

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.SB/5

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Special Distribution

Surveillance Body

MEETING ON 8 MARCH 1988

Adoption of the Agenda

1. The Surveillance Body adopted the agenda proposed in the convening airgram GATT/AIR/2548.

Lists of notifications and communications on standstill and rollback

2. The Chairman drew attention to the list of notifications and communications on standstill and rollback which the secretariat had circulated in MTN.SB/W/3. He proposed that the secretariat should update and circulate such lists for future meetings of the Surveillance Body. The lists would be strictly factual and would show, where possible, whether and when consultations on rollback have begun, concluded or are due to begin or resume. The Surveillance Body so agreed.

Chairman's introductory remarks

3. The Chairman noted that the Trade Negotiations Committee (TNC) had decided to hold a meeting at Ministerial level in December 1988, at which progress in the Uruguay Round would be reviewed, including the status of implementation of the standstill and rollback commitments. He suggested that it would be useful for the Surveillance Body to make available for the TNC's meeting in July such material as would enable the TNC to make a comprehensive stocktaking of the situation so far on implementation of the standstill and rollback commitments.

Item 2(A): Standstill

- (I) Examination of standstill notifications (MTN.SB/SN/- series) submitted in accordance with the agreed procedures (MTN.TNC/2; MTN.SB/1, paragraph 21; MTN.SB/2, paragraphs 20 and 21)

4. The record of the Body's examination of notifications on standstill, drawn up in accordance with paragraph 3 of the agreed procedures (MTN.TNC/2), is annexed.

Item 2 A(II): Consideration of statements by participants concerning other aspects of the standstill commitment

5. The representative of Chile said that his country's concern at the growing protectionist trends that could be seen in the two major trading partners represented in the Surveillance Body had grown more acute since the European Community had recently established an import licensing system for dessert apples; the system was in force from 22 February until 31 August 1988 for the purpose of monitoring imports from third countries during that period, which coincided with the season for Chilean apple exports to the EEC market. The import licensing was apparently automatic, but Chile was nevertheless concerned about the following features: (1) the system provided for the lodging of security of 1.5 ECU per 100 kilograms net, which, although refundable, involved greater financial and administrative costs in the transaction, a cost which previously did not exist. Chile was sure this was an additional charge which its exporters would have to bear; (2) the import licences were valid for 30 days. Since Chile was a long way from Europe, and since the apples were carried by sea, the 30-day period meant that the licence had to be applied for once the shipment had been made, with the ensuing uncertainty for exporters about the final destination of their goods; (3) according to Commission Regulation (EEC) No. 346/88, Article 3:3, "import licences shall be issued on the fifth working day following the day on which the application is lodged unless measures are taken within that time". This was worrying, in that for five days there would be the danger that the EEC might take some measure that could restrict trade in apples. This paragraph constituted a threat of imposition of restrictive measures that created uncertainty in trade in this product, and Chile believed it did not contribute to a climate of trust in the Uruguay Round. It should also be kept in mind that in the Community, apples enjoyed protection in the form of minimum import prices, and the Community had not seen a need to apply this mechanism in the case of Chilean apples because they arrived on the Community market at high prices since they were fresh and high-quality. Despite the existence of this protection, Chile's apple exports had increased. The apples now being monitored represented about 6.33 per cent of the Community's consumption and stocks. Assuming that the EEC maintained its production and level of stocks of 1987, and estimating Southern hemisphere exports at 600,000 tons, that percentage would rise to 7.7 per cent, a level of exports which Chile believed could not seriously disrupt the Community market, as had been asserted in one of the preambular paragraphs justifying the imposition of the licensing system. This contradiction between the justification in the preamble and the measure itself made Chile more concerned about the measure, and it wanted to know, with figures, the grounds for the measure by the EEC. In view of the foregoing, Chile believed that the licensing had not been introduced for monitoring purposes, but rather was a concealed restriction and probably the harbinger of further restrictions. His delegation would follow closely the actual operation of this licensing system, since it was unacceptable for the EEC

to resolve its structural surplus problems by resorting to restrictive measures. Chile would use all the means available to it under the General Agreement and its instruments if necessary.

6. The representatives of New Zealand, Argentina, Canada, Australia and the United States shared Chile's concerns about the nature of the Community's measure and about the uncertainty which it could create for their exporters of apples during the relevant seasonal period. The Community was urged to remove the measure, which was seen as being incompatible with the standstill commitment.

7. The representative of New Zealand noted that his country had benefited from a GATT binding on dessert apples for the past 15 years. The binding was seasonal and permitted his country to export apples to the Community during a period in which EC producers were mostly out of the market. Apples were New Zealand's premier horticultural export, and the Community was his country's main market for that product. His authorities had held intensive consultations with the EC Commission on this matter, and had concluded that the introduction of the Community's scheme would impair, in a certain measure, the quality of access which was New Zealand's right under its binding. His authorities had been assured at the highest level that the EC measure was intended for monitoring. There was clearly a potential for serious impairment of a basic right under GATT for exporters, and should that happen, New Zealand would have recourse to traditional GATT mechanisms designed precisely to protect bindings.

8. The representative of Argentina said that the Community's measure unquestionably limited the scope of its negotiated GATT concession on this product.

9. The representative of Canada said his delegation assumed that the Community would administer the measure in a manner fully consistent with its GATT obligations and with the standstill commitment.

10. The representative of the United States noted that US apple exports to the EC between February and August, ie. during the period that the surveillance system would be in effect, amounted to 55 percent of total annual US apple exports to the Community. The surveillance would distort trade and appeared to be in violation of the Import Licensing Code which prohibited arbitrary manipulation of import control systems. The Community import duty on apples was bound in the GATT, and the United States considered the imposition of the security deposit to be an impairment of that binding.

11. The representative of Jamaica said his delegation would appreciate it if the Community could clarify its position concerning standstill in relation to proposals being tabled in negotiating groups such as those on agriculture and tropical products.

12. The representative of the European Communities confirmed that the Community had established a régime for special surveillance of imports of apples, particularly from the Southern hemisphere. Such surveillance was not only the Community's right; it was a necessity when particular interests had to be protected. The Community wanted to stress that it had taken this measure, in a market that was constantly changing, to avoid having to take other restrictive measures unless that became absolutely necessary.

13. The representative of Australia then expressed the concern of his Government over a recent decision by the European Community to further cut back access for beef. Access to the Community for beef under the so-called "Balance Sheet" arrangement had been disrupted or tightened on a number of occasions since conclusion of the Tokyo Round Arrangement Regarding Bovine Meat. In 1988, access would decline again, with the manufacturing beef component of the package down to 12,000 tonnes compared with 15,000 tonnes in 1987. There had so far been no compensating increase in access levels for high-quality beef. Furthermore, the administration of this arrangement frustrated attempts by exporting countries to make use of the available access. Australia considered that the continued erosion by the EC of access for beef under the "Balance Sheet" was contrary to the agreement reached during the Tokyo Round, was inconsistent with the standstill commitment, and had the effect of improving the Community's negotiating position. Measures such as these were of concern to countries such as Australia not just because they eroded access for particular commodities and thereby jeopardized the trading positions of those countries, but also because they represented a further drift down the road to protectionism. They soured the trading environment and made the job of negotiating new rules and disciplines and fair conditions for trade in agriculture much more difficult. Australia requested the European Community to act on its commitment to reform agricultural trade and to refrain from introducing new trade restricting or distorting measures. He called on the Community to fully adhere to its commitment to standstill and to ensure the fullest possible access to its agricultural markets.

14. The representative of Argentina said his delegation supported the views expressed by Australia concerning reduced access for beef to the market of the European Community.

15. The representative of the European Communities said his delegation wanted to repeat what it had often made clear on this subject in other GATT bodies: the commitment which the Community had undertaken in the Tokyo Round was not an import commitment for any given quantity. The Community had agreed to establish some kind of balance sheet, and in the light of that, to import certain quantities of meat at a lower levy rate. The Community had a legitimate right to limit those quantities under that commitment.

16. The representative of Australia noted that his country had a different interpretation, and different expectations, of the Community's commitment.

17. The representative of Singapore, speaking on behalf of ASEAN, then expressed concern about the implications for standstill of the recent decision by the US Government to graduate several contracting parties from its GSP scheme as of 1 January 1989. This decision, together with the invitation to those beneficiaries to negotiate for the duty-free status of their products in the Uruguay Round, would inevitably strengthen the US negotiating position vis-à-vis the developing countries concerned, particularly in the context of tariff negotiations. This was particularly so given that there were already proposals in the Negotiating Group on Tariffs calling for the elimination of industrial tariffs among the developed countries. One of those proposals had suggested that the developed countries remove their industrial tariffs in favour of developing countries for a 10-year period. Paragraph 3(c) of the Enabling Clause (BISD 26S/203) stipulated that the developed countries shall modify their preferential treatment accorded to the developing countries to "respond positively to the development, financial and trade needs of developing countries". A recent study on GSP had suggested that tariff increases on imports from major beneficiaries had done little to spread the benefits of the GSP to "less competitive" countries. Instead, the largest and most frequent gains in market shares had accrued to the industrialized countries. It was therefore apparent that the recent US decision had not satisfied the above condition in the Enabling Clause. On the contrary, it had significantly weakened the negotiating positions of the developing countries concerned in the context of tariff negotiations in the Uruguay Round.

18. The representative of Korea said that as the ASEAN countries had pointed out, some developed countries had sought to enhance their negotiating positions in the Uruguay Round by taking measures outside the Round. Removal of GSP benefits was one such example. Korea considered that the Surveillance Body should examine this development and its implication for standstill in the light of the letter and spirit of the Punta del Este Ministerial Declaration. Demanding concessions from developing countries, while removing existing benefits from them, was unreasonable and difficult to accept. This was particularly so given that the eventual benefits from the Uruguay Round had not emerged.

19. The representative of Hong Kong noted that his delegation had expressed its views on this matter in the Council on 2 February, and in the Negotiating Group on Textiles and Clothing on 9 February. He did not want to repeat those views beyond drawing particular attention to the fact that those contracting parties which had been graduated out of the US scheme under the GSP were significant exporters of textiles and clothing. Negotiating attention should not be diverted from high tariff peaks in areas such as textiles which, irrespective of developments elsewhere, remained a major concern of textile exporters and had to be tackled to realize the objective of trade liberalization.

20. The representative of the United States said his authorities had concluded that the extraordinary economic growth of Hong Kong, Korea and Singapore meant that their continued participation in the US scheme under

the GSP would no longer be compatible with the GSP's original intent, namely to enable developing countries to trade where they might not normally be competitive. The United States did not see the implication of removal of GSP status in terms of the standstill commitment. Any negotiations on tariffs in the Uruguay Round would begin from the point of bound tariff rates, so the United States did not see how its action could possibly enhance its negotiating position in any tariff negotiations. He emphasized that the US scheme under the GSP was temporary, non-binding and non-reciprocal. Furthermore, the Enabling Clause called for developing countries to take an increasing responsibility in the trading system commensurate with their economic development.

21. The representative of Nigeria noted that his country was among those which had been excluded from the US scheme under the GSP for more than five years, which was much more than a "temporary" situation.

22. The representative of the European Communities stressed that the GSP was provided on an autonomous basis, and existed to help countries which needed the scheme to make themselves more competitive on world markets.

23. The representative of Chile noted that the operation of the GSP was governed in GATT by the Decision of 25 June 1971 (BISD 18S/24) and by the Enabling Clause (BISD 26S/203).

24. Turning to separate issues, the representative of the European Communities said his authorities were still not satisfied that the Community's notification in MTN.SB/SN/1, concerning the US Department of Defense Appropriations Act in respect of machine tools, had received a proper response from the United States. In this connection, the Community was very concerned about the use of so-called "Buy America" provisions in the United States. For fiscal year 1988, the US Congress had adopted or renewed a number of such provisions which extended trade restrictions on US government procurement practices. The Community was especially concerned at the increasing use of these provisions in order to protect industry in areas covered by the Government Procurement Code. The Community was concerned over at least four measures which it saw as being very doubtful in relation to paragraph (i) of the standstill commitment. The first was the prohibition of purchase by the US Department of Defense of any super-computers not manufactured in the United States unless such purchase was considered necessary for security reasons. The second was Section 403 of the Appropriations Act which related to the facilities and modernization program for the Voice of America. The third concerned Section 662 of the Appropriations Act requiring that all paper used for printing US currency, securities and passports be manufactured in the United States. The fourth was Section 823 of the Department of Defense Authorizations Act for 1988, providing for restrictions on the purchase of foreign-made motor vehicles. The Community considered all these measures to be contrary to the provisions of the Government Procurement Code. His delegation was raising this matter under "early warning" because this was an ongoing program and further such actions were foreseen. For example, a proposed bill, the

industrial Basis Preservation Act, which aimed at maintaining and improving the industrial base of the United States and its defence establishments, would -- if it were to be enacted -- violate the Government Procurement Code. There were other areas which caused the Community concern, for example a measure requiring that the construction, alteration or repair facilities for public buildings should be funded by the US government. The Community would not claim that this last measure breached the Government Procurement Code, but since this was an area for which an extension under the Code was now being negotiated, this might be a case where the United States could be violating paragraph (iii) of the standstill commitment.

25. The representative of the United States said that his delegation's views concerning machine tools had been made clear at the June 1987 meeting of the Surveillance Body (MTN.SB/2). He would report the Community's concerns on the other issues to his authorities, and expected to be able to make a response at the Body's next meeting.

26. The representative of Malaysia asked whether the European Community could give some updated information about the EC Commission's proposed measure on fats and oils. On a separate matter, Malaysia continued to be seriously concerned about the proposed legislation which was still before the US Congress aimed at changing the requirements for labelling tropical oils, and over what he described as a smear campaign by the American Soybean Association against imports of tropical oils; this public relations campaign had already damaged sales of tropical oils, particularly palm oil, in third markets. Turning to another matter, he said that in December 1987 the US Department of Agriculture had announced the sale of 300,000 tonnes of soybean oil to third countries under the US Export Enhancement Program. These sales were subsidized and Malaysia considered them to be in breach of the standstill commitment. The sales had the effect of displacing traditional exporters, such as Malaysia, which did not subsidize exports of palm oil to the same third countries. He emphasized that small developing countries such as his own could not compete in, and were inevitably displaced by, the war of agricultural export subsidies being waged by the major trading nations.

27. The representative of Canada said that his country shared the concerns expressed by Malaysia over the effects of the US Export Enhancement Program and over the EC Commission's proposal on fats and oils.

28. The representative of Jamaica said that since the Uruguay Round was a single political undertaking, it would be useful to have an understanding on the positions taken by participants in respect of how they found it possible to make their own distinctions between products, for example agricultural and tropical products, which had a clear definition in the tariff nomenclature.

29. The representative of the European Communities said there were no further developments to report concerning the Commission's proposed measure on fats and oils.

Item (B): Rollback

Consideration of statements concerning the rollback commitment, in the light of the agreed procedures (MTN.TNC/2; MTN.SB/1, paragraph 21; MTN.SB/2, paragraph 22; MTN.SB/4, paragraph 31)

Current situation

30. The Chairman noted that while the commitment to rollback was carefully balanced and defined, there had been a clear expectation that some undertakings should have emerged by the end of 1987. Speaking on a personal basis, he said that in all meetings that he had recently attended outside GATT, he had been impressed by the importance attributed by business circles and by the general public to the need for rollback, and to the value which action on rollback would have in strengthening confidence in the Uruguay Round process.

31. The representative of Japan noted that his delegation had requested the secretariat to circulate Japan's rollback communication to the European Community (RBC/17). Japan looked forward to early consultations with the Community on this matter.

32. The representative of Canada said his delegation had made preliminary informal contacts with the participants to which Canada had addressed rollback communications (RBC/9-15), and would submit notices of consultations when dates for these had been agreed.

33. The representative of the European Communities introduced his delegation's communication on rollback, subsequently circulated as RBC/19. He said that the Community had been vigilant on standstill and was now in a position to announce an offer on rollback. The offer had a political purpose and it was also an invitation to the Community's trading partners. The political purpose was to demonstrate the Community's determination to resist protectionist pressures and to show an act of faith in the Uruguay Round process. The invitation stemmed from the fact that the Community continued to believe that the rollback commitment had to be a concerted effort between all participants, and that it had to be brought to fruition on an equitable basis. He referred to the closing remarks of the Chairman at the Punta del Este Ministerial meeting in which it was agreed that "in the negotiations every contracting party should make genuine efforts to ensure mutual advantages and increased benefits to all participants, in accordance with the principles of the GATT" (MIN.DEC/Chair). The Community intended that implementation of its offer should be followed through on a concerted basis in line with paragraphs (i) and (ii) of the rollback commitment, particularly paragraph (ii). This implied that the Community was looking for satisfactory contributions that each participant could reasonably be expected to make, and which the Community hoped would be tabled in time for the next meeting of the Surveillance Body or perhaps by

the July meeting of the TNC. This would help towards the stock-taking of implementation of the rollback and standstill commitments that the Chairman had mentioned in his introductory remarks.

34. The Community wanted to emphasize that its offer constituted the first real step taken by any participant towards implementing the rollback commitment. All other communications had been requests. This was to be understood as an autonomous gesture by the Community. His delegation remained willing to follow the agreed procedures for consultations on rollback, but had always reserved its right to act autonomously. The Community continued to consider that rollback in the first instance was an autonomous act by the parties individually concerned. The evidence was that the consultation procedures had so far not led to results, and it could well be that the autonomous route was more likely to lead to results. The Community's offer was without prejudice to GATT conformity. It could not be otherwise. The measures maintained by individual participants or contracting parties, to the extent that they had not been subject to any dispute procedure or had not otherwise been the subject of a decision by the Council, were clearly matters that could not be said to be in conformity or not in conformity with the GATT. The offer consisted of two parts, the first of which was an operational offer, and the second was a reminder of what the Community had undertaken in other areas. The offer covered some 121 NIMEXE positions, and the Community was now in the process of converting these positions into the nomenclature under the Harmonized System; this conversion would be made available in the very near future. The Community saw benefit for everyone in its offer. The underlying approach was one of non-discrimination within the bounds of what was currently possible given the nature of the Community's residual restrictions. In putting this offer together, the Community had had to take account of existing disequilibria within the GATT system. Where the Community had had to move partially on this or that quantitative restriction, it had made appropriate gestures to redress balance to the extent possible.

35. The Community did not intend to negotiate on its offer. He said that the Community would not be within its rights to negotiate, since this was not provided for under the rollback commitment as set out in the Punta del Este Declaration. However, the Community expected appropriate counterparts. Otherwise, forward movement would not be possible. In the second part of the offer, the Community had drawn attention to efforts made by its new member States in the context of the enlargement negotiations. In the case of Portugal, there had been a considerable acceleration of the process, and measures had now been liberated as from the beginning of 1988 instead of, as previously foreseen, by 1993.

36. The Chairman said he was sure that the Surveillance Body recognized the Community's effort in putting forward its offer in RBC/19.

37. The representatives of Hungary, Japan, United States, New Zealand, Poland, Canada, Argentina and Australia, in reacting to the Community's offer in RBC/19, stressed that since they had only just received the paper, their comments were only preliminary.

38. The representative of Hungary considered the standstill and rollback commitments as a cornerstone of the new round, which greatly influenced the credibility of the negotiations. In this sense, Hungary would have welcomed the Community's initiative as exemplary action. Unfortunately, his delegation could not give this welcome because it seemed from RBC/19, unless the Community stated the contrary, that in the case of certain products, Hungary, as a contracting party, was excluded from the proposed rollback measures by certain member states, namely by France, the Federal Republic of Germany, Greece, Portugal and Spain, and by implication was deprived of the benefits of these measures. This was inconsistent with the provisions of the GATT, specifically with Articles I, XI and XIII, with the letter and spirit of the Punta del Este Declaration, with its objectives and with the commitments relating to standstill and rollback. Hungary expressed deep concern and reserved its rights in relation to these measures, to which it would revert in due course. His delegation at the same time noted that the offers of other member states of the EEC, namely Belgium, the Netherlands, Luxembourg, Denmark, Ireland, Italy and the United Kingdom, were in line with their GATT commitments. Hungary hoped that the EEC and the member countries concerned would bring their proposals into conformity with the GATT and the Punta del Este Declaration by eliminating any discriminatory elements.

39. The representative of Japan said his delegation was seriously concerned that the Community, in RBC/19, seemed to be offering liberalization which excluded countries including Japan. The Community was now proposing to create new discriminatory quantitative restrictions against some contracting parties. It would make a mockery of the rollback commitment if, in the process of rollback, new GATT-inconsistent restrictive measures were to be created. Discriminatory quantitative restrictions violated Articles I, XI and XIII of the General Agreement. The m.f.n. principle was one of the most important pillars of the General Agreement. Japan would never accept an argument that discrimination was necessary to enhance overall liberalization because to do so would mean that GATT would end up as a confused network of bilateralism. He reminded the Community of paragraph (iii) of the rollback commitment which provided that "there shall be no GATT concessions requested for the elimination of these measures". The points made by the Chairman of the Punta del Este Ministerial meeting (MIN.DEC/Chair) in no way justified any discriminatory treatment against any country. He recalled Japan's statement made in the Working Party on the Accession of Spain and Portugal to the European Communities, concerning the discriminatory quantitative restrictions maintained by Portugal and Spain during and after the transitional period. Japan reserved all its rights under the General Agreement.

40. The representative of the United States said that the Community's offer was a step in the right direction. However, the offer covered only a fraction of the residual quantitative restrictions, which numbered well over 1,000, maintained by the Community's member States on industrial and agricultural products. In this connection, he drew attention to the communication on rollback which the United States had addressed to the Community (RBC/18).

41. The representative of New Zealand thanked the Community for making the first offer on rollback, but said that the offer was incomplete in several senses. There was still great scope for additional policy changes to eliminate trade-restrictive or distortive measures which did not fall into the category of being GATT-inconsistent. The offer was not complete for the simple reason that it was so far the only offer, and also because it did not address the major agricultural issues which were at the heart of the Uruguay Round.

42. The representative of Poland said that in connection with some elements of the Community's offer, as contained in the Annexes to RBC/19, his delegation stressed the importance it attached to the observance by all participants of the principle of non-discrimination, which was one of the fundamental principles of the General Agreement and of the rollback commitment. Poland would examine the Community's offer, and any other offers, from the point of view of the application of the non-discrimination principle.

43. The representative of Canada shared the assessment made by the Chairman concerning the importance attached by people outside GATT to the work being done on rollback. The Community's offer was a real step forward, which his delegation would have to study carefully. Canada thought it would be helpful in assessing the Community's offer if some indication could be given of the trade figures involved, both in aggregate form and on a tariff line basis.

44. The representative of Argentina said the Community's offer was a positive step forward, although it covered a limited number of products in comparison with the total number of residual quantitative restrictions maintained by the EC member States; furthermore, the issue of agricultural restrictions did not seem to be addressed. The question of discriminatory application of rollback would have to be examined carefully by the Community.

45. The representative of Australia said that at first glance, RBC/19 appeared to be a significant gesture by the European Community towards a substantive rollback contribution. However, there appeared to be some contradiction in the terms on which the offer was being made. The Community said on the one hand that it was an autonomous gesture, while in the covering note the Community asked that the burden of the rollback commitment be shared on an equitable basis and that only if this was done would it confirm the offer in the light of contributions made by other

participants. This apparent contradiction raised concern that the terms of the Punta del Este Declaration and indirectly a contracting party's obligations under the GATT might be substantially qualified. He hoped that the Community's statement that the offer was without prejudice to the conformity of the measures with the GATT did not imply a conclusion that the measures did in fact conform with the GATT. If the terms on which this offer was made were to qualify either the Punta del Este Declaration or the obligations under the GATT, then Australia would be concerned that perhaps the message that this gesture conveyed might not be as positive as it appeared at first glance. It might appear to be perhaps more of public relations value than a substantive contribution. However, Australia would examine the details of the offer before making any substantive comments on it.

46. The representative of the European Communities welcomed the statements that participants would examine the Community's offer in detail. On the basis of the preliminary reactions, he was not sure that he could recommend to his authorities that the Community should move fast or far any further on its offer. He wanted to stress once more that this initial step by one participant would have to be met by steps from other participants if the process was to go further; this requirement seemed to be so obvious as to not need repetition and was based strictly on the provisions of the rollback commitment. As for the trade figures which Canada had requested, the Community could provide some such data, but he thought they would probably mislead rather than clarify, since quantitative restrictions by their very nature affected trade that was limited or even non-existent. He agreed that while the Community had offered partial liberalization, its offer was not positively discriminatory. The offer had, furthermore, sought to redress balance by offering to liberalize quantitative restrictions maintained solely against those countries which otherwise would not benefit from the offer. If participants could not even move forward partially, they would not be able to move forward at all.

47. The representative of Australia said that his earlier reference to the risk of a public relations exercise was not necessarily meant to be critical of, or even focus on, the European Community but to issue a warning that unless it was recognized that this was only a partial offer, and that there were serious questions of GATT legality and conformity with the rollback undertaking, then other participants might be induced to do less than they might otherwise want to do. His delegation saw the rollback undertaking as largely an educative process; if the Surveillance Body did not give the right signals, then that part of the business community that felt it was benefiting from the protection of discriminatory measures would be disinclined to accept suggestions from their governments to undertake rollback measures. It would be wrong for any participant to think of rollback as a partial exercise. The aim was to go the whole way and not end up with something that was no more than decorative.

48. The representative of Hungary, while rejecting the notion of the so-called positive discrimination, said that for his country it was the result of a measure which counted. If a measure was not applied on an m.f.n. basis, then it was discriminatory.

49. The representative of Jamaica said that the Community should be congratulated for taking a major and constructive step by making its offer. He had no difficulty in understanding that the Community expected other participants to make initial steps in their turn so that the overall balance, step by step, could be assessed as they proceeded. However, the Community's introduction of its offer was not complete. Jamaica wanted to see reflected the fourth general principle governing the negotiations, providing that in the implementation of standstill and rollback, particular care should be given to avoiding disruptive effects on the trade of less-developed contracting parties. He noted that the US representative had said that the Community's offer covered only a fraction of the residual restrictions applied by its member States and had then indicated that the United States was requesting consultations with the Community on all of them. This raised the question of what were the parameters for consultations. Would these be held in terms of determining inconsistency a priori in terms of substantial interest in trade, or would they just be to say that a trading partner had all these measures in force and they should all be discussed? He was also curious to know what the trade figures mentioned by Canada and the Community would reveal.

50. The representative of the European Communities said that the offer covered actual trade of about 541 million ECUs (US\$ 675 million) a year. However, it would not be helpful to break this figure down for the reasons which he had already given (paragraph 46). He added that the Community would not refuse to consult with any participant concerning the offer. The Community would bear in mind Jamaica's remarks about the need for rollback offers not to be disruptive in their effects on developing countries.

51. The Chairman said it was clear from the discussion that the Surveillance Body realized the significance of the Community's offer. The hope and expectation would be that this first step would lead to the general movement on rollback which all participants wanted to see. He noted that there would be further opportunity for reflection and discussion on the offer both outside and inside the Surveillance Body, even though the Community had indicated that it was not envisaging a process of formal consultations as provided in paragraph (ii) of the rollback commitment.

52. The representative of Canada, turning to a separate matter and commenting on the European Community ban on the sale of meat containing artificial hormones, noted that the European Court of Justice had recently declared the ban invalid. Canada had submitted a rollback communication concerning this measure (RBC/10/Rev.1) and had thought, in light of the above court decision, that follow-up on this request for rollback consultations would no longer be necessary. However, on 7 March, the EC Council of Agriculture Ministers had re-adopted the same directive. This

raised the question whether of Canada should now discuss this matter under the heading of rollback or standstill. Canada's concern about the ban was for both technical and trade policy reasons. On the technical side, his Government considered that the growth hormones currently approved for use in beef production were completely safe when administered according to proper procedures. This position was shared by several other countries, and Canada noted that the Community's own scientific working group on anabolic agents in animal production had come to the same conclusion on a number of compounds. Canada's objections on trade policy grounds were based on two considerations. First, there was obvious potential for trade impairment. Second, was the responsibility of all traders to avoid erecting unjustified new barriers to trade in pursuit of non-trade objectives. Canada did not dispute the right of governments to ensure that food for human consumption be free of harmful residues. However, the Community's ban focused on methods of raising live animals rather than on the desired end result of residue-free meat, and was clearly excessive in relation to the desired end. If the Community deemed such an intrusive ban to be consistent with its obligations under GATT or under the Agreement on Technical Barriers to Trade, Canada would reply that this was debatable and deserved further detailed consideration.

Rollback procedures

53. The Chairman, referring to Korea's proposals for improving rollback procedures (MTN.SB/1, paragraph 18), noted there was a general recognition that transparency throughout the rollback process was desirable and necessary. There was also a general feeling that it would be helpful if the process of consultations could be made more expeditious. He proposed that the Surveillance Body agree that it expects consultations on rollback to begin within a reasonable period and that it takes note that a period of 30 days (following circulation of a communication) has been suggested as appropriate. It is understood that a first consultation held within the above 30-day period may be simply a meeting to clarify facts and to set a date, as may be needed, for a subsequent consultation. The Surveillance Body so agreed.

54. The representative of the European Communities said the proposal just agreed made clear that it could happen that after a first consultation, both participants could agree that further consultations were not necessary.

55. The representative of Korea said that the suggested understanding on the procedure for rollback consultations substantially met the original purpose of the Korean proposal. He expressed his gratitude that the Chairman's efforts would assist the consultations in achieving successful and fruitful results.

56. The representative of Japan confirmed his delegation's understanding that the grounds for belief that measures were subject to the rollback commitment should be made clear at the latest by the first consultation.

57. The representative of the United States said it should be understood that the dates in the proposal just agreed were target dates, rather than a rigid timetable. He suggested that participants involved in consultations give at least one or two weeks notice of their being held, so as to help third parties prepare for them.

58. The Chairman urged participants involved in rollback consultations to give sufficient advance notice of them, and to use the standard formats for notices of consultations.

Proposal by Brazil

59. The representative of Brazil said there was an important parallelism between some undertakings that might be agreed upon in Uruguay Round negotiating groups and the work in the Surveillance Body. In this sense, the Surveillance Body should develop formulae for implementation of the rollback commitment, for instance by setting out, as had been done in the Negotiating Group on Non-Tariff Measures, a tentative date for arriving at an agreement on modalities and procedures for rollback of measures inconsistent with GATT. The linkage between the work of the Negotiating Group on Non-Tariff Measures and that of the Surveillance Body was obvious. It had been discussed at length during the most recent meeting of that Negotiating Group, during which it was clear that it would not be possible to make much progress in that area of negotiations if agreement were not reached on modalities for rollback. The conditions under which the European Community had put forward its offer in RBC/19 indicated that unless there was a multilateral understanding on this issue, commitments might never be implemented. If the Body was to start a process of decision on modalities to reduce or eliminate non-tariff measures, it would be clear that steps to phase out or bring into conformity with GATT, within an agreed timeframe, all trade restrictive or distorting measures inconsistent with the provisions of the General Agreement, should also be defined. This had been expressly recognized in the Punta del Este Declaration. Brazil would welcome further discussions on this issue either in this Body or in informal consultations.

60. The Chairman proposed that participants reflect on Brazil's proposal and that the Surveillance Body revert to the proposal at its next meeting. Informal consultations on the proposal before that meeting might be helpful. It was agreed that the Chairman might arrange such consultations.

Item C: Other Business

61. The Surveillance Body agreed to hold its next meeting on Thursday, 9 June.

ANNEX

RECORD OF EXAMINATION ON 8 MARCH 1988
OF NOTIFICATIONS ON STANDSTILL

Item 2 (A): Standstill

- (I) Examination of standstill notifications (MTN.SB/SN/series)
submitted in accordance with the agreed procedures (MTN.TNC/2;
MTN.SB/1, paragraph 21; MTN.SB/2, paragraphs 20 and 21)

New notification on standstill

United States - Suspension of Chile from the US scheme under the GSP
(MTN.SB/SN/7 and Add.1)

The representative of Chile referred to the points set out in his country's notification (MTN.SB/SN/7) and noted that the suspension of Chile from the US scheme under the GSP had been discussed at length in the Council on 2 February; Chile's arguments were reflected fully under item 2 in the minutes of that Council meeting (C/M/217). For this reason, his delegation would focus in this Body on the relevance of the US measure to the standstill commitment. Chile considered that the measure contravened paragraph (i) of that commitment because the United States had adopted a measure which restricted and distorted trade, and which was inconsistent with the provisions of the General Agreement and with the Instruments negotiated within the framework of GATT. The US measure violated the general principles of GATT, including Part IV and in particular Articles XXXVI and XXXVII. It also contravened the decisions of 1971 (BISD 18S/24) and 1979 (BISD 26S/203). Furthermore, the measure contravened paragraph (iii) of the standstill commitment, because it clearly improved the US negotiating position in the Uruguay Round. He noted that his country was consulting with the United States on this matter and hoped that these consultations would produce satisfactory results.

The representative of the United States said his delegation could not agree that removal of GSP benefits, which was a unilaterally offered tariff preference, could be considered to be a violation of the standstill commitment. The basis for the US decision to suspend Chile indefinitely from the US scheme under the GSP was the provision in US law requiring beneficiary developing countries "to have taken or be taking steps" to afford internationally recognized worker rights to their workers. The action to suspend Chile had come after two-and-a-half years of careful review, including consultations with the Government of Chile. The US action was not discriminatory, since all beneficiary developing countries were subject to the same legal provisions regarding worker rights. The United States failed to see how its action could be seen to improve its

negotiating position in the Uruguay Round, since any negotiations in the Round on tariffs would begin from the point of bound tariffs, not from GSP rates.

The representative of Argentina said his delegation shared Chile's views on this matter and he reiterated Argentina's opposition to the use of discriminatory economic measures taken for non-economic reasons. Argentina considered that the US measure was inconsistent with the standstill commitment, and hoped that a satisfactory solution would be found through bilateral consultations.

The representative of the United States said his delegation continued to insist that a country according preferences, such as the GSP, had the right to determine criteria for applying those preferences, as long as those criteria were applied consistently and in a non-discriminatory manner. The United States had not taken a trade distorting or restrictive measure, since Chile would now be subject to the normal bound tariff rates under GATT.

The representative of Chile stressed that the operation of GSP was not governed in GATT by UNCTAD rules but rather by the 1971 and 1979 Decisions taken in GATT. In the case at hand, the United States had violated the principle of non-discrimination. Once a developed contracting party had unilaterally chosen to establish a GSP scheme, it could not under GATT law apply that scheme to some developing countries and not to others. It had sometimes been erroneously stated that since the GSP was unilateral, it could be applied in a discriminatory way. However, the 1979 Decision was absolutely clear regarding the principle of non-discrimination when it referred to "generalized, non-reciprocal and non-discriminatory system of preferences beneficial to the developing countries". Since the United States was applying its GSP scheme to some countries and not to Chile, it was obviously discriminating against Chile and was thus violating GATT rules. The reason invoked by the United States for discriminating against Chile was that his country was not taking measures to grant its workers internationally recognized rights. In doing so, the United States had introduced into GATT an element that was alien to it. Just as no contracting party could exclude another from its concessions on terms of religion or race, even if such grounds were provided for in its domestic legislation, the United States could not invoke arguments that had nothing to do with trade.

Previous notifications on standstill

European Economic Community - Subsidy program for long-grain rice
(MTN.SB/SN/6 and Add.1)

The representative of India said his delegation shared the concerns expressed by participants at the Body's meeting in December 1987, concerning the US notification against the European Community's subsidy program for long-grain rice. He asked if the Community could provide the information requested by Yugoslavia on this matter (MTN.SB/4, Annex, paragraph 12).

The representative of the European Communities said his delegation would provide the information as soon as possible.

The Chairman noted that once the information was provided by the Community, the secretariat would circulate it in a Surveillance Body document.

The representatives of the United States, Australia, Thailand and Argentina reiterated their delegations' concerns over the Community's program, which they saw as inconsistent with the standstill commitment. They called on the Community to withdraw the program.

The representative of the United States said his delegation was concerned that despite the fact that the Community's program was inconsistent with the standstill commitment, the Community was continuing work on preparing regulations to implement the program. Work on the first regulation, dealing with morphological characteristics of rice eligible for the subsidy, was nearing completion, and work on the second regulation, dealing with standards for cooking characteristics, was underway.

The representative of Australia said that the Community's program was a new trade-distorting measure which had the effect of displacing imports and improving the Community's position in negotiations on agriculture. Australia noted the Community's comments in MTN.SB/SN/6 that the measure was temporary and therefore was not intended to improve its negotiating position. However, in the absence of any firm commitment on a time limit for the measure, his delegation was not convinced that this was a satisfactory defence. Australia believed that the introduction of a subsidy program to assist the production of a commodity for which the Community did not have a comparative advantage would further entrench inefficient farming practices and further isolate producers from the disciplines imposed by world market signals. It would further restrict the access of efficient producers and fair traders to the Community market and intensify serious imbalances in world markets through trade diversion and displacement in third markets. The Community's measure represented a further deterioration in the unsatisfactory conditions for international agricultural trade which all participants had committed themselves to address. The program disregarded commitments which the Community had

undertaken at the Ministerial Council meeting of the OECD in May 1987 as well as at the G7 Economic Summit in Venice. The program called into question the extent to which the Community was serious about improving competitive conditions for world trade in agriculture by increasing discipline on the use of all direct and indirect subsidies which was an agreed objective for the Uruguay Round.

The representative of the European Communities reiterated the points which his delegation had made both in MTN.SB/SN/6 and at the December 1987 meeting of the Surveillance Body when this item had been examined. The Community did not accept that the program violated any of the provisions of the standstill commitment or of the General Agreement. The Community continued to be surprised at the disproportion of the alleged violation. The program involved 40,000 hectares of rice production, compared to two million acres where long-grain rice was grown in the United States which had made the notification. Nor was it acceptable to the Community to take criticism from countries which, according to the Community's information, had a total import embargo on rice of any kind.

The representative of the United States said that even though the Community had asserted that the program was not a trade measure, its net effect was to reduce imports. The United States estimated that about US\$ 76 million worth of rice exports to the Community would be affected.

Indonesia - Prohibition of exports of tropical woods (MTN.SB/SN/1)

The representative of the European Communities said his delegation would appreciate further information from Indonesia, in the form of a document, concerning its prohibition of exports of tropical woods. The Community remained concerned about measures tending to tax exports that would ultimately lead to a total prohibition of exports of certain unprocessed tropical woods by 1 January 1989. These measures created considerable difficulties for an industry in the Community. Indonesia had explained (MTN.SB/2) that the measures had been taken essentially for conservation and environmental reasons, but the Community had evidence that Indonesia's exports of finished wood products was growing rapidly, a fact which tended to undermine Indonesia's assertion.

The representative of Indonesia said that his delegation might be able to give such information at a future meeting of the Surveillance Body.

United States - Tax on imported petroleum and petroleum products
United States - Customs user fee (MTN.SB/SN/1)

The representative of the European Communities noted that even though a great deal had happened in GATT concerning the US oil tax since the Community had made its notification in June 1987, very little had happened concerning removal of the measure. He asked for information from the US delegation on this matter.

The representative of the United States said his Administration intended to bring the oil tax and the customs user fee into full conformity with the GATT. The Administration had submitted to Congress on 18 February the intention to make both measures conform with his country's international obligations.

The representatives of Canada, Nigeria, and Malaysia shared the concerns expressed about the US measures and said that their delegation looked forward to hearing that the measures had been brought into full conformity with GATT. The representative of Canada said that should legislation not be forthcoming to bring the US oil tax into conformity with GATT, his authorities would consider other available options under GATT to address impairment of Canada's rights.