

GENERAL AGREEMENT ON

TARIFFS AND TRADE

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Committee on Tariff Concessions

COMMITTEE ON TARIFF CONCESSIONS

Draft Minutes of the Meeting held in the
Centre William Rappard on 2 July 1987

Chairman: Mr. F.L. Montgomery (United States)

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1. Adoption of the Agenda

1.1 The Chairman welcomed the participants to the meeting convened by GATT/AIR/2439 dated 11 June 1987 which contained the agenda and the list of documents for the meeting. The agenda was adopted with the two additions mentioned above under "Other business".

2. Submission of Harmonized System documentation for Article XXVIII negotiations

2.1 The Chairman referred to document TAR/W/67/Rev.3 dated 25 June 1987 which gave the latest situation regarding the submission of Harmonized System documentation. With Zimbabwe and Korea there were now fifteen countries which had circulated their Harmonized System documentation since the last meeting.

2.2 The representative of Brazil recalled that his country had already transposed chapters 1 to 40 of its schedule into the Harmonized System and informed the Committee that his authorities intended to complete the transposition before the end of the year, at which time a proposed Harmonized System Schedule III would be submitted to contracting parties for eventual negotiations under Article XXVIII.

2.3 The representative of the European Communities noted that several developing countries had indicated in other fora their intention to adopt the Harmonized System and, to this effect, he reminded them that they were expected to submit the required Harmonized System documentation.

2.4 The representative of Iceland reported that the preparations for the Harmonized System documentation were being finalized and that his authorities intended to implement the Harmonized System on 1 January 1988.

2.5 The representative of Canada emphasized the importance to supply import statistics by tariff line and by origin for three years in order to help determine supplier status or supplier interest in respect of changes

which might occur in the transposition to the Harmonized System. Canada would, therefore, not approve any Harmonized System conversion where inadequate or insufficient documentation was not submitted.

2.6 The representative of the European Economic Community, referring to unbound rates of duties, said that his delegation attached great importance to transparency in the conversion of all tariff items, bound or unbound, in the Harmonized System and expected that the transposition of unbound items would be justified in the same way as bound rates of duty, according to the methods set out in document L/5470/Rev.1

2.7 The representative of Israel indicated that his authorities were preparing the required HS documentation with a view to implementing the new system on 1 January 1988.

2.8 The representative of the United States supported the concerns expressed by Canada and the Community regarding both the content of the documentation and the absence of any documentation from certain countries. He also indicated that his delegation had circulated to interested contracting parties replacement pages to the US proposed Annex 2 reflecting the results of Article XXVIII negotiations.

2.9 The representative of Canada also supported the comments made by the representative of the Community regarding the lack of information on unbound rates and the changes made on those rates during their transposition into the Harmonized System.

2.10 The representative of India took note of requests made by several delegations and, as already mentioned in previous meetings, confirmed that the transposition of the Indian tariff into the Harmonized System did not affect bound rates of duty.

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

3.1 The Chairman noted that presently only one country, Japan, had concluded its Article XXVIII negotiations and had annexed its final schedule in Harmonized System nomenclature to the Geneva (1987) Protocol on 20 February 1987. As delegations were aware, this Protocol stipulated that countries which intended to introduce the Harmonized System on 1.1.1988 had to annex their HS schedules to the Protocol by 31 July 1987; the Protocol would be opened for acceptance until 30 September 1987 and would enter into force on 1 January 1988. Since several countries were in the process of concluding their negotiations under Article XXVIII, the Chairman asked whether delegations could report on the progress achieved and the likely date at which they expected to be able to annex their schedules to the Protocol.

3.2 The representative of the European Communities said that when examining transpositions from existing tariffs to the Harmonized System, his delegation had attached great importance that (a) existing GATT bindings should be maintained to the extent possible; (b) transpositions

should not result in significant or arbitrary increases in duty collected on a particular product; and (c) modification of duty rates for reasons not associated with the introduction of the Harmonized System should be avoided. These were the basic principles set out in L/5470/Rev.1 containing the rules and procedures in connection with the adoption of the HS. The Community and other contracting parties had stressed the need for their observance (see TAR/M/19, para. 2.5-20). He also drew to the attention of the Committee members to a problem that had arisen in connection with the proposed Harmonized System tariff of the United States. There had been a large number of departures from these basic principles (especially in the textile sector) which involved significant increases in duty collected on particular products, as well as a serious impairment of Community rights and trade interests in respect of the GATT tariff commitments of the United States which the Community had received in the past. Moreover, compensation offered did not meet the Community's interests nor concerns. In some cases the increases were such that Community products would no longer be able to compete in the US market. He added that the net result was that Community exporters would face a US\$1.1 million increase in duty collected (mainly in the textile sector). He informed the Committee that his delegation had thus reserved all its GATT rights, including the right to adjust its own Harmonized System proposals, as well as rights under Article XXVIII in respect of the proposed US Harmonized System tariff.

3.3 The representative of Sweden reported that negotiations concerning the Swedish Harmonized System schedule had been successfully completed. His

delegation expected to circulate a revised Harmonized System schedule within ten days, and the final schedule for annexation to the Protocol soon after.

3.4 The representative of Chile, referring to the Chairman's statement that Japan had concluded its negotiations, pointed out that Japan's negotiations had not been terminated with his country. Consequently, Chile was reserving all its GATT rights towards Japan. He also indicated that it was not acceptable that previous concessions would be affected by the transposition into the Harmonized System, even in a minimum proportion, and that a mere change in nomenclature could not result in losses of concessions, in particular if these concessions were granted in exchange for substantive contributions from developing countries.

3.5 The representative of Brazil expressed concern over the fact that a number of countries were about to close their negotiations; although consultations and negotiations with those countries had been carried out under criteria falling in normal GATT practices, the application of those criteria undermined the engagement contracting parties had undertaken within the scope of the Harmonized System, i.e. to respect the maintenance of existing tariff levels. For Brazil, the trade of many products of extreme export interest and for which it was first supplier, would be negatively affected by the transposition of national tariffs into the Harmonized System. Consequently, the Brazilian authorities were examining the course of action to be taken with regard to this particular problem, in the light of Article XXVIII, paragraph 2.

3.6 The representative of Finland stated that after having concluded Article XXVIII negotiations on rates of duty, his delegation had initiated the verification process and had also started consultations on INRs. Finland intended to annex its Harmonized System Schedule to the Protocol before the end of July.

3.7 The representative of Norway reported that his country had practically terminated Article XXVIII negotiations, except with one country. Norway would circulate shortly amended pages for verification and expected to annex its schedule to the Protocol by mid-July.

3.8 The representative of India referred to the last meeting of the Council in which the Community had expressed concern over the Harmonized System negotiations. Although his delegation had not intervened at the Council, it wished to point out that it shared the views expressed by the Community and Brazil regarding negotiations with the United States. His delegation had just received a set of pages containing changes for verification, within a time-limit of two weeks, and was informed at the same time that, at a later stage, negotiations would be formally concluded with a memorandum of understanding; he wondered what the purpose of this memorandum would be. He pointed out that, in general, his delegation had had satisfactory consultations with other contracting parties which had tried to abide by the guidelines contained in document L/5470/Rev.1, but this had not been the case with the US transposition where other factors had been taken into account. Although only few issues remained outstanding, he regretted the attitude of the US authorities which claimed to have done all that was necessary in these negotiations. His delegation felt that the

balance of interests which existed under the existing system had not been preserved in the transposition and was thus wondering whether, apart from reserving its rights under Article XXVIII, there would be scope for further considerations by the US to meet the few outstanding Indian concerns.

3.9 The representative of New Zealand reported that his delegation had made good progress with the negotiations and that his authorities were hoping to meet the deadline for inclusion of the New Zealand Schedule in the Protocol. He expressed some concern over the tendency of including queries on unbound items at the same time as requests on bindings which were causing some delay in the conclusion of the negotiations. He suggested to give an early reply on bound items, and to provide further clarification on unbound items at a later time. His delegation was also worried about the delay in finalizing negotiations on historical INRs which his delegation had considered as an integral part of the negotiations. He further stated that the fact that INRs would in many cases be discussed at a second stage should not allow for negotiations to be drawn out indefinitely; he hoped to see a prompt resolution of outstanding historical INRs issues.

3.10 The representative of the United States, responding to remarks made by delegates about the US conversion, explained that it had not been technically possible for his country to maintain systematically all concessions unchanged. He believed that, as a result of the negotiations carried out over a year, the US had met its obligations under Article XXVIII and that it had presented a neutral conversion; there were changes, both increases and decreases, but his delegation was convinced that when the new US Tariff Schedule would enter into force on

1 January 1988, it would present US partners with a balanced neutral product. He was surprised at the comments made by India which had not given any opportunity for an examination of its own Harmonized System conversion and which, in his view, would benefit considerably from the US transposition. Referring to the comments made by the representative of the European Communities, he pointed out that when his delegation had examined the Community's conversion, certain problems had been found which had necessitated negotiations, but these had turned out to be unsuccessful. The gap could not be bridged, particularly in a sector of great interest to the United States, namely Chapter 90 relating to scientific instruments where unjustified increases had been introduced, and which represented an impairment of one million ECUs. Moreover, the US had found that the Community had not respected a Tokyo Round commitment. Under these circumstances, it was not possible to reach a satisfactory conclusion of the negotiations. Therefore, the US would also reserve its rights with respect to the Community's conversion. Regarding the US textile sector, the US representative referred to a notification by the Community in the early 1980's to the effect that the TSUS represented a non-tariff measure, especially because of certain provisions in the textile area. These provisions had been eliminated in the new nomenclature, and this fact could not be overlooked in the context of the US adopting the Harmonized System.

3.11 The representative of the United States also informed the Committee that his delegation had completed the negotiations with a number of contracting parties, including major textiles suppliers, and was aware that others considered that there were outstanding issues which had not been resolved. He further reported that the US Administration had recently

submitted to Congress a proposed new tariff Schedule based on the Harmonized System, together with the implementing legislation; it effectively meant that his delegation was no longer in a position to make changes to rates of duty or nomenclature. He regretted that there had been insufficient time to address the concerns of certain parties but stressed the fact that the US had made every effort to extend the time allowed for the negotiations as far as possible. Negotiations on INRs had not been completed and his delegation envisaged to continue the discussion with contracting parties on this point as and when it received the authority to pursue those issues.

3.12 The representative of Canada indicated that his country had substantially concluded discussions on rate requests made by delegations. Changes resulting from those discussions would be reflected in the Canadian legislation to be submitted to the Canadian Parliament in the autumn. There were still outstanding issues which his delegation hoped to settle over the next few weeks, in order to be able to complete the preparation of the Canadian GATT Schedule for attachment to the Protocol, hopefully at the end of July.

3.13 The representative of Switzerland expressed the hope to circulate the Swiss draft Schedule the following week and indicated that the Swiss authorities intended to annex the new Swiss Harmonized System Schedule at the end of July. However, developments in the Community were causing his delegation some problems, since Switzerland would not annex its Schedule to the Protocol without an assurance that the Community would also annex and ratify its Schedule within the time-limits set forth in the Protocol.

3.14 The representative of Chile requested the opinion of the secretariat whether in case a country violated a concession in the course of the transposition of its Schedule into Harmonized System, action could be taken to compensate for the damage. His country was fearing to lose the few concessions it had. More specifically, the representative asked which precise remedies Chile had under Article XXVIII.

3.15 Mr. Kautzor-Schröder (secretariat) referred to document TAR/W/62 which explained that if agreement could not be reached between two delegations on a certain concession, negotiations could continue subsequently and the country changing over to the Harmonized System could make additional concessions at a later date. If disagreement continued to exist, Article XXVIII:3 gave the contracting party which considered that its rights had been impaired, the right to withdraw substantially equivalent concessions. The six-month period provided for in that Article started to run from the date at which the new rate was implemented. In the case of the Harmonized System, the six-month period would start running from 1.1.1988 in relation to countries which began its implementation on that date. Article XXVIII:3 also provided for specific procedures, including the review of the withdrawal of concessions by the CONTRACTING PARTIES upon request.

3.16 The representative of Japan stated that his Government had already accepted the Harmonized System Convention last June and that the necessary domestic procedures had been completed to accept the Geneva (1987) Protocol in early August. He expressed concern over the slow progress made by other delegations in the Harmonized System negotiations and hoped that as many

countries as possible would annex their schedules to the Protocol by 31 July 1987. Regarding the statement made by Chile, he confirmed that the Japanese Diet had already approved the new Schedule and that no change could be made to it. He added that the items which the delegate of Chile had mentioned related in one case to a product where Japan had had no imports for the last five years and Chile had no main supplier status on that item; concerning the second item, all existing rights of Chile had been maintained, although the text relating to that item might be complicated.

3.17 The representative of the European Communities informed the Committee that his delegation considered the negotiations virtually completed, and the new Community schedule should in principle be annexed to the Protocol as planned. In reply to the representative of the United States, he said that the Community had strictly respected the existing situation in the transposition of Kraft paper, and that, in other areas, there had indeed been some increases in tariffs but broadly speaking the Community's transposition with respect to the United States was perfectly neutral overall. In that connection, he pointed out that the Community's Harmonized System proposal contained tariff increases of more than five points in seventeen cases concerning a trade volume of \$7 million, whereas comparable increases in the United States transposition concerned 280 cases representing a trade volume of \$33 million, without taking into consideration specific and mixed duties. Moreover, the Community was concerned about significant and arbitrary increases, in particular concerning olives; the original proposal submitted by the United States

was strictly neutral, maintaining the existing situation, but a last-minute change in the rate and wording of this product was made in the US transposition which departed from the principle of neutrality and status quo and which affected the Community's GATT interests.

3.18 The representative of Austria said that most of the negotiations had been finalized in a satisfactory manner; only a few items remained outstanding with some delegations. Austria would transmit a revised Schedule XXXII for verification to all contracting parties with which her country had conducted negotiations or consultations. She explained that her authorities had to submit the final results of all negotiations to the Parliament and that the Protocol could be accepted by her country only once the Parliament had approved it. In these circumstances, Austria would not be in a position to accept the Geneva (1987) Protocol by 30 September 1987 as stipulated therein, and therefore envisaged the establishment of a second protocol for those contracting parties which could not accept the first protocol, but which nevertheless intended to implement the Harmonized System on 1 January 1988. The Second Geneva Protocol would be similar to the first one although certain modifications would be required.

3.19 Mr. Kautzor-Schröder (secretariat) referred to earlier discussions in the Committee regarding the possibility of establishing a second and subsequent protocols for countries not in a position to meet the time-limits of the first protocol, or for countries which would decide to implement the Harmonized System at a later stage and explained that, from

the procedural aspect, there was no difficulty in opening other protocols. The second protocol should preferably contain the schedules of several countries. He invited delegations which considered the possibility of participating in a second protocol to inform the secretariat so that consultations could be arranged to discuss the terms of the Second Protocol.

3.20 The representative of Australia stated that her country would not be in a position to annex its schedule by 31 July 1987. Her delegation had carried out negotiations and consultations with twenty-eight contracting parties, agreement having been reached with twenty-four of them to date. She endorsed the comments made by the representative of New Zealand regarding the large number of questions submitted on unbound items, which had limited Australia's ability to meet the time-frame originally envisaged. The Australian schedule was being finalized for annexation and would be circulated shortly for verification. The treatment of INRs still remained outstanding and would need to be examined at a later stage. If there were to be a second protocol, Australia would consult with any parties wishing to be part of it. Australia was about to have an election, and approval of Schedule T by Ministers and the Executive Council could not be obtained before 31 July 1987.

3.21 Referring to the comments made by Australia and New Zealand on unbound rates, the representative of the European Communities pointed out that if correct information had been provided with the Harmonized System documentation showing how the rates of duty had been arrived at, there

would not have been so many problems. His delegation had also raised this question in the standstill group and had expressed apprehension that countries might be tempted to improve their negotiating position with regard to unbound rates of duty in the context of the Uruguay Round. The Community had proposed that the base rates for negotiations should be the applied rates of duty, if unbound. His delegation was therefore very interested in full transparency on the question of unbound rates.

3.22 The representative of the United States still hoped to be able to attach Schedule XX to the first protocol, but the matter was in the hands of the Congress and depended on the time-frame within which the necessary legislative action would be taken. His delegation supported the suggestion by Austria to establish a second protocol. Regarding the question of olives, he confirmed that the US had made changes in the nomenclature with minor rate consequences in order to improve the nomenclature and make it commercially more relevant.

3.23 The representative of Peru expressed concern about the comments made by the US delegate concerning the fact that no more changes could be made to the US schedule. His country considered that negotiations were still under way with the United States; Peru had received an offer of compensation which was presently being examined by his authorities. His country could not accept that the United States considered the negotiations terminated. If that were the case, Peru would find its GATT rights affected. He therefore formally reserved all the rights of his delegation under Article XXVIII regarding the US schedule.

3.24 The United States representative confirmed that once the US conversion had been submitted to Congress, there was no possibility of making any change. He regretted the situation created by the deadline contained in the Congressional calendar.

3.25 In view of the comments made by the delegates of Peru and the United States, the representative of Chile formally reserved all his GATT rights concerning the US, Japan and EEC schedules, since negotiations between his country and these three delegations had not been terminated.

3.26 The Chairman noted that for a number of delegations, negotiations had been concluded and that they would circulate their schedules for verification; some of them would be in a position to annex their schedules to the first Geneva (1987) Protocol by the end of July. Other countries had expressed concern related to problems encountered in the negotiations, because of the scope of the exercise as well as the time pressure delegations had been under to complete the work. He urged those delegations which still had outstanding questions to settle them as quickly as possible, making reference to the provisions of Article XXVIII. He confirmed that the establishment of a second protocol should be envisaged for those countries which would not be in a position to meet the requirements of the first protocol but which, nevertheless, intended to implement the Harmonized System on 1 January 1988. Consultations with interested delegations would be held to this effect.

4. Content and presentation of the schedules for inclusion in the Protocol

4.1 The Chairman recalled that, from the discussion which took place at the last meeting and on the basis of document TAR/W/65/Rev.1, dealing with questions of a legal nature, as well as document TAR/W/70, submitted by Chile, it had appeared that, although interested delegations had been preoccupied with the need to conclude Harmonized System negotiations in time, great concern had been expressed by several delegations concerning the rights and obligations derived from INRs.

4.2 The representative of Brazil supported the views contained in the document submitted by Chile and reiterated that his delegation attached great importance to the maintenance of INRs in schedules transposed in Harmonized System.

4.3 The representative of the European Communities explained that his delegation would not indicate any INRs in the schedule which would be annexed to the Protocol, as the discussions on those rights had not yet been concluded. Furthermore, with regard to the presentation of the schedule, on account of the adoption of a community tariff based on the Harmonized System involving a combined - tariff and statistical - nomenclature, the Community intended to submit, for practical reasons and in the interests of transparency, the tariff as it would be applied by the Community as from 1 January 1988. The new schedule's presentation would differ from the one constituting the Community's initial offer as a result

of the adoption of an entirely numerical codification as well as the direct inclusion in the nomenclature of a certain number of sub-divisions established for statistical purposes. The Community was ready to circulate its schedule in this new form; however, it draw the attention of its partners to the fact that no substantive modification had been introduced as a result of the adoption of this combined nomenclature.

4.4 The representative of Switzerland informed the Committee that his country would also not include INRs in the schedule it would annex to the Protocol as discussions on such rights were still continuing, and that information concerning INRs would be furnished at a later stage.

4.5 The representative of Canada stated that his delegation would not include INRs in its schedule but would continue the discussion over the coming weeks.

4.6 The representative of Australia said that, despite the timing difficulties, the Australian Schedule would include current INRs but would not contain information in columns 6 and 7.

4.7 The representative of the United States stated that the US Schedule to be annexed to the Protocol would present a mixed picture as concerned INRs, depending on the progress made in the negotiations with individual countries.

4.8 The representative of Austria said that her country had already carried out some negotiations related to INRs, but they were not terminated. Therefore, Austria would not include INRs in its schedule for annexation to the Protocol. She was wondering whether objections raised to proposed schedules would be partially withdrawn or would remain in force until negotiations on INRs would be terminated.

4.9 Mr. Kautzor-Schröder (secretariat) referred to document TAR/W/65/Rev.1 which the secretariat had prepared in reply to questions raised by the delegation of the United States and which, in paragraph 2, said that "a schedule which is annexed to the Harmonized System Protocol and which contains information relating only to columns 1 - 5 would be considered as a legally valid consolidated - but incomplete - schedule of concession". Therefore, in order to comply with the requirements of the Decision of the CONTRACTING PARTIES relating to the Loose-Leaf System, it would be necessary to certify the completed consolidated schedules when information in columns 6 and 7 would be provided at a later stage.

4.10 The representative of New Zealand said that his delegation had hoped to include in its schedule all current and historical INRs, but in view of the necessity to further discuss the question of partial INRs and the conversion of certain historical INRs into current ones, it was not sure that information on INRs would be included in the New Zealand Schedule to be annexed to the Protocol.

4.11 The representative of Finland informed the Committee that the Finnish Schedule to be annexed to the Protocol would contain information in columns 1 to 5; columns 6 and 7 would be completed later.

4.12 The Chairman noted that several countries would not be in a position to provide all necessary information required by the decision on the Loose-Leaf System in the schedules to be annexed to the Geneva (1987) Protocol, but would continue negotiations on INRs and include information related to them in their schedules at a later stage; he urged delegations to complete those negotiations on INRs as soon as possible.

5. Common Data Base

5.1 Mr. Raynal (secretariat) informed the Committee that the Technical Group on the HS common data base had met that morning with the following matters on its agenda:

- (1) updating of Harmonized System data files to reflect the results of Article XXVIII negotiations;
- (2) information to be included in the future tariff data base when foreign trade data would be available in the HS; and
- (3) tables required for the analysis of the tariff situation.

On the first point, participants had agreed to forward to the secretariat the information required to update the Harmonized System data base, including imports for a more recent year. In that connection, note was taken of the EEC statement on its new presentation, which could raise some data-processing problems. On the second point, the secretariat would propose standard formats for the submissions of participating countries; those proposals would be studied at the next meeting of the Technical Group, to be held on the same date as the next meeting of the Committee. As for the third point, the secretariat would get in touch with certain delegations in order to find a solution to outstanding problems. Finally, the question of the broadening of the tariff study had also been raised. He added that mention had also been made of the work of the informal group on the integrated data base and the discussions to be held at the next Council on that subject. Furthermore, the Technical Group had requested the secretariat to contact certain contracting parties in order to study the modalities for their possible participation.

6. Other business

Canada - Review clause

6.1 The representative of Canada recalled that at the last meeting of the Committee, his delegation had emphasized the need for a time-limited mechanism to deal with legitimate errors in the transposition of schedules

which would not be discovered until after the implementation of the Harmonized System. In recognition of some of the concerns expressed by delegations regarding the misuse of such a mechanism, Canada had re-examined its suggestion and was endeavouring to find ways which would limit the use of such mechanism. Canada was essentially envisaging a pre-consultation mechanism whereby a party which felt that there had been an error, would first notify its trading partners of the nature of the error, indicating what the proposed change would involve, seek their views on the error and, if the trading partners agreed, would notify the correction as a rectification according to GATT procedures. If a trading partner did not agree, the GATT procedures would then protect its GATT rights. He further indicated that in revising its proposal, Canada would abandon the idea of having a panel examine the so-called errors. His delegation would continue discussion on this matter with a number of delegations in the coming weeks.

6.2 The representative of the European Communities was of the view that the cases described by Canada did not represent a real problem since existing GATT provisions were adequate to solve them.

6.3 The United States representative recalled that his delegation had expressed at earlier meetings scepticism as to the need and workability of the Canadian proposal and indicated that the views of his delegation in this respect had not changed.

Date of next meeting

6.4 The Chairman suggested Friday, 2 October 1987 as a tentative date for the next meeting of the Committee, subject to further consultations.