

# GENERAL AGREEMENT ON

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# TARIFFS AND TRADE

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Committee on Tariff Concessions

COMMITTEE ON TARIFF CONCESSIONS

Minutes of the Meeting of the Committee  
held on 13 October 1989

Chairman: Mr Alejandro de la Peña (Mexico)

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1. Adoption of the agenda

1.1 The Chairman welcomed the participants to the second meeting of the Committee in 1989 convened by GATT/AIR/2842 dated 26 September 1989, which contained the agenda for the meeting and the indication of the relevant documents. Under "other business", the representative of the United States requested to raise a matter related to the status of schedules. The agenda was adopted with this addition.

2. Status of the implementation of the Harmonized System

2.1 The Chairman made reference to document TAR/W/74/Rev.5 dated 5 October 1989 and noted that there had been no new country added to the existing list. He recalled that at present sixty GATT contracting parties,

out of ninety-six, were applying the Harmonized System and twenty-eight of them (EC schedule representing twelve countries) had a new schedule annexed to a Protocol. He pointed out that there were several countries which had introduced the Harmonized System without following any GATT procedures. Other countries had requested a waiver in order to carry out the necessary Article XXVIII negotiations subsequently. He reminded these latter countries that the time-limit of their waivers expired on 31 December 1989 and that, if necessary, they would have to request an extension of their waivers as soon as possible so that their requests could be considered by the Council at its 7 November meeting, which was the last meeting of the Council before the next session of the CONTRACTING PARTIES; the countries concerned were Bangladesh, Brazil, Israel, Malaysia, Mexico, Pakistan, Philippines, Sri Lanka and Turkey.

2.2 The Chairman also reminded the members of the Committee that a Geneva (1989) Protocol had been opened early in 1989 and that delegations which were in the process of terminating their Article XXVIII negotiations could annex their new HS schedules to this Protocol until the end of the year. A new Protocol would be opened, if necessary, in 1990.

2.3 The representative of India informed the Committee that the required documentation related to the transposition of the Indian schedule into the Harmonized System was under preparation and would be submitted for circulation, if possible, before the end of the year.

3. Ongoing negotiations and submission of documentation related to the Harmonized System

3.1 The Chairman referred to document TAR/W/67/Rev.8 and informed the Committee that since this document had been circulated, the delegation of South Africa had submitted the required HS documentation in connection with the transposition of Schedule XVIII. This documentation was being processed and would be circulated as soon as possible in document SECRET/HS/25. Moreover, the delegation of Mexico had also submitted a revised version of its HS documentation which would be circulated in document SECRET/HS/20. The Chairman enquired whether any additional delegation had the intention to submit its HS documentation for circulation in the near future.

3.2 The representative of Turkey reported that his country had implemented the Harmonized System on 1 January 1989 and that the proposed HS Schedule of Turkey had been circulated to the contracting parties on 16 January 1989. During the ninety-day period for possible objections, only the United States and Australia had reserved their rights on the transposed Turkish schedule. At the last meeting, his delegation had asked those countries to submit their detailed requests on specific items in order to carry out the necessary consultations or negotiations. His delegation had only very recently been informed by the delegation of Australia of the withdrawal of its reservation. As stated in document

SECRET/HS/22, the transposed Schedule XXXVII of Turkey had been compiled to reflect all existing bindings expressed in the nomenclature of the Harmonized System; bound rates had not been changed. However, his delegation had circulated on 23 June 1989 an addendum in order to rectify typing errors. A new addendum was being prepared in the capital to rectify additional typing errors. Furthermore, document SECRET/HS/22/Add.1 contained Turkey's proposed entries for columns 5, 6 and 7 in the Turkish HS schedule. During the ninety-day period for possible objections, his delegation had received a general reservation from Sweden and one specific request from Norway which was being examined. Since his authorities were eager to complete their consultations and negotiations as soon as possible in order to annex the new HS Schedule XXXVII of Turkey to the Geneva (1989) Protocol, he requested the co-operation of the countries concerned.

3.3 The representative of Mexico confirmed that his delegation had submitted for circulation a revised version of the HS documentation to the secretariat. His delegation had been granted a waiver from its GATT obligations until the end of the year in order to carry out the necessary consultations and negotiations under Article XXVIII. Due to the fact that it would not be possible for Mexico to conclude those negotiations within the proposed time-limit, his delegation would shortly ask for an extension of the waiver.

3.4 The representative of the United States stated that the reservation lodged by his delegation in respect to the HS documentation submitted by Turkey after the circulation of document SECRET/HS/22 related to the addenda as well.

3.5 The representative of the European Communities pointed out that his delegation still had some outstanding negotiations related to the recording of Initial Negotiating Rights in the EC Schedule.

#### 4. Completion of columns 5, 6 and 7 in the Harmonized System schedules

4.1 The Chairman reported that since the Committee's last meeting in May, he had held an informal meeting of the Committee on 17 July 1989, the purpose of which had been to discuss the content of column 6 and to reach an agreement on this issue. The Chairman stated that, from the outcome of the discussion, it seemed to him that, as a general rule, the date to be indicated in column 6 should be the date at which a concession or part of a concession had first been granted, and that delegations which could not agree with such general approach would indicate on what basis information into column 6 would be entered and also indicate the reasons for not following the general approach.

4.2 The representative of Japan recalled that his delegation was still in favour of indicating in column 6 the date when a concession was first granted and therefore felt that the Chairman's proposal would represent a

practical solution. However, his delegation had some doubt regarding the applicability of the proposal, especially regarding the deviations from the general rule and the legal status of the information to be included. He also referred to the discussion on Article II:1 (b) in the context of the MTN, and wondered whether in case other duties and charges were to be inserted in schedules, the maintenance of column 6 would be justified. His delegation was not in a position to accept the Chairman's proposal for the moment and would need more time to study the issue.

4.3 The representative of the United States requested the opinion of the secretariat in relation to cases where the entries in column 7 of a given schedule predated the date entered in column 6.

4.4 The representative of the European Communities recalled that the date in column 6 would be the date at which the Schedule of the EC of 12 was first deposited with the GATT, i.e. G/HS/87/3. Replying to the question raised by the US delegate, the Community representative indicated that there would be no historical INRs in the Community schedule but instead "ceiling INRs" relating to currently bound rates. These rates could either be inserted in column 7 with a note at the beginning of the schedule indicating that they should be regarded as "ceiling INRs" and not historical INRs, the other possibility being to leave column 7 blank and to add an annex to the EC schedule listing all "ceiling INRs".

4.5 The representative of New Zealand said that his delegation needed more time to study the Chairman's proposal and also raised the question of the legal status of the information in column 6. He requested clarification from the secretariat regarding the legal implications related to historical INRs.

4.6 The representative of Australia indicated that his delegation intended to follow the general approach described by the Chairman, i.e. incorporating in column 6 the first legal instrument containing the concession or any part thereof. His delegation understood that, in case countries would adopt a different approach, contracting parties could reserve their rights on those schedules if they considered that an inappropriate methodology had been used. He felt that it was an issue that deserved further informal discussion in order to come to a common approach.

4.7 Replying to a question raised by the delegates of Japan and the United States, the representative of the European Communities confirmed that in column 6, his delegation would refer to the EC of 12 and that there would be no historical INRs in the Community schedule. However, discussions on INRs to be retained in the EC schedule were going on, and the outcome of these discussions would be reflected in the Community schedule.

4.8 Mr. Kautzor-Schröder (secretariat) noted that the Community would make no entries in column 7 on historical INRs but rather indicate "ceiling INRs" in column 5 (or possibly in an annex to the schedule). Therefore,

there would be no indication of any date prior to the introduction of the Harmonized System in the EC schedule. He added that column 6 was relevant to other duties and charges which contracting parties were allowed to levy according to Article II:1 (b); this problem was being examined in the Negotiating Group on GATT Articles.

4.9 The representative of the United States said that the concept of ceiling bindings, whether reflected in an annex, in column 5 or in column 7 in the Community schedule would, in his view, not solve the problem and would necessitate extremely careful negotiations. Historical INRs contained in column 7 were presently accompanied by an indication of the instrument in which that concession was granted: in case of possible future disagreement regarding the exact nature of the concession in question, one could refer to the original instrument. In the case of the Community, and in particular with reference to the change of nomenclature, the United States delegate felt that those earlier concessions would have to be renegotiated in order to reflect them in the context of currently existing tariff lines. This could, however be avoided if the historical INR concept would be maintained.

4.10 The representative of the European Communities assured the Committee that wherever the Community had an INR on a concession expressed in an old nomenclature and the INR was now split into, say, three new HS items, the INR had either been granted on the totality of the HS item taking into account the majority of trade factor or would be reflected as an "ex" item referring thus only to part of a new item. For the EC delegation, this method constituted an honest transposition of the rights enjoyed by other contracting parties vis-à-vis the Community.

4.11 The representative of the United States added that the situation of other contracting parties was different since they maintained the entries in column 6; thus, other countries' rights were clearly protected. The EC's approach meant that no recourse to earlier legal instrument were possible in the case of a future dispute.

4.12 The Chairman noted that certain delegations had expressed some doubts about his proposal and other delegations had requested more time to reflect on this issue, whereas others had suggested further informal consultations. Since no consensus could be reached on this problem, the Chairman said that he would continue to discuss this issue informally with a view to finding an agreement. Furthermore, the Chairman reminded the members of the Committee that as long as no cut-off date had been fixed for the supply of the missing information in the various columns of the loose-leaf schedules, previous GATT legal instruments remained valid sources of information. Until the time of final certification, the right to challenge entries in columns 5 to 7 would remain. The Chairman added that of the seventeen contracting parties that had annexed an HS schedule to a protocol, only three so far had completed all the columns (Hong Kong, Thailand and Zimbabwe) and that two countries, the United States and Yugoslavia, had submitted proposals for additional entries in the various columns.

5. Report of the Committee to the Council

5.1 The Chairman introduced the report prepared by the secretariat on the activities of the Committee during the current year, which had been distributed to all members as document TAR/Spec/5. The Committee<sup>1</sup> examined the draft text of this report and adopted it with some amendments.

6. Other business

- Status of contracting parties' schedules of tariff concessions

6.1 The representative of the United States referred to the situation with respect to the establishment, review and certification of GATT schedules representing the instruments containing contracting parties' obligations on tariffs and in particular to the status of pre-HS schedules. He noted that only sixty-two contracting parties had a GATT schedule; of those, only forty-five had been circulated and only eighteen schedules had been approved. He expressed concern about this situation which created great uncertainty in the field of tariffs as it was difficult to know what the exact obligations of contracting parties were. In his view, this situation was even more preoccupying in the context of the MTN where contracting parties were expected to make changes in their current level of obligations. He requested that this question be discussed at the next meeting of the Committee, recalling that some work was being undertaken by the secretariat in this regard in the framework of the Negotiating Group on Tariffs.

6.2 The representative of Chile renewed his country's general reservation with regard to negotiations in connection with the introduction of the Harmonized System by the European Communities, Japan and the United States. He also referred to a request recently made by his country to the secretariat in the framework of the Negotiating Group on Tariffs which related to the updating of the list of Initial Negotiating Rights granted to Chile since the beginning of the General Agreement.

6.3 The Chairman took note of the statements made by the delegations of the United States and Chile and confirmed that the agenda of the Committee's next meeting would include the point made by the United States. He also requested the secretariat to take note of the request made by the representative of Chile concerning the technical work which would greatly facilitate its situation with regard to INRs.

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<sup>1</sup>The final text of the report was subsequently distributed as document TAR/177.

6.4 Referring to the statement made by the delegate of Chile regarding the exact situation of INRs, the representative of the United States added that such research would be of great help to all delegations.

7. Date of the next meeting

7.1 The Chairman suggested that the exact date of the next meeting, to be held in the spring of 1990, would be fixed in consultations with members of the Committee.