechanism.

10. The representative of Japan said that the Council should be the body responsible for surveillance in general. The Special Council should therefore be strengthened and its functions should be discussed and considered within the context of the new round. The surveillance of standstill and rollback, however, could be undertaken by a body created for that purpose, as suggested in the secretariat paper. There were, in effect, a number of options available as regards the precise surveillance mechanisms to be established or developed and these options required further reflection.

11. The representative of Korea said there was a linkage between the commitment to rollback and standstill and the nature of the surveillance mechanism needed. Those who were fully committed to rollback and standstill need not be too concerned about the nature of the surveillance machinery that was established. However, his delegation was of the opinion that there should be an effective surveillance mechanism with the possibility of applying sanctions in cases of violation of the standstill and rollback commitments.

12. The representative of Australia said the purpose of a surveillance mechanism was to ensure that countries' trade policies were fully transparent. Surveillance was essential if standstill and rollback commitments were to be credible. This meant that a reporting procedure was necessary throughout the new round. In regard to the suggestion that notification procedures needed to be streamlined, he said that although this might be important, it was even more important to ensure that sufficient value was attached to notification and surveillance as a means of reinforcing the institution of GATT. The idea of instituting a system of country-wise surveillance had been raised before. Such surveillance would be designed precisely to ensure the degree of accountability necessary to strengthen and ensure the proper functioning of the GATT system. Not all countries were necessarily in a position to provide detailed information on all aspects of their trade policies at regular intervals, and the obligations required of such countries would have to be scaled down accordingly. A standardized format for the presentation of information should be established so that data from different countries were comparable. Two or three countries could assume the rôle of an examining panel. The idea that a committee be established to oversee trade policies was a good one, and such a committee should be responsible for surveillance of standstill and rollback during the round, and perhaps also for the present functions of the Special Council sessions. It was questionable whether this committee should be responsible for all the other surveillance functions which had been listed in the addendum to the secretariat document. Surveillance of the standstill and rollback commitments associated with the new round should be kept separate from the rest of GATT's surveillance activities. The proposed committee could, therefore, be responsible to both the Council and the Trade Negotiations Committee, reporting to the latter on standstill and rollback. The Trade Negotiations Committee should take up the question, referred to above, of regular examinations of the trade policies of contracting parties.

13. The representative of Switzerland said that surveillance was an integral part of standstill and rollback and was central to the credibility of the exercise. In more general terms, surveillance was designed to ensure transparency, and streamlining and strengthening the notification system would help in this respect. Surveillance also required the exercise of judgement as to whether measures and policies were commensurate with contracting parties' commitments under the GATT and to each other in connection with the negotiations themselves. Finally, surveillance acted as a form of dissuasion to the extent that it ensured awareness among contracting parties of each other's policies and thus increased mutual accountability. As to the institutional aspect of this matter, he supported the idea of establishing a trade policy committee which would be responsible for the present functions of the Special Council Sessions, including the surveillance of standstill and rollback commitments. These arrangements were compatible with the continuation by existing groups and committees of their own specific surveillance functions. In regard to the idea of establishing machinery for a regular scrutiny of the trade policies of individual contracting parties, he expressed the view that this matter should be examined further during the course of the negotiations.

14. The representative of Norway said that the Nordic countries were convinced of the need to improve surveillance of the trade policies of contracting parties. In addition to streamlining existing notification requirements, such improvement would require the extension and perhaps redefinition of certain notification and surveillance procedures. These questions could be dealt with during the negotiations on individual items and as part of a broader discussion during the round. The suggestion for the establishment of a trade policies committee was worth considering for the purpose of surveillance during the round. On the other hand, the existing arrangements of periodic meetings of the Council in special session may be adequate for this purpose. In dealing with the question of notification and surveillance, care should be taken to avoid unnecessary duplication of work, both in regard to obligations imposed on individual contracting parties and to the GATT itself.

15. The representative of Argentina said that in his view it was not necessary at this stage to decide precisely what institutional arrangements could be made for dealing with notification and surveillance, both in relation to the new round and more generally. A more fundamental consideration was whether the surveillance arrangements associated with standstill and rollback envisaged the establishment of a body with decision-making powers, or the authority to make recommendations. This could in effect be done by an existing body, such as the Council in special session, or by a new body. Another consideration which would influence the choice of surveillance arrangements for standstill and rollback commitments was how strict and clearly defined these commitments were. The greater the leeway for conflicting interpretations of the commitments, the greater was the need for surveillance.

16. The representative of the European Communities said that the records of the Special Sessions of the Council indicated that the Community attached importance to these sessions. It was not always clear that some other contracting parties did, and if Special Council was not sufficiently used then there was no point in settling for something additional to complement it. The idea of special surveillance arrangements for standstill and rollback should not be ruled out, but the nature of these arrangements would clearly depend on the kind of commitments made in relation to standstill and rollback.

17. The Chairman expressed the view that it was important, both to the standstill and rollback commitments associated with the new round and to the proper functioning of the GATT on a continuing basis, that contracting parties give a powerful signal of their intention to respect fully their GATT obligations and to seek ways of further improving the GATT system. In the matter of notification and surveillance, it was not clear that merely asking an existing body to continue what it was already doing would be an adequate signal. It was in this light that the idea of creating a special body which would supplant the Special Council Sessions and monitor the standstill and rollback commitments might have some practical attraction. The experience of the Special Council Sessions had suggested that the detailed work of surveillance in some areas of GATT activities, such as under certain Codes,

would best be left to the bodies responsible, and that the overall surveillance exercise would constitute a more general approach, but one in which particular problems could nevertheless be examined. The idea of periodic trade policy reviews on a country by country basis had some attraction and merited further consideration. All countries would not necessarily be subject to the policy review with some frequency, but the review procedure would permit governments to take stock of their trade policies on a regular basis and report on them to the review body. At first sight, it did not appear that arrangements of this nature would imply any additional budgetary outlay.

18. The representative of the European Communities repeated that his delegation was open to the idea of setting up some kind of surveillance machinery during the negotiations, but that the nature of this surveillance clearly depended on the nature of the standstill and rollback commitments that were to be assumed. A review by GATT of trade policies on a country-by-country basis would need to be reconciled with the overall balance of rights and obligations and thus required careful consideration. It ran the risk of complicating and unbalancing the negotiating process. More time was needed to reflect on the proposal. As far as new surveillance machinery for the duration of the round was concerned, one should not forget existing arrangements, such as the Special Session of the Council. The question to be considered was whether the establishment of new arrangements would improve the manner in which notification and surveillance activities were carried out.

19. The representative of Jamaica said that a distinction should be made between recommendations by the Preparatory Committee on arrangements for monitoring standstill and rollback commitments and recommendations, resulting from negotiations, which aimed to streamline and make more effective the review and notification and surveillance procedures of the GATT. In its present formulation, paragraph 8 of the secretariat document gave the impression that the Preparatory Committee was in a position to recommend a Trade Policies Committee to replace the Special Council Session. This question could only be decided during the course of the negotiations. As far as surveillance of a standstill and rollback commitment was concerned, it should be borne in mind that whatever arrangements were made, these would not undermine or in any way impinge upon recourse to GATT rights by contracting parties.

20. The representative of Colombia said that it was necessary to reach a consensus on setting up a surveillance body for standstill and rollback commitments. All the proposals that had been made on this subject should receive due attention. He recalled in connection with the idea of trade policy reviews by country that a number of countries were already subject to periodic reviews by the Balance of Payments Committee.

MINISTERIAL INVOLVEMENT

21. The representative of Australia said that there were two possible areas for increased Ministerial involvement. The first was in the normal functioning of the GATT. This matter should be among the negotiating objectives of the new round. His delegation would circulate a paper elaborating on that point. The second and more immediate question was whether to give Ministers some continuing role in the negotiations themselves. Ministers had a direct and immediate impact on national policies and thus should be involved at key points in the process of the negotiations. The Ministers' role would be more in the nature of orchestration, rather than oversight, of the round. There could be a session of Ministers, perhaps every six months, to assess how the round was progressing. One possible solution to the problem of the appropriate size of a group of Ministers might be to convene the CG.18 at Ministerial level.

22. The representative of Canada said his delegation favoured increased Ministerial involvement in the GATT and increased Ministerial direction to the next round of multilateral trade negotiations. This objective should be appropriately reflected in the Ministerial Declaration.

23. The representative of India said there was a link between notification and surveillance and the question of Ministerial involvement. The link was not apparent when it came to the technical aspects of notification and surveillance, but in the matter of ensuring a firm commitment to standstill and rollback, high-level political involvement was essential. This position was reflected in the paper submitted by a number of countries to the Preparatory Committee on standstill and rollback. A very important task before the Committee was to decide on the kind of monitoring and surveillance mechanism that should be envisaged for the proposed new round. A discussion on the kinds of new bodies which could be established, and the desirability of setting up a new body at all, could be time-consuming and perhaps inconclusive. A different approach could be to try to establish the reasons why existing surveillance arrangements had proved unsatisfactory. The experience of the Committee on Trade and Development, which had been unable to discharge its notification and surveillance responsibilities properly, was an example of a case which might be examined in order to determine what was required, and at what political level.

24. The representative of Japan said his delegation did not think it necessary to have periodic or regular Ministerial meetings for surveillance purposes. However, it would be useful, during 1987, to hold a Ministerial meeting to review the progress of the negotiations.

25. The representative of the European Communities said that while occasional meetings at Ministerial level might serve a useful purpose, if they were too frequent they would reduce the value of Ministerial participation and thus undermine the purpose of such meetings. Institutionalization should be avoided.

26. The representative of Malaysia said that if Ministers were to meet under GATT auspices more frequently than at present, it should be clear what purpose such meetings were designed to serve. Regular meetings at Ministerial level would likely diminish the impact that such meetings could have in providing a particular impetus to the GATT's work, or in transmitting a signal to the international trading community at an appropriate moment.

27. The representative of the United States expressed surprise that delegations were reluctant to have political leaders responsible for trade meet on a predictable, and perhaps an annual basis, when the International Monetary Fund and the World Bank held annual meetings for Finance Ministers. The GATT should enable political leaders with responsibility for trade to understand the political needs of their counterparts and thus to make trade decisions in a multilateral frame of reference rather than within a purely domestic context.

28. The representative of Japan said that the operation and functioning of the International Monetary Fund and the World Bank was very different from that of the GATT. Regular Ministerial meetings in the GATT would likely become routine consultations and exchanges of views at a general level. They would not contribute effectively to the GATT's work.

29. The Chairman suggested that delegations might be able to work out a formula for meetings which would enable Ministers to meet more often than they have sometimes in the past, in order to examine together the situation of the world trading system and the evolution of trade.

#### CHAIRMANSHIP AND PARTICIPATION

30. The Chairman invited the Committee to consider the Chairmanship of, and participation in, the September meeting of Ministers. Decisions on the Chairmanship and on participation in the meeting could be taken before determining the legal status of the meeting, i.e. whether it would be an ad hoc Ministerial meeting or a Session of CONTRACTING PARTIES at Ministerial level. It should be remembered that participation in the Ministerial meeting would not necessarily have to be the same as in the negotiations themselves. This second aspect of the matter of participation could be discussed later. Concerning the Chairmanship of the meeting, past practice had been that a minister of the host country should chair the meeting, regardless of whether it was an ad hoc Ministerial meeting, as in Geneva in 1963 and Tokyo in 1973, or a CONTRACTING PARTIES session held outside of Geneva, as in Tokyo in 1959. Based on these precedents, he proposed that the September meeting be chaired by the Foreign Minister of Uruguay, Mr. Iglesias. It was so decided. Many delegations expressed satisfaction at the decision to offer the chairmanship to Mr. Iglesias. Concerning participation in the Ministerial meeting, it was up to this Committee to recommend criteria for attendance, and this could be done without prejudging the question of the meeting's status. There were customary rules for attendance at sessions of the CONTRACTING PARTIES, which provided that, in addition to the contracting parties, thirty-one de facto

countries, thirty countries with observer status and fourteen organizations of the United Nations family and seventeen other organizations were normally invited as observers. However, the Council, which would formally have to convene a CONTRACTING PARTIES Session, could decide that criteria for attendance in September should be different if the Preparatory Committee so recommended. If the September meeting were an ad hoc Ministerial meeting, as was the 1973 Tokyo meeting, this Committee would decide criteria for attendance. A note on participation in the Tokyo meeting and the Tokyo Round was distributed as PREP.COM/W/33.

31. The representative of the European Communities said his delegation would like to use the same criteria for the September meeting which it had proposed for participation in the new round itself, i.e. all contracting parties; countries which had acceded provisionally to the General Agreement; countries which were in the process of negotiating their accession; countries applying the General Agreement on a de facto basis; and former contracting parties.

32. The representative of Israel asked what was the rationale for the sixth category, former contracting parties.

33. The representative of India asked whether there had been any previous case in which participation in a Session of Contracting Parties had not followed the customary rules referred to by the Chairman, or in which decisions on the nature of a meeting and in participation in it had been taken separately.

34. The Chairman replied that in the case of an ad hoc Ministerial meeting, and in particular the Tokyo Ministerial meeting, the decision to have the meeting and a decision about its composition were taken separately. There had been two occasions when the Council had taken a decision to modify the normal attendance at a Session of the CONTRACTING PARTIES.

35. The representative of Japan said that his delegation hoped that many developing countries that were not members of the GATT would join in the negotiations, so as to increase the universality of the GATT. Since the purpose of the September meeting would be to launch a new round, it would seem that those countries which were not seriously interested in the negotiations would not have much interest in coming to the meeting itself. While his delegation could accept the first four categories outlined by the representative of the European Communities, it might be preferable to describe the fifth category as observers to meetings of the Contracting Parties, rather than as former Contracting Parties.

36. The representative of Uruguay thanked the Committee for its decision to offer the Chairmanship of the September meeting to the Foreign Minister of his country. Concerning participation in the meeting, his delegation would like to return to the question of the participation of international organizations at a later time.

37. The representative of Argentina said that his government believed the formulation for participation in the Ministerial meeting and in the negotiations should be the same as for a session of the CONTRACTING PARTIES, as outlined earlier by the Chairman. In the present serious situation of the international trading system it was important that participation in GATT's activities should be as open as possible.

38. The representative of Australia agreed with the representatives of Japan and the European Communities that participation in the Ministerial meeting should be identical to that in the new round of negotiations. Participation should be open to as many countries as possible and thus should be constituted along the following four categories: all contracting parties; countries acceding to the General Agreement on a provisional basis; countries applying the GATT on a de facto basis; and other developing countries which were not contracting parties. The fourth category covered both the European Communities' third and fifth points and the Japanese proposal to reformulate the latter, as well as the formulation used for participation in the Tokyo Ministerial meeting.

39. The representative of Brazil said that his delegation considered the question of participation to be closely linked to the nature of the meeting and therefore would like more time to reflect on this matter before being called upon to take a decision.

40. The representative of Jamaica said that the question of participation required a decision on the nature of the meeting. It had not yet been decided whether the Ministerial meeting would launch a round of negotiations within the framework of GATT or a round of negotiations based on the GATT. If the former, and if the principles and rules of the GATT were to be discussed, then in the light of the experience of the Tokyo Round it might be preferable to confine the negotiations to contracting parties to ensure that the consistency and unity of the GATT system would be preserved. It would be curious to follow the same procedures used for the MTN Agreements and Arrangements in which non-contracting parties had participated in amending GATT rules in ways which were not necessarily favourable to those contracting parties who did not accede to the Codes. It might thus be wise to divide the work to be undertaken into distinct programmes, such as: issues involving the reform or rebuilding of the GATT; other issues, involving questions such as market access; and issues which might be dealt with in the context of the Codes. There were three stages of work in preparing for and launching the New Round. The first stage was the Preparatory Committee, which regrettably excluded countries applying the GATT on a de facto basis. He recalled that his delegation's proposal to invite those countries to participate in the preparatory process had been opposed by a number of countries. The Ministerial meeting to launch the New Round was the second stage of the process. Was this Committee going to invite to the launching phase countries which had not participated in the preparatory phase? That would mean that those who had not participated in formulating the recommendations would be as free to reject as to accept them. In this case, would the Ministers be able to issue a declaration on the basis of consensus, if those countries not

participating in the preparatory phase did not accept this Committee's recommendations? The third phase was that of the negotiations. Was this Committee in a position to recommend to Ministers that they should also invite non-contracting parties, i.e. those who had not participated in the preparatory phase, to negotiate? His delegation's preliminary views were that those countries provisionally acceding to the GATT or applying it on a de facto basis could be invited to the meeting if there were a consensus to do so. As for other developing countries, it would be useful to know whether these countries intended to participate in the negotiations, and moreover to become contracting parties, so that they would accept the resulting balance of rights and obligations. This Committee must have a complete and open discussion on these issues to ensure that the decision on participation was based on recognized and accepted criteria, and also was based on the full knowledge that the nature of the Ministerial meeting in Punta del Este could not constitute an obstacle to the discussion of subjects which presently were not in the context of GATT.

41. The representative of Hungary said that the formula for participation should reflect the importance of the Ministerial meeting. As there were great expectations for this meeting, it would be justified to have as wide a participation as possible. Any formula chosen which would allow the participation of non-contracting parties should be non-discriminatory. It would be hard to justify inviting countries, even if they were developing countries, who were not interested in the negotiations while excluding other countries which had shown serious interest in participating in them.

42. The representative of New Zealand said that participation in both the Ministerial meeting and in the negotiations should be wide and appropriate. In this context, he agreed with the broad outlines suggested, for example, by the delegation of Australia that would include in addition to the obvious participants other developing countries that were not contracting parties.

43. The representative of Czechoslovakia said that his delegation supported the proposal that the negotiations should be open to all countries interested in participating. As could be deduced from the course of the preparatory process the results of the new round would probably have a global impact on the international trading system and great significance for international trade as such. Therefore all countries interested in taking part in them should be permitted to do so. Contracting parties were certainly interested in the expansion of their trade with all countries, and this goal could be achieved only by involving as many countries as possible in the process now being prepared. There was no reason for discrimination among non-contracting parties regarding their participation in the new round and no reason to change the principle applied during the Tokyo Round enabling the participation of all countries without any restriction.

44. The representative of the European Communities said that the GATT's status as a contract meant that membership was open only to countries willing to accept the terms of the contract. His delegation could not accept that countries without any connection with the organization nor obligations under the contract could negotiate on the same footing as those who had accepted obligations and enjoyed certain rights. His delegation agreed with the

representative of Jamaica that this Committee could set rules and criteria for participation in the new round; those countries which presently were not members of this Committee could either accept these rules and join in the negotiations, or could reject them and stay outside the negotiations. His delegation maintained its earlier proposal on criteria for participation.

45. The representative of Japan said that the question of inviting observers to the meeting was separate from that of accepting observers in the negotiation itself. Once the negotiation started, there would be only participants and non-participants. While his delegation favoured inviting observers to the Ministerial meeting, these observers would then have to decide whether or not to participate in the negotiations. Participation in the negotiations would entail becoming a GATT member, and thus would entail accepting certain obligations. Therefore, his delegation's position was not very different from that of the European Communities. Recalling the difficulties experienced by his country after acceding to the GATT, in that a number of countries had invoked Article XXXV against Japan, he expressed the hope that newly acceding countries would not have to face similar problems.

46. The Chairman said that a distinction must be made between the question of participation and that of observership. In the case of observers, an additional distinction had to be made between country observers and international institution observers. These matters were for this Committee to decide.