

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
TAR/W/25/Rev.1

12 July 1982

Limited Distribution

Committee on Tariff Concessions

THE HARMONIZED SYSTEM AND GATT CONCESSIONS

Preliminary Considerations

Revised Version

In reply to requests made at the meeting of the Committee on Tariff Concessions on 19 October 1981 for a document on procedures to be followed in the renegotiations in connexion with the introduction of the Harmonized System, the secretariat circulated some suggestions in document TAR/W/25. It should be read in conjunction with the previous document on implications on GATT schedules of the introduction of the Harmonized System, TAR/W/22. Following the discussion in the meeting of the Committee on 1 April 1982, the secretariat has prepared, in consultation with interested delegations, the following revision of document TAR/W/25.

1. Introduction

- 1.1 The Harmonized Commodity Description and Coding System (H.S.), currently under development in the Customs Co-operation Council, is envisaged by the CCC timetable to be applied, for those countries which decide to adopt it, as the basis for customs tariffs and international trade statistics nomenclatures with effect from 1 January 1985, subject to final decision by the CCC.
- 1.2 In addition to the benefits for trade facilitation and analysis of trade statistics, from a GATT point of view adoption of the Harmonized System would ensure greater uniformity among countries in customs classification and thus a greater ability for countries to monitor and protect the value of tariff concessions.
- 1.3 The introduction of the Harmonized System implies considerable changes in the GATT schedules of tariff concessions. Some of the changes will be made through the rectification procedure; others are likely to require renegotiation of existing schedules.
- 1.4 In order to introduce the Harmonized System on 1 January 1985 (cf. paragraph 1.1 above) it would be necessary, at least on current thinking, for contracting parties to have terminated their preparatory work, including any necessary GATT negotiations, by the end of 1983. This would provide contracting parties with one year between the conclusion of Article XXVIII negotiations and national implementation of the Harmonized System. Based upon past experience an absolute minimum of eighteen months would be required to complete negotiations in GATT. This implies that the GATT procedures would have to commence in mid 1982. In order to

cope with the amount and complexity of the work involved, considerable discipline will be required and the traditional GATT procedures will have to be simplified and accelerated as much as possible.

- 1.5 The purpose of this note is to outline the tasks involved and to suggest arrangements for simplifying and facilitating the exercise to the greatest extent possible.

2. Basic principles

- 2.1 The main principle to be observed in connexion with the introduction of the Harmonized System in national tariffs is that existing GATT bindings should be maintained unchanged as far as possible. [The alteration of existing bindings should only be envisaged where their maintenance would result in undue complexity in the national tariffs which would not be justified on the basis of the minimal and inconsequential amount of trade or potential trade covered by the binding, and should not involve [arbitrary increases of customs duties] [a significant increase of customs duties collected on a particular product].]
- 2.2 In order to avoid complicating the introduction of the Harmonized System, contracting parties should endeavour to avoid modifying or renegotiating, in the context of the introduction of the Harmonized System, their bindings for reasons not associated with the System.
- 2.3 In light of paragraphs 2.1 and 2.2 contracting parties should be ready to [explain and discuss the reason for] [justify] their proposed changes where requested. [Contracting parties with initial negotiating rights or or principal or substantial supplier positions] [Interested contracting parties] will be free to raise specific cases, which the party which has notified the change will examine, taking into account all relevant factors with a view to finding a mutually acceptable solution. If the contracting party proposing the change and the other contracting party referred to above cannot reach agreement, the provisions of Article XXVIII would apply.
- 2.4 To the extent that the value of existing concessions is not impaired, the conversion of present nomenclatures to the Harmonized System can be done through the rectification procedure.

3. Negotiations

- 3.1 It is very difficult to forecast the number of cases where renegotiations will be required. As pointed out in TAR/W/22, first sentence of paragraph 5, the fact that one bound tariff line is divided up into a number of new lines, without changing the content of the original line, will not create any problem for the maintenance of the concession.
- 3.2 [Problems could arise in cases where separate bound items or parts of bound items with different rates are combined into new tariff lines. In such cases the contracting party concerned could maintain the bound rates by splitting up the item in further tariff lines with rates corresponding to the previous bindings. Another possibility would be to apply to the new tariff line the lowest bound rate previously applicable in its component parts. Since, however, the introduction of the Harmonized System will result in a considerable number of such combined tariff lines, in many cases these two solutions might be excluded. A renegotiation under Article XXVIII will then be necessary.]

[Where renegotiations are necessary, contracting parties should employ the provisions of Article XXVIII. The objective should be to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for prior to such negotiations. Consequently, participating contracting parties must observe due restraints so as not to compromise the expectations of the applicant contracting party arising from paragraphs 4 and 6 of the notes and supplementary provisions relating to paragraph 1 and Article XXVIII.]

3.3 The guidelines relating to procedures for negotiations under Article XXVIII, adopted by the Council on 10 November 1980 (BISD, 27th Supplement, p. 26, will be the basis for this exercise. However, because of the amount and complexity of the work involved, and the exceptional nature of the exercise, it will be necessary to simplify the guidelines, as indicated below, in order to facilitate the implementation of the Harmonized System.

4. Proposed Special Procedures

4.1 Each contracting party adopting the Harmonized System shall supply to the GATT secretariat the following information:

4.1.1 Up-to-date consolidated schedules of concessions in the present nomenclature in loose-leaf form (see BISD, 27th Supplement, p. 22).

4.1.2 A draft new consolidated schedule based upon the Harmonized System. [In conformity with the requirements of the loose leaf system, column 7 should give a concordance backwards to the tariff and statistical nomenclatures currently used] [The schedule should follow the format set out in Annex 1*] [Information on trade allocation for items subject to renegotiation should also be supplied.]

[A draft of a new consolidated schedule based on the Harmonized System which should give a concordance backwards to the tariff currently used (see example in Annex 1*].]

*Annexes not attached

¹The United States' delegation is proposing in document TAR/W/25/Add.1 a series of models for the information to be supplied by contracting parties adopting the Harmonized System. Section 4.1 may therefore have to be redrafted to take into account the outcome of the discussion on the United States' proposals.

- 4.1.3 Concordance tables between the present concessions and the new national tariff headings in Harmonized System terms [in accordance with the format set out in Annex 2.*] [These tables should also show trade allocation.] [Concordance tables between present concessions and the new national tariff headings in Harmonized System terms. These tables should indicate by a symbol the concessions to be renegotiated under Article XXVIII as a result of proposed increases [or decreases] in bound rates. In consequence, the other concessions, in the opinion of the notifying country, will not be impaired by their conversion into the Harmonized System and are intended to be covered by the rectification procedure. These tables should also indicate the new headings, the present bindings, the proposed new concession rates and the countries with Initial Negotiating Rights. The symbol should also indicate how the proposed new rates were arrived at (see paragraph 4.3). These tables should follow the format set out in Annex 2.*]
- 4.1.4 [A list of concessions to be renegotiated under Article XXVIII as a result of proposed increases [or decreases] in bound rates. The list should indicate [original headings modified by the new structure] proposed new concession rates, [countries with Initial Negotiating Rights (INRs).] The list should also indicate how the proposed new rates were arrived at. (See paragraph 4.2). [For each heading the importations [during an agreed three-year period] [one year] together with the arithmetical average of the three, should be separately supplied.] Trade allocations based upon total importations for all MFN origins should also be separately supplied. Bilateral trade allocations for countries with rights of negotiation or consultation should also be made available on request.] [The list should follow the format set out in Annex 3.*] [For each heading the importations for the agreed three year base period should also be supplied. Trade allocations based on total importations for all MFN origins should also be separately supplied. Bilateral trade allocations for countries with negotiating or consultation rights should also be made available on request.]

- 4.1.5 A list of concessions which, in the opinion of the notifying contracting party, will not be impaired by their conversion into Harmonized System and which are intended to be covered by the rectification procedure. [This list should follow the format set out in Annex 4.*]
- 4.2 Where contracting parties consider it unavoidable to combine headings or parts of headings in implementing the Harmonized System they may have to modify certain of their existing concessions. Possible ways of arriving at new rates include:
- 4.2.1 Applying the lowest rate of any previous heading to the whole of the new heading
- 4.2.2 Applying the rate previously applied to the item or items with the majority of trade.
- 4.2.3 Applying the trade weighted average rate of duty for the new heading
- 4.2.4 Applying the arithmetic average of the previous rates of duty, where no basis exists for establishing reasonably accurate trade allocations.
- 4.3 In order to ensure a fair and balanced result, contracting parties [should, in so far as possible, use the first three methods indicated above] [should, insofar as possible, use methods indicated above or create sub-positions in particular cases] thus minimizing the scope for negotiations under Article XXVIII.
- 4.4 The right of consultation for contracting parties with a substantial interest shall as a general rule, for the purpose of the implementation of the Harmonized System, be interpreted [as covering countries supplying 10 per cent or more of the imports] [as covering the five first suppliers, or suppliers the imports from which amount to[\$]].
- 4.5 If a contracting party considers that the conversion of a concession, which has been notified as a rectification case by another contracting party, in effect impairs the value of the concession and should have been notified for renegotiation under Articles XXVIII, the first contracting party, having demonstrated at least its substantial interest in the concession, is free to request, in accordance with normal practice in rectification exercises, that the concession be restored (or, failing that, the item concerned be notified for renegotiation).

*Annexes not attached.

4.6 Contracting parties should, as soon as possible, provide information on their envisaged timetable and domestic procedures for the implementation of the Harmonized System.

4.7 Consistent with Part IV of the GATT special account would be taken of the needs of developing countries.

5. Conclusion

5.1 It is clear that the implementation of the Harmonized System will involve a great deal of work for contracting parties both domestically and in the GATT. It will speed up the examination of the documentation listed under 4 above by other contracting parties, if the submitting contracting party would send the documentation in instalments, even if in a preliminary form, rather than wait until the complete documentation is available. It is not, however, envisaged that renegotiations could start until contracting parties have an overall view of modifications to be made in another contracting party's schedule. It would, nevertheless, be a considerable gain if the examination of the "rectification part" of the new schedules could begin at as early a date as possible.

5.2 The complexity of this exercise should not be underestimated and it is, therefore, essential that contracting parties should recognize the timing constraints mentioned in Section 1 and respect the procedures set out in Section 4.