

RESTRICTED

RBC/15

16 December 1987

Special Distribution

The Uruguay Round  
Surveillance Body

ROLLBACK

Communication

The following communication is circulated in accordance with paragraph 4 of the agreed procedures for the surveillance mechanism (MTN.TNC/2, Annex).

1.	<u>Communication from:</u> CANADA	<u>to:</u>
2.	<u>Participant maintaining the measure:</u> USA	
3.	<u>Description of the measure</u> (including date of entry into force and relevant legislation or other document):  Section 337 of the U.S. Tariff Act of 1930 declares unlawful "unfair methods of competition and unfair acts in the importation of articles into the United States ... the effect or tendency of which is to destroy, or substantially injure an industry, efficiently or economically operated in the United States". Complaints almost invariably involve intellectual property cases and are made to the International Trade Commission (ITC). Relief granted is either a cease and desist order or an exclusion order in the case or not. Reference by Canada of one case to the GATT in 1981 did not produce a satisfactory outcome in the sense that case did not deal with the issue of Section 337, itself. Proposed amendments in the U.S. trade bill to the Section would eliminate the need for a complainant to prove injury to obtain relief and would also remove the current requirement that the U.S. industry be operated economically.  At present, two Section 337 cases are being conducted against Canadian companies. These involve electronic chime modules and cellular mobile telephones. Both allege patent infringements.	
4.	<u>Products covered, including tariff headings</u> (CCCN where applicable, otherwise national tariff lines):  Generic measure; specific cases involve electronic chime modules and cellular mobile telephones.	

5. Country or countries to which the measure applies:

All.

6. Grounds for belief that the measure should be subject to the rollback commitment:

The Section 337 process provides, in the case of imports, for an additional process dealing with alleged infringement of intellectual property beyond domestic court procedures which, in our view, is not consistent with the national treatment provisions of the GATT. Domestic producers are only subject to the court proceedings.