

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED
MTN.SB/9
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Surveillance Body
Surveillance Body

MEETING OF 17 MAY 1989

Adoption of the Agenda

1. The Surveillance Body adopted the agenda proposed in the convening airmgram GATT/AIR/2763.

List of notifications and communications on standstill and rollback

2. The Chairman drew attention to the most recent list of notifications and communications on standstill and rollback in MTN.SB/W/3/Rev.5.

Item 2(A): Standstill

3. At the outset, the Chairman recalled the paragraphs of the TNC's decision at its mid-term review (MTN.TNC/11) which were relevant to the standstill commitment (paragraphs (a), (b) and (c) of the decision).

(I) Examination of standstill notifications (MTN.SB/SN/- series)
submitted in accordance with the agreed procedures (MTN.TNC/W/10)

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

(II) Consideration of statements by participants concerning other aspects of the standstill commitment

"Early Warning"

5. The representative of Japan said that, in the light of the GATT, the US Omnibus Trade and Competitiveness Act of 1988 presented serious problems and Japan had strongly urged the US Administration to implement the Act in a fair and prudent manner. Japan was concerned that a series of actions had already been taken by the United States, which might lead to unilateral retaliatory measures. Japan was concerned that these actions might endanger the very basis of the multilateral free trading system. In this

regard, his delegation wanted to refer to two concrete cases. First, the introduction of "Super 301" had paved a way for the invocation of unilateral retaliatory measures, through such procedures as identification of priority foreign countries and practices. The USTR had published its annual report on trade barriers of foreign trading partners on 28 April 1989, and priority foreign countries and practices would be made public by 28 May 1989. Second, according to Section 1377 of the Act, the determination that a foreign country had violated its bilateral agreement with the United States and the decision to take retaliatory measures were to be made unilaterally by the United States. On 28 April, the USTR had made its determination that Japan had violated the United States-Japan bilateral agreement in the field of telecommunications. Japan regretted that the United States had made such a determination despite Japan's implementation in good faith of the outcome of the telecommunication talks. The United States' threat of resorting to unilateral retaliatory measures not only discouraged efforts to coordinate policy among major participants but also challenged the authority of the GATT dispute settlement procedures. The United States' measures could undermine joint efforts to maintain and strengthen the multilateral trading system, and lead to the spread of protectionism and the contraction of world trade, thereby hampering the development of the world economy. As the Uruguay Round negotiations were entering their substantial phase, each contracting party was strongly urged more than ever to respect the multilateral free trading system and to endeavour to strengthen the system through implementing domestic reform measures, even if those measures were painful to it. The United States had a great influence on world trade and had a significant responsibility in the world. The fact that the United States had been taking such actions was a matter of serious concern to all, since these would endanger the Uruguay Round negotiations and subsequently the fundamental principles of the multilateral free trading system. Moreover, the unilateral invocation of retaliatory measures was clearly inconsistent with the GATT and constituted a challenge to the GATT system. His delegation was strongly concerned since it eroded confidence in the system. Japan believed that the series of US actions to which he had referred were in contravention of the spirit of standstill, which was a political commitment made by each participant underpinning the Uruguay Round negotiations.

6. The representative of the Republic of Korea, speaking on the same issue, recalled that his delegation had on several occasions expressed its deep concern about the negative impact of possible US action under the Omnibus Trade and Competitiveness Act of 1988 on the multilateral trading system based on the General Agreement, and particularly on the ongoing trade negotiations of the Uruguay Round. Much had been said about the dangerous approaches contained in, and the implications of, Section 301 and "Super 301". The strong sectoral, unilateral, bilateral, discriminatory and retaliation-oriented nature of the Section remained of serious concern to all contracting parties. The action foreseen under the Section targeted a broad spectrum of international economic and trading activities ranging from tariff and non-tariff matters to service sectors, investment and intellectual property rights. The coverage encompassed virtually the

totality of the subjects being negotiated in the Uruguay Round. His delegation therefore considered that whether it was intended or not, Section 301 actions would both directly and indirectly result in strengthening the negotiating position of the United States in the Uruguay Round in violation of the standstill commitment. His delegation hoped that the US Government would be faithful to its commitment to the multilateral trading system of the GATT and the standstill commitment of the Uruguay Round. He concluded by saying that if the United States ever determined the existence of any unfair trading practice by her trading partners, it would be only fair and just for her to bring the matter to the GATT and seek a solution through the GATT forum and the Uruguay Round negotiations.

7. The representative of the European Communities said that under the US Act countries and measures were being identified with a view to achieving the United States perception of what was, and was not, fair trade, by negotiations in the first instance, but if the negotiations should fail, by coercion. The pending measures were anti-GATT by definition as they were unilateral and unauthorized. This Surveillance Body was bound to be affected and its task would become more difficult in view of the threat hanging over it. It had been said that the standstill and rollback commitments were political commitments and that this Body was a political one. A political response was needed in the direction of legitimizing measures, not in the other direction. His delegation considered that the signal from the US Act was that the United States was prepared to go in the wrong direction.

8. The representatives of Canada, India, Sweden, speaking on behalf of the Nordic countries, Brazil, Switzerland and Argentina said that their delegations shared the concerns expressed and points made by Japan, the Republic of Korea and the European Community on the issue. They considered that unilateral action under the US Act would not only be inconsistent with the General Agreement and the standstill commitment, but would also have a negative impact on the Uruguay Round. The point was made that if the United States had trade problems with its partners, it should have recourse to the normal GATT dispute settlement procedures.

9. The representative of the United States said that Section 301 was intended to open markets, not to close markets in response to pressure for protection. If the United States had not had Section 301 or if it had not been enforced by the Administration, political pressures for protection would have likely been much greater. The United States preferred multilateral to bilateral solutions where they were available. Whenever feasible, actions under Section 301 were pursued through multilateral dispute settlement. Where international disciplines were not currently adequate, the United States had to look elsewhere. His country, however, was devoting extensive efforts and resources to the Uruguay Round to help ensure that they become so. He concluded by quoting Ambassador Hills, the United States Trade Representative, who had recently said: "We will use

the tools contained in the 1988 Act vigorously but constructively to open markets, combat unfair trade practices and persuade our trading partners to honour agreements. In administering these provisions, we will focus on removing trade barriers and promoting a healthier trading system. We will not use these tools to destroy the rules of the system we are trying to strengthen."

10. Turning to another matter, the representative of Australia said that his country was concerned about Finland's general levy of FIM 1.5 per Kg. on lupin seed (tariff item 12.09 (seeds, fruit and spores of a type used for sowing), sub-item 29.10 (lupin seed of a type used as feed)). Finland had withdrawn its duty-free tariff binding on lupins and imposed the levy on 4 November 1986. Australia found that the levy prevented any trade. As the levy had been introduced after the Punta del Este Declaration, Australia considered that Finland had been in breach of paragraph (iii) of the standstill commitment not to take any trade measures in such a manner as to improve its negotiating positions. Australia had received formal comments from Finland relating to its concerns and the comments were being studied.

11. The representative of Finland said that his delegation took note of the Australian statement and would pass its contents on to his capital for closer examination. His delegation was aware of the bilateral contacts which had taken place about the issue between the Finnish and Australian Authorities. The Australian Embassy had explained the Australian concerns to the Finnish Ministry for Foreign Affairs last December. A written reply covering all the points raised by the Embassy had been given by the Finnish Foreign Ministry on 14 April 1989. Since then no further queries had been made, no clarifications sought and no other reactions given through the bilateral channel. Against this background, his delegation was a bit surprised that the issue had been brought before the Surveillance Body. His delegation noted, nevertheless, that this had been done only orally by the Australian delegation, and also noted the spirit with which the issue had been raised. As to the substance of the issue, he referred to the following facts. First, Finland's decision to withdraw from its Schedule, in accordance with the procedure of Article XXVIII:5 of the GATT, the tariff concession on seeds of lupin used for animal fodder had been notified to the GATT on 18 October 1985. No claims of interest had been communicated to Finland within the 90 days following the circulation of that notification. Second, Finland had decided to effect the withdrawal as from 1 April 1986. That decision had been communicated to the GATT on 4 February 1986. Third, these steps had constituted a normal withdrawal process under Article XXVIII:5 of the GATT, and they had all been taken well before the Punta del Este meeting. Fourth, although the new import duty (FIM 1.50 per Kg.) had been introduced into the Finnish Customs Tariff only as from 1 January 1987, this had been purely due to the domestic administrative and technical requirements. From the point of view of the GATT or the Uruguay Round mechanism which surveys the implementation of the standstill commitment, nothing new had been initiated in Finland between the Punta del Este Declaration and the publication of the Finnish Customs Tariff for 1987. He concluded by saying that, for all these reasons, Finland considered that no breach of the standstill commitment had taken place in this particular case.

12. The Chairman recalled that in his report to the TNC meeting at Ministerial level in Montreal, he had noted that the Body's "early warning" discussions had been considered useful by all participants. He hoped that this was also true of the discussions at this meeting.

Item 2(B): Rollback

Consideration of statements concerning the rollback commitment, in the light of the agreed procedures (MTN.TNC/W/10)

13. The Chairman recalled the paragraphs of the TNC's decision at its mid-term review (MTN.TNC/11) which were relevant to the rollback commitment (paragraphs (a), (d), (e) and (f) of the decision).

14. The representative of Hong Kong said that her delegation had had a third round of consultations with Japan on 23 February 1989 concerning Japan's import quota system on 13 items and the prior confirmation system on imports of silk fabrics (RBC/8). At the consultation, Hong Kong had accepted Japan's justification in regard to six items under import quota. Japan had agreed to provide more information on some of the remaining items. As regards the prior confirmation system on imports of silk fabrics, Hong Kong had made a proposal which Japan had agreed to study further. Her delegation was waiting for Japan's responses regarding these two issues.

15. The representative of Japan said that the proposal made by Hong Kong in regard to the prior confirmation system was being studied in Tokyo.

16. The representative of Canada said that his delegation would hold consultations with the delegation of Brazil concerning the request contained in RBC/9 on 18 May 1989. He hoped that the consultations would result in early Brazilian action to bring their practices into conformity with their GATT obligations.

17. The representative of Australia said that his country was concerned about the way in which Japan had been addressing the findings of the so-called "12 agricultural products" Panel as reflected in Japan's notification on rollback. Australia's concern was that there was some selectivity in implementation with the focus being the interests of the United States. Various milk products were of interest to Australia, but Japan had not taken action to liberalize the trade of these as of other products. Australia had already raised the issue at a bilateral level. The Japanese market was important to Australia, as it represented over 20 per cent of Australian exports. Australia had hoped that the Panel findings would provide opportunities to export a wider range of agricultural products to Japan.

Follow-up to the EEC offer (RBC/19)

18. The representative of the European Communities said that the Community's offer had represented a genuine effort to take the rollback

issue forward. The proposal made in that communication, however, had met with a degree of scepticism and some opposition from this Body. As a consequence of that, the Community had agreed to review the matter internally. At present, the offer was not withdrawn, but it was, to a certain extent, in limbo. The matter had been further complicated by Japan's notification (RBC/17) which had led to two consultations between the Community and Japan. The consultations had related to some of the areas under the Community's offer on rollback. He concluded by saying that the Community's offer would have to be further considered in the context of the evaluation of the implementation of the standstill and rollback commitments by the TNC in July.

19. The representatives of Hungary, Japan and Poland hoped that the European Community would take into account concerns already expressed by these delegations and present a modified offer of action on a m.f.n. basis.

Item 2(C): Other business, including arrangements for, and date of next meeting, taking into account the decision taken by the Trade Negotiations Committee on 8 April 1989 (MTN.TNC/9 and MTN.TNC/7(MIN))

20. The Chairman noted that Ministers had agreed in paragraph (g) of the TNC's decision at its mid-term review that participants should communicate the conclusions of their consideration to the Surveillance Body promptly. It had been also agreed by Ministers in paragraph (h) 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. He believed it useful for the Surveillance Body to make available sufficiently in time for the the TNC meeting scheduled to be held on 28 July such material as would enable it to carry out the substantive evaluation. He suggested that in order to provide the TNC with enough time to consider the reports by the Surveillance Body the next meeting of the Surveillance Body be held on Monday 3 July. The Surveillance Body so agreed.

21. The Chairman also said that at the July meeting of the Surveillance Body, he would make a factual summary of the current situation on implementation of the standstill and rollback commitments so that the Body could consider the summary to be put forward to the TNC meeting. In order to make the summary, he believed it necessary for participants to promptly communicate in writing to the Surveillance Body the conclusions of their consideration about their action on the standstill and rollback commitments as provided for in paragraph (g) of the TNC's decision. The Chairman proposed, as a target date for such communication, Friday 23 June so that the information could be processed for consideration by the Surveillance body at its July meeting. The Surveillance Body so agreed.

ANNEX

RECORD OF EXAMINATION ON 17 MAY 1989 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/W/10)
- New notification on standstill

United States - Agricultural export subsidy programs and targeted export assistance (MTN.SB/SN/18)

1. The representative of Argentina said that his country was carefully evaluating and assessing the implications of the decision of the TNC at its mid-term review for the issue under notification, and wished not to discuss the issue at the present meeting. His delegation would, if necessary, raise the issue at the next meeting.

Sweden - Increase in the levy on imports of sheepmeat (MTN.SB/SN/19)

2. The representative of Australia drew participants' attention to document MTN.SB/7 page 2 which contained a summary of the points made by his delegation at the last meeting of the Surveillance Body. At that meeting the representative of Sweden had advised of a decision to decrease the levy by SEK 1.45 per kilo from 1 December 1988 to SEK 19.00 per kilo. Australia had expressed doubts that the proposed reduction had been sufficient to allay its concerns, bearing in mind that the new rate was still SEK 4,50 per kilo over the level prevailing in June 1987, which represented a 31 per cent increase. Since the levy reduction had been implemented, Australia had had the opportunity to assess its impact. His delegation's conclusion was that while Sweden might be said to have made a step in the right direction, the commercial world perspective was that the total levy still effectively prohibited imports from suppliers trading on a m.f.n. basis. He asked the representative of Sweden what advice Sweden could provide on the next review of the levy. Australia hoped that there was a proposal to further reduce the levy so as to provide the opportunity to Australia to develop a market in Sweden and to provide a product which Swedish consumers would like to obtain.

3. The representative of Sweden said that his Government had set up a parliamentary working group to act as a drafting committee on agricultural policy. Sweden's agricultural policy was in need of reform in view of national as well as international goals. The task of the working group was to evaluate the present domestic food policy and to formulate proposals for new agricultural policies from the year 1990, in light of the GATT

negotiations. The Swedish system of market regulation on agricultural products was based on variable import levies. Within this framework levies were changed on a regular basis. Sweden considered that neither the Swedish system of agricultural market regulation, nor the changes of levies that followed from that system were inconsistent with Sweden's standstill commitment. A basic purpose of the system was to guarantee that the producers received a certain level of income by means of market price support. The total amount, as well as the distribution between different products, was the result of deliberations where consumers, producers and the Swedish National Agricultural Market Board were represented. In the light of market developments, the levies were regularly reviewed twice a year, namely on 1 January and 1 July. Two more reviews would be undertaken, on 1 April and 1 October, if required. Due to the last year's market development, the Government had requested the National Agricultural Market Board to review the situation for sheepmeat. The Board had come back with a proposed decrease of 1.45 SEK per kilo for cuts of sheepmeat, which had become effective on 1 December 1988. While confirming that the import levy on cuts had increased by 31 per cent from June 1987 to December 1988, his delegation considered that the changes of the levy should be seen in a longer perspective. Following a process of the same kind, the levy for cuts had been lowered during the years 1984-86, and it had remained unchanged from the beginning of 1986 to June 1987. He concluded by saying that the Swedish system of market regulation and import protection was intended to set the Swedish target price and the import price at an equal level. Over time, the import levy for sheepmeat showed a very modest increase, and its effects had not been to cut out imports. Nor was it the intention to do so in the future. He also noted that total imports of sheepmeat had increased from 786 tons in 1984 to 2025 tons in 1987. The imports for the first six months of 1988 had been 1910 tons, almost equivalent to those for the full year of 1987. The imports from Australia had been 22 tons in 1984, 277 tons in 1987 and 173 tons for the first six months of 1988. If the last figures were doubled for the full year of 1988, it would show that the imports from Australia had steeply increased.

4. The representative of New Zealand said that his delegation was disappointed at Sweden's response just given and the response which Sweden had given in bilateral discussion with his country. He considered that the complicated Swedish system involved both levy system and wholesale price system set by the Swedish farmers' cooperatives and two systems could be put together in such a way as to manipulate effectively markets to cut out importers. Information from New Zealand consumer sources had indicated that the subsequent reduction of the Swedish levy had had little or no discernible impact on exporters' opportunities in the Swedish market. There had been some imports permitted of saddle, but the leg of lamb which had been the product of key interest to New Zealand and which had commanded price premium of about 5 to 6 SEK in the Swedish market for New Zealand products had continued to suffer from the Swedish increase in protection. His delegation urged that the general spirit within which Sweden was examining the fundamentals of its agriculture could be turned to good advantage in a specific way.

5. The representative of Australia, while welcoming that Sweden was beginning to review its agricultural policies, said that the figures cited by Sweden deserved responses from his delegation. When the levy had been reduced in 1984, imports had gone up. The Swedish figures did not go beyond June 1988, although nine months had already passed since then. It was the contention of his delegation that Australian trade had suffered, and was suffering from the current levy. He urged Sweden to review closely the level of the levy so that the trade could again be developed.

6. The representative of Sweden said that he would convey the request to his authorities. In regard to imports of sheepmeat from New Zealand, he noted that the imports which had been only 1 ton in 1984 had gone up to 413 tons in 1987, and 433 tons in the first half of 1988.

Previous notifications on standstill

- United States - Tax on imported petroleum and petroleum products
(MTN.GNG/W/1 and MTN.SB/SN/1)

7. The representative of Mexico, recalling paragraph (b) of the TNC's decision on standstill at its mid-term review (MTN.TNC/11), asked whether the United States had taken any measures to implement the CONTRACTING PARTIES' recommendation concerning the United States tax on imported petroleum, taking into account the renewed commitment by Ministers at the TNC. He asked the United States to indicate dates when the United States could inform whether there would be solution following the Panel's recommendation or whether Mexico had to find another kind of solution even provisionally.

8. The representative of the United States said that his delegation regretted the delay in responding to the Panel's recommendation on the issue. The intent of his Administration was to remove GATT-inconsistent practices, namely to equalize the tax. His Administration had a proposal to do so, and it was in a final stage of preparation and would be forwarded to the Congress soon in the expectation that the legislation could be voted and signed into law. If it appeared that his Administration would be unable to secure legislation to bring the "Superfund" tax into conformity with the GATT, they intended to negotiate appropriate compensation.

9. The representative of Canada said that his country had an important interest in the case. His delegation would be closely following the matter. It was the intention of Canada to seek authority of the CONTRACTING PARTIES to retaliate in the absence of the United States action to comply with the Panel ruling.

10. The representative of the European Communities said that the Community also took note of the statement made by the United States.

- United States - Customs user fee (MTN.SB/SN/1)

11. The representative of the European Communities asked the United States to indicate its intention in regard to the United States customs user fee on which a Panel finding had been made nearly two years before.

12. The representative of the United States said that his Administration last year had attempted to promote legislation to bring the customs use fee into conformity with the GATT in the context of the Panel's recommendation. Congress had found the Administration's proposal unacceptable. The Administration had a new proposal in circulation for internal consideration. At a Congressional hearing in January 1989, the need to implement a GATT-consistent customs user fee had been addressed, and the Administration believed that there would be support in Congress in 1989 for legislation this year to obtain the objective. The Administration would soon make a formal legislative proposal and expected that it would be implemented. His delegation also expected that other contracting parties with similar customs charges would bring their own regime into conformity with the Panel's reasoning.

13. The representative of Canada said that his country had also complained in this case against the United States. His delegation would be closely watching the development in Washington and hoped to see that the standstill commitment would be lived up to by the United States.

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

14. The representative of the European Communities said that the Community had been pursuing, through consultation with Indonesia, its concern over Indonesia's prohibition of exports of tropical woods. He noted that the Community had not had any satisfaction as a consequence of its notification to the Surveillance Body on the issue since June 1987. The time-table for the restriction of exports of tropical woods in their finished and semi-finished forms had been rather reduced in the interim. To that extent, the European Communities' request had remained totally unanswered. His delegation had been seeking to obtain at least some clearer views as to the likely outcome.

15. The representative of Indonesia said that his authority had been in contact with the European Community and discussions would continue. He had no specific instruction as to the status of the discussions.