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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Tariff Concessions

COMMITTEE ON TARIFF CONCESSIONS

Draft Minutes of the Meeting held in the Centre William Rappard on 4 and 17 December 1986

Chairman: Mr. A.S.J. Woo, Vice-Chairman of the Committee (Hong Kong)

1. Adoption of the Agenda (GATT/AIR/2347)

1.1 In the absence of the Chairman of the Committee from Geneva, the Vice-Chairman welcomed the participants to the meeting and called their

attention to GATT/AIR/2347 which contained the agenda and the list of relevant documents. He suggested adding the above-mentioned items under "Other Business" and the agenda was adopted with these additions.

2. Submission of Harmonized System documentation for Article XXVIII negotiations

2.1 The Chairman referred to document TAR/W/67 which gave the situation regarding the submission of Harmonized System documentation. Since the last meeting in October, two additional countries - Australia and Canada - had submitted their documentation. In addition, the Harmonized System documentation from Austria had just been received by the secretariat for reproduction and distribution.[1] The Chairman also reminded delegations to circulate modifications made to their proposed Harmonized System schedule (Annex 2).

2.2 The representative of Zimbabwe reported that his country had signed the Harmonized System Convention, without reservation of ratification, on 5 November. A draft Harmonized System tariff had been drafted at 6-digit level. HS Article XXVIII documentation would be prepared in the near future and would be sent to the secretariat early next year. His authorities intended to implement the Harmonized System on 1 January 1988.

2.3 The representative of Brazil indicated that his country had signed the Harmonized System Convention on 31 October, subject to ratification, and that the transposition of chapters 25-40 of the Brazilian schedule into the Harmonized System had been completed.

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[1] Subsequently distributed with document SECRET/HS/12 on 23 December 1986.

2.4 The representative of Chile stated that his authorities wished to point out that in many cases consultations held with a certain country were based on statistics for the period 1980-1983 because the party introducing the new nomenclature did not have more recent statistics available. In such cases, Chile assumed that, for purposes of consultations, the party affected by the change in nomenclature could also refer to more recent trade statistics as, for example, for the 1983-1985 period, should the import potential be greater during that period.

2.5 The observer from the Customs Co-operation Council (CCC), Mr. Asakura, reported that two additional countries had signed the HS Convention, bringing thus the number of signatories to the Convention to forty-seven, out of which six countries - India, Jordan, Lesotho, Mauritius, Swaziland and Zimbabwe - were contracting parties. The Council expected to have one more contracting party for the Convention before the end of the year.

3. Progress of negotiations and approximate timing of submission of schedules

3.1 The Chairman noted that several delegations were in the process of carrying out negotiations and wished to be informed by these delegations of the progress of the negotiations and the preparation of their final schedules.

3.2 The representative of Chile referred to the problem faced by developing countries in relation to the analysis of statistics submitted for the Harmonized System negotiations and felt that the approach followed was legally incorrect since countries were requested to detect themselves the concessions that might have been violated, leaving thus to the affected

country the burden of proving that its rights had been impaired. Although the Harmonized System negotiations were following the procedures provided for under Article XXVIII, he felt that these negotiations were going beyond the framework of Article XXVIII and that countries should be free to organize the adoption of the Harmonized System and to renegotiate concessions when and where necessary, but not a priori.

3.3 The representative of Egypt described a situation where transpositions into the Harmonized System adversely affected a number of products of exporting countries which had neither initial negotiating rights nor principal or substantial rights to negotiate, but for which the accumulative negative effect of the transposition of such items might represent a case to be examined by the Committee, since no GATT rules existed in this context. The representative of Egypt reserved his right to come back to this problem at a future meeting.

3.4 The representative of the United States reported that his delegation had made progress in the negotiations on other countries' schedules and that, in some cases, had even completed them. Concerning the US schedule, his delegation had received blanket reservations from a large number of contracting parties but, so far, only a few specific requests had been submitted. From the content of the requests, it was sometimes very difficult for his delegation to know what was exactly claimed by the country concerned when, for instance, there were items listed which did not involve any tariff impairment. He asked delegations to specify in their requests what was actually requested from the United States, since he was afraid that unclear requests might unduly delay the negotiations.

4. Time-limits provided for presenting claims of interest for the Harmonized System negotiations

4.1 The Chairman referred to document C/W/509 submitted by several countries and to the discussion which took place at the Council of 21 November and at the 42nd Session of the CONTRACTING PARTIES concerning the possibility of extending the time-limits for the presentation of claims of interest in the context of the Harmonized System negotiations. The following decision had been taken:

> "The CONTRACTING PARTIES took note of the statements made under this item of the agenda and decided to refer to the Committee on Tariff Concessions, for an appropriate solution, the question of the time-limit for presenting claims of interest for the Harmonized System negotiations, in light of the communication contained in document C/W/509 as well as its annex and bearing in mind the agreed objective of the entry into force of the Harmonized System on 1 January 1988."

4.2 The representatives of Pakistan, Yugoslavia, Chile, Argentina, Peru, Egypt, Brazil, Cuba and Uruguay made statements and explained the difficulties encountered by their delegations in analyzing the voluminous documentations submitted by several countries and to prepare claims of interest within the time-limits proposed. They also expressed concern about the way in which negotiations were being carried out. They appealed to the delegations concerned to show understanding for the developing countries' problems and allow maximum flexibility in setting limits for the presentation of claims of interest.

4.3 The representatives of Australia, Switzerland, the European Communities, Canada and the United States said that they were prepared to show as much

flexibility as possible in order to meet the difficulties described by the above speakers; however, in order to respect the target date of 1.1.1988 for the implementation of the Harmonized System and, taking into account the respective legislative requirements, negotiations had to be carried out within a specific time-frame.

4.4 The representative of Japan recalled that his delegation had submitted its Harmonized System documentation in April and had waited until the end of November to finalize the negotiations, thus showing utmost flexibility. His authorities were facing a very serious timing problem and were now in the process of preparing Japan's final schedule. As he had repeatedly stated over the past few months, his authorities needed to have a certified copy of the Protocol, together with the Schedule of Japan annexed to it, before the end of 1986 or at the latest, early January 1987, in order to present those documents for approval by the Diet in February/March 1987.

4.5 The Chairman noted that there were divergent views over this question and about the proposed time-limits given by the countries concerned, and that consultations would need to take place among interested delegations in order to arrive at a mutually satisfactory solution. At the Committee meeting of 7 December 1986, the Chairman stated that, following consultations between interested delegations and in the light of the Decision taken by the CONTRACTING PARTIES at their 42nd Session and of the statements made under this item of the agenda, the Committee recognized that it was necessary to have sufficient time for presenting specific claims of interest related to the transposition of national schedules of tariff concessions to the Harmonized System nomenclature as well as for the completion of

Article XXVIII negotiations consequent thereupon. For this purpose, the Committee took note that the contracting parties mentioned below, having regard to their own domestic legislative requirements, had established the following dates for completing the required negotiations:

Australia	mid-May 1987
Austria	end-April 1987
Canada	15 April 1987
EEC	1 March 1987
Finland	end January 1987
Hong Kong	31 March 1987
New Zealand	end April 1987
Norway	31 March 1987
Sweden	31 March 1987
Switzerland	31 March 1987
United States	31 March 1987

It was recognized that specific requests should be submitted a sufficient period of time prior to the dates for completion of the negotiations.

4.6 Replying to a question raised by the representative of Chile regarding the legal nature of the above statement, the Chairman replied that his summary reflected the results of the consultations held among interested parties and that it was not binding, in the legal sense, on any delegation.

4.7 The representative of Chile considered that the Chairman's statement was binding upon the Committee as a whole since it took note of; his delegation felt, however, that the dates mentioned were still very restrictive

and that it was not bound by those dates. Moreover, as far as Japan was concerned, his delegation considered that the negotiations between the two countries had not been terminated.

4.8 The representative of Pakistan stated that as time passed, more and more rigidity was being introduced into the Harmonized System negotiations. In noting that the name of an important country was missing from the list, he could not accept that this contracting party considered having completed its negotiations. In view of the complexity of the exercise, his delegation was not in a position to agree to any proposal made or explanation given. His authorities had to be kept informed of the discussion and of the progress made in the negotiations. They needed time to reflect and consult the exporters concerned before taking any position. His delegation found it therefore unfair to establish rigid dates and to finalize the consultations and negotiations within short specific periods of time. He added that his delegation would be able to submit specific requests within the given time, but urged the delegations concerned to show utmost understanding of his country's situation for the negotiations.

4.9 The representative of Japan explained that his country was not included in the list because his delegation had distributed its Harmonized System documentation last April; the ninety day time-limit had thus been mid-July and the target date for concluding the negotiations had then been fixed for end-September. However, in order to finalize the negotiations particularly with developing countries, his delegation had shown maximum flexibility in continuing negotiations until the end of November, which constituted the final date for Japan if it wanted to implement the Harmonized System on 1 January 1988, bearing in mind the domestic legal procedures to be followed

by his country. The representative of Japan realized, however, that there were outstanding problems of a technical nature and his delegation was prepared to give further explanations concerning Japan's transposition.

4.10 The representative of the European Communities confirmed his delegation's position that the date mentioned for the Community included a certain amount of flexibility and could be considered as indicative.

4.11 The representative of Switzerland said that his delegation attached importance to the fact that specific requests should reach his country by 15 February 1987.

4.12 The representative of Austria stated that, like developing countries, smaller developed countries also suffered from a heavy burden concerning the preparation of negotiations. However, it was important to have a firm time-frame and, although it was possible to show flexibility in the beginning, it was necessary to respect the dates fixed for the end of the negotiations. For Austria, end-April 1987 was the latest date which his country could accept; in addition, it would appreciate receiving the specific requests by the end of March 1987.

4.13 Referring to the statements made by Austria and Switzerland, the representative of Brazil stated that his delegation considered the dates mentioned as merely indicative, in light of the second part of the Chairman's statement.

5. Common data base

5.1 Mr. Raynal (secretariat) said that the Technical Group on the Harmonized System common data base had met in the morning of 4 December 1986 to discuss the following three main points: the situation as regards submissions to the data base, information avilable in the secretariat on non-tariff measures, and the results of tests conducted by the secretariat on the analysis of average duties by groups of products according to the CCCN nomenclature and the HS nomenclature.

- The statements made on the first point had dealt with the adjustments that should be made to the data base so as to enhance its value, namely, by eliminating as far as possible minor differences between the amount of customs duties under the present nomenclature and the Harmonized System nomenclature. Those differences were due mainly to rounding-off following the conversion of national currencies into dollars and after concordance. All the data base files were being revised, and that would invevitably delay the availability of the base to some extent. With respect to multiple ad valorem equivalents, the members of the Group had agreed that the secretariat should prepare a note outlining the problems that had to be resolved and indicating when that information could be incorporated in the base.

- As regards the second point, namely, the inclusion of non-tariff measures in the data base, the secretariat had drawn the Group's attention to document NTM/TG/W/1 which had been prepared for the Technical Group on Quantitative Restrictions and Other Non-Tariff

Measures. Participants had refrained from embarking upon a detailed discussion of such a complex issue. They had considered that the document prepared by the secretariat constituted a useful summary of what was available in the GATT secretariat on magnetic medium. It had been found that, pending the availability of an integrated base, a link between tariff and non-tariff measures would be necessary and that the negotiating group on measures affecting market access could, when necessary, indicate its requirements. It had been emphasized that the objective should be to make maximum use of the Harmonized System data base and that more countries should participate in that exercise.

- On the third point, Mr. Raynal said it had been impossible to discuss the results of tests carried out by the secretariat in detail because they had been circulated only at the beginning of the meeting. Supplementary information had been requested of the secretariat concerning the methods used. It had been emphasized that certain groups of agricultural products could be divided into two in the interest of a more refined analysis, and that comments on the subject would be sent to the secretariat. It had also been emphasized that tropical products should be identified separately so that the data base could be used tropical products negotiations.

5.2 The representative of the European Communities said his delegation regretted that the problem of multiple ad valorem equivalents had still not been resolved, that the data base was not functioning quite satisfactorily and that it failed to meet the requirements expressed in the framework of Article XXVIII negotiations. He wondered how long it would be before the various problems could be solved.

5.3 Mr. Raynal drew attention to the fact that the updating of the files and the quality of information also depended on the submission of basic data. In that respect, the secretariat was counting on the assistance of all participants in the data base.

6. Protocol embodying the results of Harmonized System Article XXVIII negotiations

6.1 The Chairman drew the attention of the Committee to document TAR/W/63 containing the text of the Protocol which had been prepared following consultations with the delegations concerned. He noted that it would seem that a consensus had been reached among those delegations regarding the dates to be included in paragraph 3, i.e. 31 July 1987 in paragraph 3(a) for the annexation of schedules to the Protocol, 30 September 1987 in paragraph 3(b) for the acceptance of the Protocol and, of course, 1 January 1988 in paragraph 3(c) for the entry into force of the Harmonized System, on the understanding that further consideration would be given to a Canadian proposal relating to a review mechanism. According to normal procedures, the final text of the Protocol would be circulated to all contracting parties in due course in an L/document.

6.2 The representative of Canada presented a proposal related to the possible introduction into the Protocol of a review mechanism which would allow countries to make rectifications to their schedules, under special circumstances, without having recourse to renegotiations. This detailed proposal has subsequently been circulated to all contracting parties in document TAR/W/68.

6.3 The representative of Chile endorsed the proposal made by Canada. He felt it necessary to foresee the future problems and to envisage a solution

involving a maximum of flexibility along the lines described by the Canadian representative. He further asked whether delegations were requested to approve the terms of the Protocol and whether the Protocol would contain the consolidated schedules of all contracting parties that had taken part in the negotiations on the Harmonized System. He also wondered whether the Protocol would have to be accepted by all contracting parties.

6.4 The representative of the European Communities recalled that his delegation had in the first instance expressed the idea of a review clause, but had dropped it and thought it best to avoid abuse and to continue applying the existing GATT Article XXVIII procedures if a problem arose. Due consideration was being given to the Canadian proposal by the Community, but the following preliminary comments could be made. On the question of lowering duties, it was any country's unilateral right to lower a duty and rebind it at a lower rate. On the other hand, the Community considered it dangerous to give a country the right to unilaterally increase a duty. This would be a departure from existing rules which could cause trade problems and could have protectionistic implications, no matter how honourable the motive was behind the Canadian proposal. In reply to the Canadian argument that its industry might complain about the new Harmonized System rates, he stated that Canada had gone to lengths to consult it and to take its views into account. As to the further argument that there might be an influx of imports which bore no relation to trade allocations, it should be said that import patterns were always changing and that there could also be a change in consumer demand. Exporters might no longer be afraid of exporting to Canada because of its present highly complicated customs tariff. The Harmonized System tariff should facilitate trade. A change in the import situation needed to be measured over a longer time period. Article XXVIII provided, for

very good reasons, for negotiations to be based on statistics for three years. Given that countries in hindsight might have made different requests, was Canada implying that the negotiations could be re-opened on demand? It was also unacceptable that mistakes with regard to classifications in the Harmonized System nomenclature entitled Canadian industries to request changes in bindings. In concluding, the representative of the European Communities said that if countries wanted to lower tariffs, this was their unilateral right. If they wanted to increase rates, GATT Article XXVIII procedures should apply.

6.5 The representative of New Zealand stated that his authorities would give serious consideration to the Canadian proposal and his delegation would come back to it at a future meeting. On the Protocol, his authorities were now ready to accept both the text and the dates proposed.

6.6 The representative of Australia said that her delegation was flexible on the issue of the dates of annexation of schedules and signature of the Protocol, on the assurance that supplementary protocols would be possible, both for countries implementing the system on 1 January 1988 and at a later date. Regarding the Canadian proposal, her authorities needed more time to consider it. However, she could offer some initial comments which were similar to those of the Community, to the extent that her delegation had some concerns relating to a situation in which Australia had accepted a contracting party's conversion of its bound rates on the basis that duty decreases exceeded duty increases. However, should that contracting party subsequently find that those credits had arisen from errors in the conversion process, then an increase of these bound rates (albeit to previously bound levels) would upset the balance on which Australia had accepted that

contracting party's schedule. Her delegation would also have difficulties with the concept that contracting parties would have a unilateral right to make alterations subject only to the requirement to inform the Director-General. At the minimum, her delegation would find it necessary for consultations to take place with interested contracting parties, with formal Article XXVIII negotiations to be undertaken if agreement could not be reached on an informal basis. The situation of Canada was not unique; most countries had encountered similar problems some years ago when they adopted the CCCN but they had accepted the risk of unintended consequences arising from the change in their system.

6.7 The representative of Austria could not give an official position on the Canadian proposal but thought that in the case of errors, involving both tariff increases or decreases. She found it difficult to accept that if contracting parties were authorized to take measures according to the Canadian proposal, they would have a six-month time-frame to notify the measure. In her view, immediate - if not advance - notice should be given.

6.8 The representative of Korea indicated that his country intended to submit its Harmonized System documentation in the course of 1987. Korea, however, would not be able to meet the dates mentioned in the Protocol and asked whether it would be possible to establish a second Protocol which would allow for the annexation of schedules until the end of September, and acceptance until the end of December 1987.

6.9 The representative of the United States reiterated his delegation's acceptance of the text of the Protocol as drafted and of the dates mentioned. He explained that the first Protocol would meet the requirements of certain

parties and that subsequent protocols might be more suited, as regards the dates, to the specific needs of other parties. Regarding the Canadian proposal, he pointed out that his delegation had previously expressed reservations about this suggestion. He believed that the interests of all parties were best protected by the existing GATT provisions.

6.10 Mr. Kautzor-Schröder (secretariat) confirmed that not all contracting parties would participate in the Protocol, which would be the first in a series of identical protocols, except for the dates of annexation of schedules, of acceptance and of entry into force. He further recalled that at a previous meeting, the Committee had agreed that for the Harmonized System, the protocol approach should be used. There was no question of all contracting parties having to agree to the schedules to be annexed to the Protocol. He referred to document TAR/W/55/Add.1 prepared by the secretariat, which addressed the points raised by Chile, as well as TAR/W/62 which was also relevant in this context. He underlined that by annexing its schedule to a Protocol, only the contracting party doing so would be bound and would commit itself to apply in the future the new rates of duty; this procedure did not commit other contracting parties which, in the case of increased duty rates and in the absence of an agreement, retained the normal GATT rights.

6.11 The representative of Japan said that his delegation had no problem with the text of the Protocol and the dates mentioned. However, he made it clear that once Japan had attached its schedule to the Protocol, submitted it to the Diet, and obtained approval, it could not accept any amendments to the Protocol since it could not submit a new or revised protocol of the same type to the Diet again. It was his delegation's understanding that even if one

country could not meet the dates mentioned in paragraph 3(a) and (b) of the Protocol, those that would have annexed their schedules would accept the Protocol and implement it on 1 January 1988; those countries which could not meet the time-limits set out in the first Protocol would attach their schedules to subsequent protocols. Concerning the Canadian proposal, his authorities had serious difficulties to incorporate a review mechanism into the Protocol, firstly because they could not accept a Protocol including a mechanism to amend rates of duty from the date of entry into force and, secondly, it was a question of timing since the text of the Protocol had now to be finalized. His delegation suggested finding a solution to the Canadian problem outside the context of the Protocol.

7. Content and preparation of schedules for inclusion in the Protocol, including question of INRs

7.1 The Chairman referred to document TAR/W/65, a note prepared by the secretariat in response to questions raised by the United States delegation at the previous meeting. He asked delegations whether an understanding on the information to be included in the schedules could be reached among interested contracting parties, particularly regarding the treatment of INRs.

7.2 The representative of the United States said that, regarding the content of the schedules to be annexed to the Protocol, his delegation would expect that columns 1 to 5 would be filled in and that, depending on the results of the negotiations, column 7 could also be completed. Column 7 appeared in the United States proposed schedule but was left blank. His delegation had indicated that it would be willing to consider requests from contracting parties for inclusion of information in column 7, but that the

United States' initial offer was meant to simplify the schedule by not providing that information. Referring to document TAR/W/65, he pointed out that his delegation had expected more complete information on the practical importance of column 6, and that it still had some technical questions on the content of paragraph 4 of TAR/W/65.

7.3 The representative of Canada reiterated that, in view of the complexity of the Canadian transposition, the transfer of current INRs in Harmonized System would delay considerably the submission of the documentation. However, his delegation was prepared to consider, on a sympathetic basis, requests for the maintenance of both current and historical INRs during the negotiations.

7.4 The representative of the European Communities also recalled that his delegation had expressed the hope that historical and partial INRs would be eliminated in order to simplify the preparation of Harmonized System lists. However his delegation was prepared to give sympathetic consideration to any request by its partners concerning the need to retain the INRs. Referring to the replies furnished by the secretariat in document TAR/W/65, he said that the Community would appreciate clarification of column 6, bearing in mind possibilities of simplification.

7.5 The Chairman concluded that these issues needed to be further discussed. He suggested that, following consultations between the secretariat and the delegations concerned, a revised version of TAR/W/65 be prepared.

8. Preparation of final schedules in loose-leaf form after implementation of the Harmonized System (in particular question of INRs)

8.1 The Chairman recalled that the schedules which would be annexed to the Protocol would constitute consolidated schedules, but incomplete, since some of the information required by the loose-leaf system would be missing. The question therefore arose whether the missing information could be supplied at a later date, and if so, within which time-frame, or whether the format of the loose-leaf schedules should be simplified (e.g. by deleting columns 6 to 8), which would require a decision by the GATT Council.

8.2 The representative of Uruguay noted that several countries had not included any information in column 7 (INRs on earlier concessions); he stressed that his authorities attached special importance to the maintenance of INRs and wanted them to be reflected in the schedules. He asked whether the Decision by the Council in March 1980 was not mandatory to include information in column 7 and whether the countries that had failed to do so, would include this information at a later stage.

8.3 The representatives of Chile and Turkey associated themselves with the comments made by the representative of Uruguay.

8.4 The representative of New Zealand said that his delegation also attached considerable importance to negotiating rights and that, in New Zealand's proposed Harmonized System schedule, both existing and historical INRs, including INRs on partial bindings or sub-items, had been indicated. His delegation recognized the importance which historical INRs had, especially for smaller trading countries, and would request that all contracting parties

follow this practice. If a contracting party wished to dispense with INRs without transforming them into existing INRs or applying the modalities of the Swiss proposal, it would cause a legal problem.

8.5 The representative of Australia reiterated the position of her delegation concerning the importance of inclusion of current INRs in the Harmonized System schedules; historical INRs of continuing value should also be incorporated. However, in respect of the latter, timing consideration might preclude to do so and her delegation could accept an assurance that where maintenance of historical INRs had been agreed, they would be reflected in the schedules in due course through a certification.

9. Other business

- Implementation of Harmonized System tariffs and other outstanding Article XXVIII regulations

9.1 The representative of the European Communities recalled that his delegation had asked the representative of India to inform the Committee whether any development had taken place since the last meeting concerning both an outstanding Article XXVIII negotiation and the documentation to be submitted in the context of the Harmonized System.

9.2 The representative of India confirmed the statement he had made at the last meeting of the Committee and assured the representative of the Community that the required documentation would be made available very shortly.

- Distribution of binders for loose-leaf schedules

9.3 The Chairman informed the Committee members that the secretariat would very soon proceed to a distribution of special binders to keep the loose-leaf schedules already available. A set of binders would consist of 12 pieces.

- Date of next meeting

9.4 The Chairman suggested holding the next meeting of the Committee tentatively on 18 February 1987.