

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.SB/8

22 November 1988

Special Distribution

Surveillance Body

REPORT BY THE CHAIRMAN OF THE SURVEILLANCE BODY
TO THE TNC MEETING AT MINISTERIAL LEVEL IN MONTREAL

1. The aim of this report, which is made by the Chairman of the Surveillance Body on his own responsibility, is to assist the Trade Negotiations Committee (TNC), meeting at Ministerial level in Montreal, in its task of evaluating the implementation of the standstill and rollback commitments and its impact on the process of the multilateral trade negotiations and in relation to the interests of individual participants (MTN.TNC/W/10, page 8, paragraph 8).
2. This report provides the TNC with a factual account of what has, and has not, been achieved so far, assesses the situation, and makes recommendations for agreement by Ministers. The report does not of course take the place of any appreciation that participants in the TNC might want to make individually, nor does it substitute for the evaluation which the TNC itself is required to make.
3. A consolidated text of the Ministerial commitments on standstill and rollback, and of the procedures agreed by the TNC and by the Surveillance Body, is contained in document MTN.TNC/W/10. This document shows that the Surveillance Body reached agreements designed to deal with a number of the practical problems that arose with the agreed procedures during the first two years of the Body's work.
4. The basic material for the TNC's stock-taking and evaluation is contained in the detailed reports (MTN.SB/1-7) on the Surveillance Body's seven meetings held so far. The secretariat has updated the list of notifications and communications on standstill and rollback; the most recent revision is contained in MTN.SB/W/3/Rev.4; it will be further updated as necessary.

- Standstill

5. The list in MTN.SB/W/3/Rev.4 shows that since the standstill commitment took effect on 20 September 1986, a total of 23 notifications, by 11 participants against seven participants, have been made as of 31 October 1988. Seventeen of the notifications were made by developed countries, and six by developing countries. The notifications cover quantitative restrictions, tariffs, import controls and prohibitions,

GATT SECRETARIAT

UR-88-0585

export restrictions, internal taxes, production and export subsidies, and government procurement.

6. More than two-thirds of the notifications have cited violation of paragraph (i) of the standstill commitment under which participants agreed "not to take any trade restrictive or distorting measure inconsistent with the provisions of the General Agreement or the Instruments negotiated within the framework of GATT or under its auspices". The other notifications have mostly referred to paragraph (iii) of the commitment, under which each participant agreed "not to take any trade measures in such a manner as to improve its negotiating positions". Some notifications have cited violations of both paragraphs (i) and (iii).

7. During the detailed discussions on standstill notifications, participants which have made the notifications have described the negative effects which notified measures have had on their trade and, in the view of some participants, on the GATT multilateral system and on the Uruguay Round negotiations.

8. Participants making the notifications have requested that the measures to which they refer be withdrawn. However, in only one case, concerning Greece's ban on imports of almonds, has the notifying participant, the United States, withdrawn its notification, following Greece's lifting of the ban.

9. Article XXIII:2 panels have found that two of the measures notified under standstill (the US tax on imported petroleum and the US customs user fee) contravened the General Agreement, and the Council has adopted the panel reports. In two other cases (US increase in customs duties on imports of certain Japanese electronic goods; and EEC's suspension of licences for imports of apples from Chile) the complainants have invoked Article XXIII procedures.

10. The Surveillance Body's mandate confines it to examining the relationship between the measures notified and the standstill commitment.

11. The Surveillance Body has noted that, except where the CONTRACTING PARTIES have found measures to be inconsistent with the GATT, a difference of opinion exists between the notifying participant and the participant notified against as to whether or not the standstill commitment has been breached.

12. All participants consider that the Body's "early warning" discussions, on proposed legislation and other actions affecting trade, have been useful. Among the 18 cases discussed under this category were the US Textile, Apparel and Footwear Trade Bill of 1988, which was later vetoed; the European Community's proposed stabilizing mechanism on oils and fats, which the Community has confirmed is not presently being pursued; and proposed US legislation concerning labelling of tropical oils.

- Rollback

13. As of 31 October 1988, 19 requests, by seven participants addressed to seven participants, have been made for measures to be rolled back or brought into conformity with the GATT. Ten of the requests have come from developed countries, and nine from developing countries. Most of the requests concern quantitative restrictions considered by the requesting country to be inconsistent with Articles XI and XIII.

14. Consultations have been held, or scheduled, on most of the requests. The Body has agreed on a target of 30 days for beginning the process of consultations following receipt of requests. In many cases, this target has not been met.

15. Japan has notified rollback action (MTN.SB/RBN/1) by way of market-opening measures through termination of import allocation systems on certain categories of agricultural products. Although this is not explicitly indicated in its notification, Japan has stated that its action was taken in partial response to rollback requests, and that the measures will be implemented unilaterally, without conditions and on an m.f.n. basis. The products to which the rollback decision relates are covered by an Article XXIII panel report, adopted by the Council, concerning Japanese restrictions on imports of certain agricultural products.

16. As of 31 October 1988, no other rollback actions had been notified in response to requests.

17. The European Community has put forward an offer on rollback (RBC/19), which it emphasized was unsolicited, and has sought appropriate contributions by other participants as a condition for implementing that offer. Participants have recognized that this was the first and, as at 31 October 1988, the only offer to have been put forward. However, serious concern has been expressed in the Surveillance Body that the offer would maintain or create discrimination against the trade of some participants which would be contrary to the GATT and the standstill and rollback commitments.

18. A proposal by Brazil (MTN.SB/W/5) that the Surveillance Body agree on target dates for requests, offers and undertakings on rollback was considered by the Body at its meeting on 21 June 1988. The Surveillance Body could not agree on the proposal, although it was supported by a substantial number of delegations and there was widespread expression of support for the spirit underlying it. Serious doubts were expressed by some delegations about the feasibility of establishing the kind of specific time-frame put forward in the proposal, and about the way in which some parts of the proposal related to the surveillance mechanism provided for in the Punta del Este Declaration and established by the TNC. Brazil put forward an updated and amended proposal (MTN.SB/W/5/Rev.1) for consideration at the Body's meeting on 27 October 1988. The proposal

suggested that the Ministers meeting in Montreal would agree on the specific time-frame put forward. The positions of participants had not changed. Some participants had difficulty with the specific elements of the proposal. There was, however, widespread support for the spirit behind the proposal and for the need for guidance by Ministers that would lead to more effective and progressive implementation of the rollback commitment.

19. Many participants consider that lack of action on rollback by the time of the Montreal meeting could create a situation of imbalance and have negative implications for progress in other areas of the Uruguay Round. They noted that apart from Japan's action (MTN.SB/RBN/1), as at 31 October 1988 no rollback undertakings had been made in response to requests, despite the understanding by the Chairman of the TNC in January 1987 that some would be made by the end of 1987 (MTN.TNC/W/10, page 6). Other participants, while recognizing that implementation of the rollback commitment is to be progressive and on an equitable basis, have emphasized that the only agreed deadline for implementation of the rollback commitment is the end of the Uruguay Round; they have also stated that lack of results on rollback before that deadline should not impede progress in other areas of the negotiations. A large number of participants have nevertheless stressed, in the Surveillance Body and in the TNC, the need to achieve some convincing progress on rollback by the time of the Ministerial meeting.

Assessment

20. Two years have passed since the adoption of the standstill and rollback commitments, which are a key element in the Punta del Este Declaration.

21. It should be noted that three measures raised under either standstill or rollback have been ruled GATT-inconsistent by the CONTRACTING PARTIES: the US tax on imported petroleum; the US customs user fee; and Japan's import allocation system for certain agricultural products (see paragraph 15). However, in cases where there has been no ruling by the CONTRACTING PARTIES on the GATT consistency or inconsistency of a notified measure, assessments have differed among participants as to how these cases relate to the standstill and rollback commitments. One factor in this difference of assessment has been that participants have sometimes viewed the implementation of the commitment in particular cases according to whether they have made the standstill notification or rollback request, or whether the notification or request has been made against them. Views have also differed among participants as to whether the Surveillance Body has carried out its mandate of examining the relationship between the measures notified and the standstill commitment. Similar differences of view over whether or not measures are GATT-consistent have arisen in bilateral consultations on rollback requests. The point has been made that as the standstill and rollback commitments are political, the procedures for their implementation do not depend on rulings by the CONTRACTING PARTIES and

cannot be expected to lead to legally-binding conclusions; it has also been pointed out that the whole of the Punta del Este Declaration is a political commitment.

22. Only one measure notified under the standstill commitment has been withdrawn. A number of participants consider that the commitment has not so far proved to be effective in the prevention of protectionist measures. However, other participants consider that the commitment has had beneficial effects on formulation of trade policies, by assisting governments to prevent the adoption of protectionist measures. They note that these effects, as well as the impact of the "early warning" discussions linked to standstill, are sometimes difficult to identify, because where proposed protectionist measures are not enacted, and where measures under consideration are successfully prevented from even reaching the stage of proposed legislation, they are of course not notified.

23. Only one rollback action had been notified as of 31 October 1988. Even though it was limited in scope and responded to a panel recommendation adopted by the CONTRACTING PARTIES, participants welcomed it as an important step forward in the Uruguay Round. They also welcomed the fact that the offer would be implemented unilaterally, without conditions and on an m.f.n. basis.

24. Participants have recognized the usefulness of autonomous actions on rollback, and have recognized the only offer on rollback which had been put forward as of 31 October 1988. However, serious concern has been expressed that such offers should not maintain existing discrimination or create new discrimination.

25. Some governments have taken steps to liberalize measures, in particular certain quantitative restrictions. In the view of some participants, certain of these autonomous liberalization measures could be said to have the character of rollback action. It has, however, to be recognized that these steps have not been taken and presented in the context of the rollback commitment. A point has been made that a distinction should be drawn between autonomous, GATT-consistent measures to liberalize trade, which deserve credit, as appropriate, in the area of trade, and measures to rollback GATT-inconsistent measures, for which Ministers have agreed that no GATT concessions shall be requested.

26. Some participants have stressed that implementation of the standstill and rollback commitments should be assessed in the positive context of world trade which has continued to expand over the past two years, and in the light of autonomous trade-liberalizing measures taken during that period, even though the measures have not been taken and notified under rollback. Other participants, while agreeing that appropriate recognition should be given to positive developments in the world trading system, are not convinced that such liberalizing measures have outweighed restrictions, nor that expansion of world trade and healthy development of the world

trading system are necessarily the same thing and, furthermore, do not consider that this general context is relevant to the specific evaluation of whether the standstill and rollback commitments have been implemented.

27. There is concern that, despite the fact that a number of improvements have been made, the existing procedures have proved inadequate for achieving results, particularly on progressive implementation of the rollback commitment. The widespread expressions of support for the spirit behind Brazil's proposal¹, even though some participants have difficulties with its specific elements, should be seen in this context. Many participants have stressed that procedural improvements are no substitute for political will and that the present procedures do not prevent the tabling of undertakings or offers on rollback.

28. A way forward has to be found. Two years now remain for the phasing out, or bringing into GATT conformity, of measures subject to the rollback commitment. If the commitment is to be implemented progressively during the negotiations as foreseen by the Punta del Este Declaration, progress must be made. The Surveillance Body has expressed the hope that further positive actions on rollback be announced by the time of the Ministerial meeting in Montreal.

29. It has been noted that there is difficulty in contracting parties accepting that measures are inconsistent with the GATT when there is no ruling by the CONTRACTING PARTIES to that effect. However, the Punta del Este commitment clearly envisages action on such measures without need for recourse to Article XXII or XXIII. In addition, the views expressed in paragraph 19 are relevant.

Recommendations for Agreement by Ministers

30. Ministers, noting the political importance of the standstill and rollback undertaking, are invited to:

- affirm their determination to ensure that the standstill and rollback commitments are met;
- emphasize the need to take appropriate action to ensure withdrawal of all measures contrary to the standstill commitment, taking into account that there are a number of measures which have been ruled GATT-inconsistent by panel reports adopted by the CONTRACTING PARTIES;
- recognize the importance of regular discussions in the Surveillance Body of trade measures, including those not yet in force, which may have an effect on the standstill commitment;

¹See paragraph 18.

- emphasize the need for timely action on rollback, and prompt response to rollback requests, so as to ensure progressive implementation of the rollback commitment on an equitable basis;
- urge participants, without prejudice to the existing procedures, to indicate to the Surveillance Body how and when they intend to proceed to rollback measures covered by the commitment, taking into account the fact that there are a number of measures which have been ruled GATT-inconsistent by panel reports adopted by the CONTRACTING PARTIES;
- invite participants to examine carefully measures which they maintain, whether or not these have been notified, in order to determine what actions they should take to progressively implement their rollback commitments. Such actions could be self-initiated, could result from requests and consultations, and should be taken on a GATT-consistent basis;
- agree that participants should communicate the conclusions of their consideration to the Surveillance Body promptly; and
- agree that at its meeting in July 1989 the Trade Negotiations Committee should carry out a substantive evaluation of the implementation of the standstill and rollback commitments (including evaluation of avoidance of disruptive effects on the trade of less-developed contracting parties) and its impact on the process of multilateral trade negotiations and in relation to the interests of individual participants, with a view to taking such procedural or other action as may be appropriate.