

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Surveillance Body

MEETING OF 3 JULY 1989

1. The Surveillance Body met on 3 July 1989. Part I of this note records the discussion under Agenda Items 2(A), 2(B) and 2(C)(II), and Part II records the discussion under Agenda Item 2(C)(I) which was related to the review of the situation in the context of the forthcoming TNC meeting in July. Annex II contains the Chairman's summary of the current situation on the implementation of the standstill and rollback commitments.

Part I

Adoption of the Agenda

2. The Surveillance Body adopted the agenda proposed in the convening airgram GATT/AIR/2785.

List of Notifications and Communications on Standstill and Rollback

3. The Chairman drew attention to the most recent list of notifications and communications on standstill and rollback (MTN.SB/W/3/Rev.6).

Item 2(A): Standstill

- (i) Examination of standstill notifications (MTN.SB/SN/- series) submitted in accordance with the agreed procedures (MTN.TNC/W/10/Rev.1)

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 (Annex I).

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

"Early Warning"

5. The representative of Brazil said that Brazil was once again the object of unilateral action by the United States Government. This time, action was threatened under the so-called "Super 301" procedures and was linked to the use, in Brazil, of legitimate balance-of-payments measures,

well accepted and recognized by GATT Article XVIII:B. A year ago, Brazil had brought to the attention of Uruguay Round participants, through the Surveillance Body, other US actions which were in contradiction to the standstill commitment contained in the Punta del Este Declaration. At that time, his delegation had said that the mere announcement of the decision to apply trade sanctions had already caused damage to Brazilian commercial interests. His delegation brought once again to the attention of all participants that the US was threatening to take action inconsistent with the General Agreement and contrary to the standstill commitment. Last time, the US representatives had stated that there had been no breach to the standstill commitment since retaliatory measures had not yet been applied and might not be used. Three months later, specific trade sanctions had been enforced. They had discriminated against Brazil and implied modifications of the US bound tariffs on a number of items in relation to Brazil alone. As Brazil had anticipated, the actions had been inconsistent with GATT Articles I and II and aimed, inter alia, at enhancing the US position in one negotiating group of the Uruguay Round. The policy of threats which the US had pursued with increasing intensity was in itself a violation of the standstill commitment. Brazil negotiated in good faith and respected each participants' interests and limitations. Furthermore, like many other developing nations, Brazil had engaged in unilateral liberalizing policies which contributed to the objective of the negotiations and represented substantive indications of good will. In his Government's view, it was important that this Round should allow for a better atmosphere in world trade. All participants should build upon the agreements arrived at in the Tokyo Round in such a way as to accommodate the interests of all. Brazil invited all participants, specially the US, to join with others in contributing to the reinforcement of the multilateral system and refraining from undermining the ongoing process of negotiations which had to be carried out in good faith and against a background of mutual understanding. There was another reason why his delegation had decided to bring the American threat of action to the Surveillance Body under the early warning procedures relating to the standstill commitment. He recalled that Section C, Item (iii) of the Punta del Este Declaration established that each participating country had undertaken "not to take any trade measure in such a manner as to improve its negotiating positions". The US had indicated as a motivation for its action the fact that Brazil maintained non-tariff barriers for balance-of-payments reasons. These measures were legal and had been duly notified to, and examined by, the Committee on Balance-of-Payments Restrictions during consultations with Brazil. The US, which participated in the work of that body, had recognized that Brazil had serious balance-of-payments problems. As a member of the Committee, it had concurred in the Committee's findings. Besides, the measures had been referred by the United States to the Negotiating Group on Non-Tariff Measures as items which the US would like to negotiate with Brazil. The so-called "Super 301" might generate investigations and eventually retaliation during 1989 and 1990, namely during the last and crucial two years of the Round. This implied that the negotiations were likely to proceed while some members, like Brazil, might be facing threats if they

did not agree to the US specific interests. These serious undue constraints could not be accepted. The recognized objective of the "Super 301" practices consisted in opening up markets for US products and supporting US positions in the Uruguay Round. According to the United States, action taken under 301 would be GATT-consistent whenever possible. The representative of Brazil stressed the words whenever possible because they implied that action might not be GATT-consistent as well. Thus the US negotiated under the existing rules but at the same time did not lose sight of the possibility of ignoring the undertakings which constituted the basis for the multilateral trading system. The USTR herself had stated that "we will use Super 301 negotiations to support and complement our Uruguay Round efforts." She had also said that the identification of the priorities countries and practices had been based, inter alia, on the compatibility with US objectives in the Uruguay Round. This was an authoritative indication that the rollback commitment was being breached and threats were being used as a tool to enhancing the US position and whatever the US considered to be the necessary outcome of the negotiating process. How could Brazil negotiate fully in the Negotiating Group on Non-Tariff Measures if its ability to defend its interests was under the threat of retaliatory action?

6. The representative of Brazil said further that the US had also selected Brazil and a number of other participating countries for inclusion in a priority watch list under "Special 301" procedures. This part of the US law had to do with the use of illegal trade sanctions as a tool against what the US considered to be inadequate intellectual property protection abroad. Brazil brought this issue also to the attention of the Surveillance Body under the early warning procedures. Brazil thought it important that the Surveillance Body discussed this issue with a view to trying to avoid yet another serious setback for the political undertakings upon which the whole Round was based. He concluded by expressing his hope that in this discussion all participants would be in a position to renounce unilateral practices that undermined the confidence in the system and that constituted, per se, a clear contradiction to the purposes of the Round. Political commitments were not concrete concessions; but without due respect for them negotiations might be hampered. The responsibility was shared by all participants.

7. The representative of India said that, at the previous meeting of the Surveillance Body held on 17 May 1989, a number of delegations had expressed concern over the negative impact on the multilateral trading system of action by the United States under Section 301 of the US Omnibus Trade and Competitiveness Act of 1988. Nevertheless on 25 May 1989, the US had proceeded to take action identifying India as a priority country under the so-called "Super 301" provision in respect of certain investment measures and the insurance sector. India had also been identified as a priority watch country along with some other countries under the "Special 301" provision relating to intellectual property rights. It was the view of his authorities that the US action constituted a breach of the standstill commitment undertaken by participants at Punta del Este.

Specifically it violated the commitment under Section C(iii) of the Punta del Este Declaration not to take any trade measures in such a manner as to improve its negotiating positions. Such recourse to unilateral measures could only serve to undermine the multilateral negotiating process. Even though the United States had not taken any action so far which was directly inconsistent with the provisions of the General Agreement, it was the view of his delegation that the actions initiated under Section 301 could lead to results which would inevitably be inconsistent with the US obligations under the General Agreement. The recourse to such unilateral action by the US constituted a serious setback to the multilateral negotiating process. He recalled that at the mid-term review of the Uruguay Round, Ministers had reaffirmed their determination to ensure the observance of the standstill commitment and recognized the importance of discussions in the Surveillance Body of trade measures which might have an effect on the standstill commitment including those not yet in force. India would urge the United States to desist from any further action under Section 301 as such action would seriously jeopardize the entire process of multilateral negotiations under the Uruguay Round. Participants had to ask themselves whether these multilateral negotiations could at all be meaningful when a major economic power took recourse to unilateral action in violation of its multilateral commitments. His delegation reserved the right to make a formal notification to the Surveillance Body regarding the US action in due course.

8. The representative of Japan, recalling the statements of his delegation on the same issue at the previous meeting of the Surveillance Body and at the special and regular meetings of the Council held on 21 and 22 June, said that the threat of unilateral action which was possibly in contravention of the GATT was contrary to the spirit of the standstill commitment. Japan had serious concern that such posture on the part of a major trading partner was detrimental to an environment conducive to negotiations in the Uruguay Round.

9. The representative of Mexico noted that his country had been also included in a priority watchlist under the so-called "Special 301" of the US legislation. His delegation thought that the problem should be discussed in various bodies of the GATT not so much because of the fact that his country had been so identified, but on account of the influence that the US action could have on multilateralism. As his delegation had stressed at the regular Council meeting, if a contracting party considered that another contracting party was not respecting its contractual commitment under the GATT, the party should seek solution through the normal dispute settlement procedures which had been strengthened. If questions were not foreseen by the GATT, then the solution should be sought in the context of the commitment agreed upon for carrying out the Uruguay Round negotiations, particularly the standstill commitment C(iii) of the Punta del Este Declaration. He concluded by calling upon all participants, in particular the United States, to respect contractual commitments under the GATT and to fulfil their political commitments under the Punta del Este Declaration.

10. The representative of the European Communities said the identification of specific countries under the US Trade Act, and in particular Section 301 further under the so-called "Super 301" or the "Special 301", was bound to be an issue of concern to the Surveillance Body. For as the Brazilian delegation had said, this Body as an essentially "political Body" had to do as much with the creation of the right atmosphere within which multilateral trade negotiations could take place as it had to do with detailed issues of GATT legal interpretation. The issue was whether naming individual countries and thereby inviting them to undertake bilateral consultations, at the end of which there might be action of a certain kind that could not be regarded as consistent with the General Agreement, constituted a breach of the standstill commitment taken at Punta del Este or not. Three separate types of issues should be looked at. The first concerned the identification of a country under the "Super 301" procedure, with a view to engaging negotiations in an area clearly covered by the GATT. That seemed to be the case with Brazil. To the extent that the United States had notified those same measures as non-tariff measures to the appropriate Negotiating Group, it would be very difficult not to argue that the United States had improved its negotiating position in that Group and had therefore put itself in breach of item C(iii) of the standstill commitment not to take any trade measures in such a manner as to improve its negotiating positions. The second type of issue concerned measures where there were currently no GATT rules, but where negotiations were in progress in order to establish some kind of multilateral rules. There were ongoing negotiations in services and if there were to be free negotiations in that area, it was difficult to see how such freedom could be maintained if at the same time, a threat, a Sword of Damocles, hung over one country in such a manner as to force that country to come into line with the views of another country and thereby negotiate in a manner which was biased towards the views of that second country. It was the view of his delegation that C(iii) of the standstill commitment was breached in this case. The third type of measure concerned the priority watchlist under the "Special 301". The Community had a more direct interest in it, for some of the member States had also featured on that priority watchlist. The priority watchlist was only a distant cloud on the horizon. It would be difficult to gainsay those who would claim that by placing individual participants on a priority watchlist, some coercion was being exercised in such a way as to falsify the free process of negotiation in the Uruguay Round. There was at least a question mark to whether or not the United States was in full conformity with the third indent of the standstill commitment. The Surveillance Body was nothing if it was not a watchdog. It was nothing if it could not keep under review precisely this type of difficulty where participants were worried, and deeply worried, that the multilateral purpose of the exercise was being undermined. His delegation wanted to ensure that the problem of the implementation of Section 301 remained before the Body so that some of the dangers did not turn into a reality.

11. The representatives of Uruguay, Finland, speaking on behalf of the Nordic countries, Hong Kong, Yugoslavia, the Republic of Korea, Canada,

Cuba, Chile, Romania, Hungary, Australia, and Malaysia, speaking on behalf of the ASEAN countries, while not wanting to repeat their statements on the same issue at the special and regular Council meetings of 21-22 June, to which they referred, expressed their concerns over the threat of unilateral action by the United States under "Super 301" and "Special 301" provisions. They considered that initiation of such procedures would result in strengthening the negotiating position of the United States in breach of the standstill commitment and urged the United States to refrain from taking any unilateral action in breach of the standstill commitment and obligations under the GATT. They also said that the Surveillance Body should continue to monitor the matter closely.

12. The representative of the United States said that he would provide some assurances to other contracting parties about the intentions and attitude of the United States, both with respect to the Uruguay Round and with respect to its standstill commitment. His delegation was certainly heartened by the importance that so many delegations attached to the Uruguay Round. The United States shared the commitment to the strengthening of the multilateral trading system and to halting and reversing protectionism, and nothing had weakened its commitment. There had been a full discussion about recent US actions under Section 301, most recently in the special Council meeting of the previous week. He knew that it had been discussed before in this Body, but he felt compelled to repeat some of the same comments that his delegation had made previously. First of all, his delegation heard the message of concern of participants about potential increases in protectionism and the importance of maintaining a high degree of market access that most of participants enjoyed in the United States. He could cite a litany of examples to demonstrate the continuing commitment of the United States to the open multilateral trading system. For example, over the last 2½ years the volume of imports into the United States had increased by 7.3 per cent annually, which was twice the rate of increase in domestic demand. He had offered statistics, in the special Council meeting, that indicated that, in every year since the conclusion of the last round of multilateral trade negotiations, manufactured imports into the United States from the developing world had been higher than imports into all other OECD trading partners combined. Even in the most protected sectors of the US markets, the United States took in a greater per capita share of imports than any other major developed country. In regard to the US position on Section 301, it was true that under the new law the United States Administration had identified trade liberalization priorities of the United States in the context of Section 301. The United States addressed what it considered to be barriers to world trade. The United States was exercising its rights, just as others had, to seek the reduction or removal of these barriers on a bilateral basis with its trading partners by negotiating and by seeking consultations in the appropriate manner. With respect to certain actions that the United States had cited under the law, for example the import licensing and import prohibition measures maintained by Brazil, the United States would expect to challenge these measures under the appropriate GATT procedures. This was certainly something that could not

possibly be interpreted as a violation of standstill and rollback commitments. He could cite a number of other examples by other contracting parties who had brought other countries' trade restrictions into the GATT dispute settlement process and certainly had not been interpreted by this Body as a violation of their commitments. The only thread of possible argument against the actions taken by the US thus far related to the third element of the standstill commitment not to take any trade measures in such a manner as to improve its negotiating positions. He had listened very carefully to the statement of the Indian representative and he must compliment him on the artful wording of that statement. As he understood it, the Indian representative had said that even though the United States had not taken any action on the Super 301 which were directly inconsistent with its GATT obligations, it had taken actions which could lead to results which would inevitably violate its GATT obligations. That was a very artful way of saying that the United States should be careful about what it does in the future and his colleague from the European Communities had also said that there might be future actions by the United States contrary to its obligations. The United States was aware of its standstill obligations. Indeed, the statute under which Ambassador Hill was required to operate by Congress provided authority to retaliate, but it did not specify or mandate the form of action that the Administration must take under the statute. It did not mandate or require that future action violate GATT obligations. If the statute had mandated such a resolve, it would have been fairly easy to say that the future course was charted and there was nothing to discuss with trading partners. There was a great deal of latitude in the way this statute had been, and could be, administered and it was his Government's firm intention that the US Administration would continue to discuss these matters with its trading partners and to seek negotiations with them in a manner that was fully consistent with its desire to have the Uruguay Round reach a successful outcome. The Uruguay Round continued to be the centrepiece of US trade policy, and the United States wanted to engage in negotiations in good-faith and would continue to pursue its objectives in that manner.

13. The representative of Japan said as a preliminary response to the United States' statement that it was one thing to mention increased imports at the macro-level, but it was another to suggest that measures concerned were not in contravention with multilateral agreements. He also said that seeking certain objectives in negotiations was one thing, pursuing that objective through the kind of measures which were at issue at this meeting was another.

14. Turning to another matter, the representative of the United States raised a point with respect to possible future actions by the European Community which might be contrary to GATT obligations or to the spirit of multilateralism and might in many ways undermine the Uruguay Round. It concerned an action on 24 May by the European Parliament which had approved the so-called "Television Without Frontiers" Directive. The Directive contained a provision which the United States believed would discriminate against non-European nations in violation of the Communities' obligations

under the GATT. Article IV of that directive would oblige member States of the Communities "to ensure, wherever practicable, and by appropriate means, that broadcasters reserve for European works a majority proportion of their transmission time". In the opinion of the United States, it was a local-content requirement which would be inconsistent with Article III(4) of the GATT, notwithstanding the provisions of Article IV of the GATT. In addition, because the definition of "European works" encompassed films produced by film-makers in any other member country of the Council of Europe, the Directive's local-content provision was also violation of the most-favoured-nation provision of GATT Article I. The United States would appreciate if, at an appropriate time, an indication of the status of this Directive and its possible implementation could be provided. The European Community might take a view that the directive applied not to trade in goods but trade in services and therefore was not in violation of their GATT obligations. The United States would disagree on that point with the Community. Services and the issue of providing free-trade in services was a matter being negotiated in the Uruguay Round. The representative of the United States asked for an explanation as to why the particular Directive would not enhance the Communities' negotiating position in the Uruguay Round. The United States was concerned because it did not believe that the terminology "Television Without Frontiers" was a very honest terminology. It should rather be called "Television With European Frontiers".

15. The representative of the European Communities, noting that the issue was brought to the Surveillance Body for the first time, said that the matter had been looked at by the Community in some detail in relation to the GATT. The Community wished to know more in detail in what manner the United States considered the EC Broadcast Directive affronted the standstill commitment. The Community would be happy to comment in more detail in light of the United States' statement at the present meeting and further explanation of why the United States had brought up the issue, and would revert to the issue if that was considered to be appropriate.

16. Addressing a further issue, the representative of the European Communities said that, with respect to the US Presidential Proclamation 5759 of December 1987 which had placed unilaterally imposed and unauthorized retaliatory measures in the form of 100 per cent duty on the Community, the two parties continued to seek a way out of the difficult problem. The Community had not yet made a formal notification on the issue to the Surveillance Body, but the time might come when it had to raise the issue formally in this Body.

17. Concluding the discussion under this Item, the Chairman said that the record of the discussion would be reported to the forthcoming TNC. He noted that, with respect to the US action under Section 301, most representatives had recalled that the matter had been discussed at the Council in some length. It had been brought up in this Body again in the context of its implications for the standstill commitment and the protection of the negotiating environment for the Uruguay Round, with specific reference to paragraph C(iii) of the Punta del Este Declaration.

This Body had heard the response from the United States, emphasizing the importance that the United States attached to the Uruguay Round negotiating process and to the functioning of the multilateral trading system. The Body had also heard the intention of the United States to proceed in a manner which it believed to be consistent with GATT procedures and with the standstill commitment. This Body should take note of the discussion on the understanding that the importance which all participants attached to the Uruguay Round negotiating process would be reflected in the report to the TNC. The Chairman also said that with respect to other two issues raised under this Item, the Body would wait for further details.

Item 2(B): Rollback

Consideration of statements concerning the rollback commitment, in the light of the agreed procedures (MTN.TNC/W/10/Rev.1)

18. There was no statement under this Item.

Item 2(C): Other Business

(i) Review of the situation in the context of the meeting of the TNC in July

19. The record of the discussion under this Item is contained in Part II.

(ii) Future work and date of the next meeting

20. The Chairman suggested that subject to any decision of the TNC or any other compelling reasons to change the date of the next meeting, the Surveillance Body would hold its next meeting on 29 November 1989. The Surveillance Body so agreed.

Part II

Review of the Situation in the Context of the Meeting of the TNC in July

21. The Chairman referred to a draft factual summary of the current situation on implementation of the standstill and rollback commitments which had been prepared by the Chairman and circulated to the participants. He also noted that three communications had been submitted by Canada (MTN.SB/W/6), Australia (MTN.SB/W/7), and New Zealand (MTN.SB/W/8), in accordance with the TNC's decision at its mid-term review. He inquired whether any other delegation intended to submit communications. Thereafter he would invite comments by participants on the communications already submitted, suggesting that the summary of discussion in this respect would be added to the Chairman's summary.

22. The Chairman's factual summary which includes a brief summary of the following discussion is annexed (Annex II).

23. The representative of the European Communities said that, hopefully, there would be an input from the Community before the TNC meeting on 28 July.

24. The representative of Japan noted that his country had already notified the rollback action in 1988. Furthermore, his delegation hoped that Japan's recent efforts in implementing the recommendations of two recent Panel reports, which related to wines and alcoholic beverages and trade in semi-conductors, would also be duly taken note of.

25. The representative of Finland, speaking on behalf of the Nordic countries, said that in accordance with the TNC's decision at the mid-term review the Nordic countries had undertaken a careful examination of trade measures irrespective of whether or not they had been notified and without prejudgement of their GATT consistency or inconsistency with a view to determining what action they could take to contribute to the implementation of the rollback commitment. At the moment, the Nordic countries had not yet completed the examination to the extent that would enable them to present concrete measures to be taken.

26. The Representative of Canada noted that the communication by his country (MTN.SB/W/6) was self-explanatory, spelling out Canada's recent trade liberalization measures, and it did not require further explanation.

27. The representative of New Zealand, referring to the communication from his country (MTN.SB/W/8), said that the Ministers had agreed in April a set of decisions according to which the Trade Negotiations Committee in July would have to arrive at some type of substantive evaluation of the commitment which this Body had responsibility for monitoring. New Zealand had felt it important to present its views on the substance of it and see if there was any interest in pursuing it - maybe subsequently, if not at this meeting. New Zealand had always thought that rollback would become very important at the end of the Round. In the decision which guided this Body's deliberations, there was a strange mixture of basically non-operational language and some very specific and highly-operational language. Therefore, in its submission, New Zealand had tried to focus participants' attention on what, from its perspective, were operational aspects of the commitments that guided this Body's work and it had related this solely to the rollback as, at this stage, its interest was in the rollback commitment. Throughout the debates in this Body during the last two years and nine months, one could see that some participants had had very ambitious ideas about the nature of the standstill and rollback commitment. There had been some very elaborate efforts to build into the reading or interpretation of these agreements, some fairly ambitious concepts which had proved to be very contentious. A lot of the debates had thus ended with presentation and counter-presentation, and then the Chairman noting the discussion. New Zealand had put forward a very modest proposal taken directly out of commitments already accepted by all contracting parties. The words which surrounded the three points (a), (b) and (c) in the submission were not so important but the words under them

were very important. What New Zealand had envisaged was that the rollback commitment would be met in a number of ways. In effect, it had put forward not an evaluation of the rollback, but a framework in which the rollback commitment might be subsequently evaluated. It would not be possible to make the final substantive evaluation until the end of the negotiations because of the nature of the commitments contained in the Uruguay Round Declaration. The first element, element (a), was that the rollback commitment would be achieved through the implementation of individual offers to rollback measures, and there were already one or two of these on the table. Indeed, people were unhappy with some aspects of the offers, but there were signs of very genuine efforts to try and ameliorate those aspects. These individual offers might contribute towards the rollback commitment. The second and third building blocks set out in the submission were aimed at what New Zealand thought had been the core of the problems in this Body over the last two years and nine months. The commitments had some operational effect only when one had a method of determining GATT consistency or inconsistency. It was simply not realistic to imagine that this type of debate would be achieved through a consensus process from a discussion among delegates here in this Body. The commitments would fall under two categories. The first category which was labelled (b) reflected the language directly from the Punta del Este Declaration. It reflected that the Uruguay Round would establish, in a more clear way than had been possible up to now, that some important policy measures practised by contracting parties would henceforth be deemed inconsistent with the General Agreement. In crude form, (b) corresponded to the grey-area measures. There were views about their consistency with the GATT, but those views were contestable. Whether the Uruguay Round would catch a very small fish out of the grey-area, or a very large fish remained to be seen. To the extent to which some real progress was made in establishing greater GATT disciplines over some very damaging policies, one would have a good result from the Uruguay Round. If the rules could not be advanced in such areas, then the result of the Round would be a very modest one. New Zealand's proposal was neutral with respect to this judgement. The concept was that, by the end of the Round, any measure agreed henceforth to be inconsistent should be phased-out. However, there was one small interpretative judgement as to the question of when these timetables had to be set in place with respect to measures deemed inconsistent through negotiations in the Uruguay Round. New Zealand had opted for the weakest interpretation of this which was to say that by the end of the Uruguay Round an agreed timetable for eliminating or phasing out GATT-inconsistent measures should be in place. It would be possible to look at the language of the Uruguay Round standstill and rollback commitment and argue that the measures themselves had to be phased out by the end of the Round. In practice, this would mean the immediate elimination of any measure deemed inconsistent with the GATT even if the agreement on inconsistency was achieved at the last Ministerial meeting, or shortly before it. New Zealand did not believe that that was a correct reading of the text and a realistic negotiating position. The third item was built on the elements contained in the TNC's decision in April. The decision had picked up the obvious point where there was a means of defining GATT-inconsistency. The

Panel process was a very good start towards developing a consensus on what the specific commitments in rollback might mean. This Body had heard statements from Japan and Canada today and other statements in the past. They indicated that a number of contracting parties regarded the elimination of measures which had been deemed inconsistent with the GATT by a GATT Panel as a very positive contribution to the rollback commitment. The language in the submission reflected that, and tried to take the formulae contained in the TNC's decision one step forward to something more concrete. It was not attempting to push this very hard. It was attempting to build solely on elements which had been in texts already agreed. Others might pursue more ambitious proposals but New Zealand laid out a minimum, almost unarguable set of building blocks on which a framework might be developed for evaluating the rollback commitment. New Zealand had been very conscious that, particularly with respect to the last point, one had to find a balance between the concept of progressive implementation, which argued for early action, and the view that early action would not be feasible in certain areas because the results would emerge from the negotiations and thus, by definition, would come late in the piece. So the formula that New Zealand searched for was to recognize the importance of parties whose measures were found to be inconsistent with their obligations under the GATT living up to the spirit of this undertaking in the rollback and contributing towards a progressive elimination by eliminating such measures as quickly as possible before the end of the Uruguay Round. While operational language could not be found at the moment to find this right balance, the measures which a number of contracting parties had announced in the past and today seemed to clearly contribute towards that concept of a progressive implementation of the rollback commitment. With regard to the last paragraph in the submission of New Zealand, his delegation did not expect the acceptance of the ideas at this meeting, but wanted to get some general reactions to them. He cautioned, however, that participants should not overload the rollback commitment. The commitment in rollback was very real and would bite in important areas, particularly if a reasonable result was obtained in clearing some measures which had caused a lot of trouble. This was not a Christmas tree on which all aspects of the Uruguay Round could be hung. He also cautioned that one should not, on the other hand, ignore the fact that a substantive evaluation of the rollback commitment must be achieved.

28. The representative of Mexico, noting the importance of the evaluation of implementation of the standstill and rollback commitments, said that something had to be done to respond to the expectations reflected in the negotiating plans and the results of the mid-term review. Mexico was not entirely satisfied with the practical results so far achieved regarding standstill and rollback. His country shared the concerns of the participants who had shown interest in ensuring that the evaluation should lead to concrete measures. He appreciated the efforts of New Zealand, Canada, and Australia to present texts. He believed that unilateral measures adopted by a number of participants should not be confused with measures to be put forward in the context of the standstill and rollback commitment. Mexico, too, had taken unilateral measures, but had not

thought it right to present them in the context of rollback. Rollback was referred to measures that were inconsistent with the GATT, though it was not easy to determine the inconsistency. No concession should be requested for such measures. However, trade liberalization measures which were fully consistent with the GATT and went beyond what others had done should be given certain credit and/or recognition. With respect to the rollback commitment, the time-frame to be agreed upon was set out in the Declaration as no later than the date of the formal completion of the negotiations. Participants were engaged in a dynamic process through which some measures in the grey-area could be determined in the judicial context as contrary to the commitment. The intent of the rollback commitment had been that something should be done as soon as possible. When the negotiating objectives and plans had been agreed upon, it had been anticipated that the first rollback measures would be notified to this Body by 31 December 1987. To date, there was still no notification on rollback, although two offers which contained unsatisfactory elements had been made. Even before the TNC meeting in Montreal, Mexico had discerned certain confusion concerning the standstill and rollback commitment with respect to those measures which had been found inconsistent with the GATT. Mexico's view was that the adoption of the Panel's report should be considered as the end of the process, whereas in respect of rollback one would be at the very beginning of the process. Mexico considered that paragraph (b) of the TNC's decision on standstill at its mid-term review had provided an incentive to participants to withdraw GATT-inconsistent measures expeditiously. Mexico hoped that the United States would soon give positive news in regard to pending issues on the Superfund and customs-user fee. In this context, Mexico fully shared the views of New Zealand that there should be more detailed evaluation of all these aspects of the standstill and rollback commitment in December this year.

29. The representative of Hong Kong said that the Chairman's summary clearly reflected the disappointing state of the implementation of the standstill and rollback commitments, particularly on the rollback front. In this regard, she found New Zealand's proposal timely and constructive and she also noted that Australia had proposed a similar idea in its communication. Hong Kong could support the underlying objective of the proposals. They had been put forward in the spirit of the TNC Decision, i.e. paragraphs (e) and (f) therein. However, Hong Kong wished to study the proposal in greater detail. As a preliminary comment, her delegation noted that New Zealand was proposing three specific mutually-reinforcing ways to fulfil the rollback commitment, but there was another important way to achieve the objective. It was for participants to respond promptly to the rollback requests which had been notified to this Body, as called for in paragraph (d) of the TNC decision. Hong Kong considered it as the primary means envisaged for the implementation of the rollback commitment. It was essential that concrete undertakings should emerge from the rollback requests, and this point should be emphasized again in the report of this Body to the TNC. As to the issue of autonomous trade liberalizing measures, her delegation wished to associate Hong Kong with the remarks made by Mexico. While welcoming such measures, which should make a

positive impact on the world-trading environment and on the overall negotiating climate of the Round, she noted that some of these measures might not be directly relevant to the implementation of the rollback commitment which was to deal with GATT-inconsistent measures. Some distinction was necessary to put the autonomous measures in their right perspective.

30. The representative of Brazil said that his country shared the views of Mexico that something concrete should be proposed to the TNC. Brazil was working on a number of ideas to that end. His delegation also shared the view that rollback had presupposed inconsistency with the GATT. Autonomous trade liberalization would not necessarily be a contribution in the process of rollback. With respect to New Zealand's communication, Brazil by and large shared the views contained in it. However, his delegation wanted to have some more time to consider the proposal, particularly sub-paragraph (c), as it believed that no additional time should be given for eliminating GATT-inconsistent measures on the basis of Panel reports.

31. The representative of Hungary expressed the hope that like others the European Communities would introduce a new proposal on rollback. His country attached importance to autonomous trade liberalization measures. The contents of the notifications to this Body was up to each country to decide. Hungary had recently introduced trade liberalization measures, but it did not consider that they were subject to the surveillance of this Body. This would not mean, however, that his country did not appreciate the measures taken by other participants. His delegation found New Zealand's proposal interesting as it addressed certain aspects of the rollback commitment which had not been tackled by this Body. The rollback commitment was a continuous process with a final deadline, and that should be reflected in any approaches. As for New Zealand's proposal, there should be more emphasis on speeding up request-based consultations. Hungary supported the idea to have more substantive reviews of the commitments until the end of the Uruguay Round.

32. The representative of Switzerland welcomed the initiative of New Zealand as a timely one, for it had reflected serious concern about how to deal with the rollback commitment. His delegation agreed that the final evaluation of the commitment would have to wait until the final completion of the Uruguay Round. Rollback was a continuous commitment and, at the heart of it, there was a distinction between GATT-consistency and inconsistency. It was hoped that, during the negotiations, the distinction would be made in a sharper and more operational way. Effective rollback hinged on negotiations on rules such as safeguard rules and many others. As New Zealand's proposal included many elements, his delegation wanted to analyse it in more detail.

33. The representative of the European Communities said that the Community had always recognized a particular problem in reconciling an individual autonomous commitment on rollback with the need to find some kind of procedures whereby various measures could be evaluated.

Difficulties arose due to the dichotomy of the two aspects of the rollback commitment. The pivotal problem was the question of GATT-consistency and inconsistency. New Zealand's paper dealt with many difficult questions on rollback and the Community wished to study it more carefully. In particular, sub-paragraph (b) begged many questions which had to be answered. He was not sure whether this Body could come up with absolutely clear answers as to what would henceforth be deemed to be inconsistent with the GATT. The Community, for its part, intended to undertake its commitment seriously, and would provide the result of the review on its previous offer on rollback as rapidly as possible, hopefully in time for the TNC's July meeting.

34. The representative of Finland said, as a preliminary comment, that New Zealand's proposal was a realistic approach, and sensible points were made in the first paragraph of the submission. His delegation shared the view that the status of grey-area measures should be cleared up. The clean-up of grey-area measures could be done in several ways. In some cases, they could be outlawed; in other cases disciplines on these measures could be strengthened. As to sub-paragraph (c) in the New Zealand proposal, he noted that the Punta del Este Declaration had stipulated two possibilities: phasing-out of measures or bringing them into conformity with the GATT. He stressed that the two concepts should be maintained.

35. The representative of Uruguay noted that the Chairman's summary would be useful for the TNC to carry out the substantive evaluation of the implementation of the standstill and rollback commitments. Before the final evaluation was made for which New Zealand had proposed a number of ideas, there would have to be several evaluations and a review on special and differential treatment of developing countries. Uruguay attached great importance to the second element of the rollback commitment, namely progressive implementation of the commitment. His delegation believed that the communications of Canada and Australia on their trade liberalization measures would be useful for the TNC to carry out the evaluation. He hoped that the main trading partners should give additional information in accordance with the TNC's decision at its mid-term review.

36. The representative of Canada, with reference to the statement of the representative of Uruguay, said that the communications should be submitted by every participant, not just by the main trading partners.

37. The representative of New Zealand thanked the delegations which had made points of support and comments on its proposal. New Zealand fully shared the view expressed by Hungary that the rollback commitment was a continuous process with a final deadline. The comment by Finland on the point to bring measures into conformity with the GATT was a valuable one which had not been reflected in New Zealand's text. Concerning the European Communities' comment, he wondered if all aspects of the rollback

commitment could be described as autonomous, particularly in the case of measures which Panels had found inconsistent with the GATT. With regard to the comment by Uruguay, he stressed that New Zealand's proposal was a proposal of structure to implement the rollback commitment. His delegation would reflect all these comments carefully and report them back to his country. New Zealand would decide subsequently what type of consultation process would be appropriate for the TNC to undertake its responsibility given by Ministers.

38. Concluding the discussion under the Agenda Item, the Chairman, first of all, noted the hope which had been expressed that, before the TNC meeting on 28 July, further submissions from participants would be made so that the TNC had a fuller basis for carrying out the evaluation as required by the TNC's decision at its mid-term review. He also noted that the communication from New Zealand had been circulated only on 30 June. Some participants saw it only in the morning of 3 July. The representative of New Zealand himself had indicated that he was not expecting much more than some preliminary reactions to the ideas contained in the communication. The communication from the representative of new Zealand was a reminder that the time-limit within which the commitment had to be implemented would soon arrive. Therefore it was only appropriate that participants should have a clear idea as to how they intended to proceed and what they hoped to cover. The Chairman also noted that some of the points that had been brought up during the course of discussion at this meeting had been touched upon at earlier meetings of the Surveillance Body. They had already been reflected in the report submitted by the Chairman of the Surveillance Body to the TNC meeting in Montreal which also touched on the distinction made between action on what were GATT-consistent measures and action on GATT-inconsistent measures. The Chairman expressed the thought, as a personal reflection, that this distinction would not be carried to the point that what were described in the TNC's decision as self-initiating actions could not be taken by governments because of uncertainty as to whether the measure in question was inconsistent or consistent with the GATT and related commitments. Turning to future procedures, the Chairman said that the communication from New Zealand, together with other documents, would be made available to the TNC and it would certainly be open to the TNC to take such decisions as it considered appropriate and to instruct the Surveillance Body to pursue these ideas further. He therefore suggested that the discussion at this meeting should be recorded as part of a report for this meeting and that the summary of the discussion be also included in the Chairman's summary so that whatever had been said under this item would be before the TNC in one document. The Surveillance Body so agreed.

ANNEX I

RECORD OF EXAMINATION ON 3 JULY 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/Rev.1)

- New notification on standstill

1. The Chairman noted that there had been no new notification on standstill to be examined at the meeting.

- Previous notifications on standstill

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

2. The representative of the European Communities said that with regard to Indonesia's prohibition of exports of tropical woods, the Community had had consultations in some detail under GATT Article XXII with Indonesia. The consultation had not been conclusive.

ANNEX II

CHAIRMAN'S SUMMARY OF THE CURRENT SITUATION ON IMPLEMENTATION
OF THE STANDSTILL AND ROLLBACK COMMITMENTS

1. The aim of this summary, which is made by the Chairman of the Surveillance Body on his own responsibility, is to assist the Trade Negotiations Committee (TNC) in carrying out, at its meeting on 28 July 1989, 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 (MTN.TNC/11, page 2, paragraph (h)).

2. This summary provides the TNC with a factual account of what has, or has not, been achieved so far with respect to the implementation of the standstill and rollback commitments. It incorporates the information provided earlier in the report by the Chairman of the Surveillance Body for the TNC meeting in Montreal in December last year (MTN.SB/8). The summary does not take the place of any appreciation that participants in the TNC might want to make, nor does it substitute for the evaluation which the TNC itself is required to carry out.

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/Rev.1.

4. The basic material for the TNC's evaluation is contained in the detailed reports (MTN.SB/1-10) on the Surveillance Body's nine 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.6; it will be further updated as necessary.

5. In accordance with the decision taken by the Trade Negotiations Committee at its mid-term review that participants should communicate the conclusions of their consideration to the Surveillance Body promptly (MTN.TNC/11, paragraph (g)), there have been three communications from Canada (MTN.SB/W/6). Australia (MTN.SB/W/7) and New Zealand (MTN.SB/W/8) as of 3 July 1989.

- Standstill

6. The list in MTN.SB/W/3/Rev.6 shows that since the standstill commitment took effect on 20 September 1986, a total of 24 notifications, by 11 participants against eight participants, have been made as of

3 July 1989. Eighteen of the notifications were made by seven developed countries, and six by four developing countries. Ten notifications were addressed to the United States, five to the EEC, three to Canada, two to Brazil and one each to Greece, Indonesia, Sweden and Switzerland. The notifications cover quantitative restrictions, tariffs, import levies, import controls and prohibitions, export restrictions, internal taxes, production and export subsidies, and government procurement.

7. Sixteen 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". Two notifications have cited violations of both paragraphs (i) and (ii). 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". Three notifications have cited violations of both paragraphs (i) and (iii).

8. 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.

9. 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.

10. Four measures referred to in six notifications under standstill have been subject to Article XXIII:2 panel proceedings. Three of these measures (the US tax on imported petroleum, the US customs user fee and the EEC's import restrictions on dessert apples) have been found by the panels to contravene the General Agreement. The Council has adopted the panel reports. With respect to the two US measures, the United States stated at the Council meeting of 21-22 June 1989 that the US Administration had proposed legislative amendments to Congress to bring the measures into conformity with the GATT. The fourth measure (the US restrictions on imports of 22 products from Brazil) is currently under examination by a panel.

11. In one case (US increase in customs duties on imports of certain Japanese electronic goods), the complainant has invoked Article XXIII:1 procedures.

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

13. 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.

14. In the Body's "early warning" discussions on proposed legislation and other actions affecting trade, 21 cases have been subject to the discussions. Among the 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 the US Omnibus Trade and Competitiveness Act of 1988. At the Surveillance Body's meeting on 3 July 1989, a number of countries expressed their concern at the US announcement, in late May, of the list of "priority countries" under "Super 301" and the watchlist under "Special 301" of the Act. They urged the United States not to take any unilateral action in breach of the standstill commitment and obligations under the GATT. Some held the view that the US initiative constituted a breach of the standstill commitment under C(iii) of the Punta del Este Declaration, and that it could lead to results which would inevitably be inconsistent with the obligations of the United States under the General Agreement. The United States described its underlying approach with respect to this matter. It emphasized the importance it attached to the Uruguay Round, and that it intended to proceed in a manner consistent with the GATT procedures and with the standstill commitment.

15. In spite of the decision taken by the Trade Negotiations Committee at its mid-term review that participants should communicate the conclusions of their consideration to the Surveillance Body promptly (MTN.TNC/11, paragraph (g)), there has been no communication from participants as of 3 July 1989 regarding specific action on standstill.

- Rollback

16. As of 3 July 1989, 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. Five requests each have been addressed to the European Communities, Japan and the United States, and one each to Brazil, Finland, Norway and Sweden. Most of the requests concern quantitative restrictions considered by the requesting country to be inconsistent with Articles XI and XIII.

17. Consultations have been held on most of the requests, but the frequency of consultations has lately diminished (only two consultations have been held since November 1988). 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.

18. Japan has notified the rollback action by way of market-opening measures through termination of import allocation systems on certain categories of agricultural products (MTN.SB/RBN/1). 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.

19. The European Communities put forward an offer on rollback (RBC/19), which they emphasized was unsolicited. The Community sought appropriate contributions by other participants as a condition for implementing that offer. However, serious concern was 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. The Community indicated that it is reviewing the matter taking into account these comments.

- Review of the situation in the context of the meeting of the TNC in July

20. The Surveillance Body, at its meeting on 3 July, held discussion in relation to the TNC's decision at its mid-term review that the TNC in its July meeting should carry out a substantive evaluation of the implementation of the standstill and rollback commitments. The discussion was mainly based on the three communications submitted by Canada, Australia and New Zealand.

21. Canada, in its communication (MTN.SB/W/6), indicated that it had taken the following trade liberalization measures: (i) elimination of the two price systems on wheat; (ii) tariff relief in the textile and apparel industries; (iii) elimination of footwear quotas; (iv) elimination of discrimination against imported alcoholic beverages; (v) removal of GATT inconsistent restrictions on the export of West Coast salmon and herring; and (vi) proposed unilateral tariff reductions. None of these measures has been subject to rollback requests by other participants. Among them, two measures ((iv) and (v)) are related to Article XXIII Panel reports, adopted by the Council, which found that these measures were inconsistent with the GATT.

22. Australia, in its communication (MTN.SB/W/7), indicated that it had taken a number of trade liberalization measures including: removal of import licensing controls on certain types of used, second-hand and disposals equipment; implementation of the Government's decisions aimed at achieving a restructuring and redirection of Australian industries in all sectors; legislation to implement new wheat marketing deregulation arrangements; and proposed reform of marketing arrangements for a number of other primary products. None of these measures has been subject to rollback requests by other participants. Australia also proposed in a

communication that the TNC in its July meeting might agree on the full and complete implementation, without delay, of all outstanding Panel reports adopted by the CONTRACTING PARTIES as the first minimum step towards building an effective programme of rollback measures.

23. New Zealand, in its communication (MTN.SB/W/8), did not refer to any specific action on standstill or rollback. However, it made a proposal for the Surveillance Body's agreement on the following three ways in which the rollback commitment might be evaluated:

- (a) through the implementation of individual offers to rollback measures;
- (b) through the implementation of any multilateral agreements, undertakings and understandings reached in the course of the multilateral negotiations which established that certain types of measures, the present GATT status of which was not necessarily agreed, would henceforth be inconsistent with GATT provisions;
- (c) through the phasing-out of measures ruled inconsistent with the GATT Panel reports adopted by the CONTRACTING PARTIES.

The communication also included a proposal that the TNC should endorse these conclusions and invite the Surveillance Body to prepare a further and more detailed evaluation of the implementation of the rollback commitment by December 1989.

24. Some other participants indicated that they might be able to submit their communications in accordance with the TNC's decision at the mid-term review in time for the TNC meeting on 28 July 1989.

25. The Surveillance Body had a preliminary exchange of views on a number of aspects contained in the communication from New Zealand. Many wished to study the communication further as it was circulated just before the meeting of the Body.

26. With respect to autonomous trade liberalization measures, some participants emphasized that they should be put in the right perspective in the context of the rollback commitment as the commitment was only related to GATT-inconsistent measures. A particular difficulty in determining the GATT consistency or inconsistency of the measures under rollback requests and offers or autonomous trade liberalization was recognized by many participants. Some stressed that in important areas like "grey-area" measures, the distinction between GATT-consistency and inconsistency could only be made after the formal completion of the negotiations, and therefore the final evaluation of the rollback commitment would have to wait until then. At the same time, doubts were raised whether the Surveillance Body could have clear answers as to what would be deemed to be GATT-inconsistent.

27. As to the question of a timeframe for phasing-out, or bringing into conformity with the GATT, the measures inconsistent with the GATT, it was suggested by some participants that the end of the Uruguay Round should be the deadline of agreement on the timeframe, rather than the elimination of the measures themselves. Many participants stressed that the rollback commitment was a continuous process with a final deadline and the commitment should be progressively implemented. In this respect, many participants complained that, to date, there had been few rollback undertakings.

28. In regard to the implementation of Panel reports adopted by the CONTRACTING PARTIES, concern was expressed that, once the reports were adopted, measures which had originally been subject to the standstill commitment should not simply be relegated to the category of rollback. It was suggested that no additional time should be given for the elimination of measures found inconsistent by the Panels.

29. Some participants stressed that more emphasis should be given to the need to speed up request-based consultations on the rollback commitment.

30. The Surveillance Body agreed to make available to the TNC, together with other relevant documents, the communications made by participants¹, the record of discussion at this meeting, and the Chairman's summary. The Body expressed the hope that these documents would facilitate the TNC's task, at its July meeting, to carry out a substantive evaluation of the implementation of the standstill and rollback commitment.

¹These communications are contained in MTN.SB/W/6-8.