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Committee on Tariff Concessions

COMMITTEE ON TARIFF CONCESSIONS

Draft Minutes of the Meeting held on 21 May 1991

Chairman: Mr. Alejandro de la Peña (Mexico)

1. Adoption of the agenda
2. Status of Implementation of the Harmonized System and Waivers granted
3. Ongoing Negotiations and submission of documentation related to the Harmonized System
4. Completion of columns 5, 6 and 7 in the Harmonized System schedules
5. Amendments to the Harmonized System nomenclature
6. Other business
7. Date of next meeting

1. Adoption of the Agenda

1.1 The Chairman welcomed the participants to the first meeting of the Committee in 1991 convened by GATT/AIR/3178 dated 29 April 1991, which contained the agenda for the meeting and the list of the relevant documents. The agenda was adopted.

2. Status of Implementation of the Harmonized System and Waivers granted

2.1 The Chairman referred to document TAR/W/74/Rev.7 dated 8 May 1991 and noted that since the last meeting of the Committee in October 1990, only Indonesia had annexed a new HS schedule, contained in document (L/6728/Add.1), to the Geneva (1990) Protocol. However, some adjustments needed to be made to the schedule and a revised Indonesian HS schedule would be annexed to the Geneva (1991) Protocol. He noted that to date some sixty-five out of a total of 102 GATT contracting parties applied the Harmonized System. However, only eighteen countries and the EC had annexed their HS schedules to a Protocol. Several countries had introduced the Harmonized System without having followed any GATT procedures, while some countries had requested a waiver in order to carry out Article XXVIII negotiations subsequently. He urged those countries that were about to conclude negotiations to accelerate this process. He referred more particularly to Brazil, Malaysia, Mexico, the Philippines and Turkey and indicated that these countries should inform the Committee of the status of the negotiations. In addition, he requested countries which had decided to adopt the Harmonized System and which were not listed in document TAR/W/74/Rev.7 to indicate this to the Committee.

2.2 The representative of Brazil stated that consultations had been held with interested contracting parties. However, in some cases there had been no response following the submission by her authorities of written answers and information. She requested delegations having additional questions to provide them as soon as possible and for the others to indicate whether the answers provided by her authorities were satisfactory. This would enable her government to conclude negotiations before the end of the year.

2.3 The representative of the European Communities said that his authorities would give the Brazilian Government the necessary confirmation regarding the transposition of the Brazilian Schedule-III. He expressed his delegation's concern regarding the process of automatic renewal of

waivers. He said that while his authorities would support the requests for an extension of waivers during the forthcoming Council meeting, this might not be the case for future waivers. Consequently, he hoped that all countries presently under waiver would conclude their negotiations by the end of the year.

2.4 The representative of the Philippines reported that the written responses, given to contracting parties that had expressed reservations, had taken a longer time for her authorities to prepare than expected. However, her government hoped to conclude these negotiations as soon as possible.

2.5 The representative of Turkey stated that bilateral negotiations were continuing with some interested contracting parties, and that his authorities hoped to conclude them in the near future.

2.6 The representative of the United States expressed his government's concern regarding the number of times extensions of waivers had been requested. With respect to the legal status of countries operating under waivers, he pointed out that in the original waivers it was indicated that pending the negotiations other contracting parties would be free to suspend substantially equivalent concessions. This, in his view, put countries operating under waivers in a vulnerable situation. He strongly urged those countries to redouble their efforts and conclude their negotiations by the end of the year.

2.7 The Committee took note of the information given as well as the concerns expressed in connection with the renewal of waivers.

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

3.1 The Chairman referred to document TAR/W/67/Rev.10 and noted that since the last meeting of the Committee in October 1990, only Bangladesh had submitted the required HS documentation in connection with the

transposition of its schedule. He noted that several countries, some of which under waiver, had not as yet provided the necessary documentation. He urged those countries to submit this documentation as required by the provisions of their waivers and the others to conform with the appropriate GATT procedures. He referred to Colombia, Hungary, Haiti, India, Israel, Madagascar, Malawi, Nigeria, Pakistan, Tunisia and Zambia. In the case of Chile he informed the Committee that the Chilean Government had submitted the relevant documentation to the secretariat and that it was in the process of being examined before its distribution.

3.2 The representative of Hungary stated that her government had implemented the Harmonized System on 1 January 1991, and had requested a waiver until the end of 1991 in order to conduct and conclude negotiations subsequently. The necessary documentation was being prepared by her authorities, but certain technical problems had been encountered in the preparation of this documentation which had consequently delayed its submission. She said that her authorities hoped to submit the documentation in due time.

3.3 The representative of the European Communities pointed out that the delegations referred to by the Chairman were not present at the meeting. He suggested that the Chairman write to them and inform them of the concerns expressed under this agenda item.

3.4 The Chairman noted the statement made by the representative of the EC and said that the concerned delegations would be informed of this agenda item and of the relevant comments made.

3.5 The representative of the United States requested that the annex of the Committee's report to the Council contained in document TAR/187 be updated, so that a more accurate picture of contracting parties which had implemented the Harmonized System without having followed GATT procedures could be reflected. In this connection he enquired about the legal status of these contracting parties.

3.6 The Chairman referred to TAR/W/74/Rev.7 and listed the countries that had implemented the Harmonized System without having followed the appropriate GATT procedures, namely Haiti, India, Madagascar, Malawi, Nigeria, Tunisia, Venezuela and Zambia. He stated that these contracting parties, in order to comply with their GATT obligations, would have to request a waiver. In the event that this approach was not followed, the situation with respect to these countries would remain irregular. They should inform the Committee of the reasons which had prevented them from not following established GATT procedures. After a careful examination of these reasons the Committee would pronounce itself from a legal point of view.

3.7 The representative of the United States agreed with the approach suggested by the Chairman. However, he pointed out that when a country had implemented the Harmonized System without having followed prescribed GATT procedures, and when in fact the change had resulted in a modification of its obligation towards a contracting party, there were certain avenues open to contracting parties to redress the rights which had existed. Such a situation placed the country having undertaken the change in a vulnerable position. He strongly urged countries to follow the relevant legal procedures. While this process might necessitate the request of a waiver, it should be noted that once under waiver countries had to bring negotiations to a speedy conclusion.

3.8 The representative of India explained that bound products in the Indian schedule were not indicated in the schedule annexed to the Customs Tariff Act, but given effect through a notification under the Customs Act. Consequently, even after the introduction of the Harmonized System, bound items remained protected by the notification procedure. However, in view of the constant reappearance of this issue during meetings, his authorities had decided to enter into bilateral consultations with trading partners to settle this matter.

3.9 The Chairman reiterated the importance of conforming to established GATT procedures and urged contracting parties which had not done so to submit the necessary documentation to the Committee.

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

4.1 The Chairman recalled that the introduction of the Loose-Leaf System for the schedules of tariff concessions had been adopted by the CONTRACTING PARTIES in March 1980. The objective of this system was that these schedules should replace all earlier GATT records. However, in the last ten years little progress had been made in completing all the columns. He also recalled 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 instruments remained valid sources of information. Until the time of final certification, the right to challenge entries in columns 5 to 7 remained. Four countries, namely Australia, Norway, the United States and Yugoslavia, had submitted proposals for the inclusion of additional information in the various columns, but without any success. He pointed out that serious consideration should be given to this matter in view of the future possibility of having to insert in the schedules additional information related to other duties and charges. The Chairman invited all delegations concerned to report on the progress made in their negotiations or consultations regarding entries under columns 5 to 7.

4.2 The representative of the European Communities said that his authorities had inserted in their schedule entries related to column 6 and had circulated proposals for entries under columns 5 and 7. Negotiations had been carried out and in some cases concluded with interested contracting parties. In some other cases outstanding issues remained. His authorities had hoped to resolve these issues and incorporate the results of these negotiations along with those of the market access negotiations into the EC schedule. However, in view of the present situation regarding market access negotiations, his authorities would concentrate on completing negotiations related to the entries under columns 5 and 7 by the end of the year.

4.3 The representative of Switzerland stated that his authorities hoped to finish negotiations with respect to entries under columns 5 and 7 as soon as possible. With regard to column 6 he noted that there had been a lack of agreement within the Committee on the contents of this column. He recalled that Switzerland had entered the dates of all initial commitments, while other contracting parties had chosen other options. In the view of his delegation it appeared necessary to reach a decision on this matter.

4.4 The Chairman recalled that efforts had been made during the course of the previous year to adopt a common approach related to the contents of column 6. Further consultations would be needed if the Committee had to reach a decision on this matter.

4.5 The representative of the European Communities had no objections to the Chairman's suggestion. He proposed that during these informal consultations preparatory work regarding the contents of column 6 could already start.

4.6 Mr. Kautzor-Schröder (GATT secretariat) recalled in this context the format for the recording of concessions, which had been developed in the market access negotiations of the Uruguay Round (see the draft protocol forming part of document MTN.TNC/W/35/Rev.1, i.e. the paper prepared for the Brussels Ministerial Meeting). This format provided for three annexes, i.e. for tariff concessions, for concessions on non-tariff measures, and for the recording of other duties and charges (Annexes I - III). He wondered whether the future GATT schedules should not be structured in a similar way, so as to avoid an overburdening of the loose-leaf schedules of contracting parties with too many columns.

4.7 The Committee took note of the statements made and agreed that an informal meeting would be held where these issues would be discussed.

5. Amendments to the Harmonized System Nomenclature

5.1 The Chairman recalled that as had been suggested at the last meeting of the Committee in October 1990, this item had been included in the agenda of the present meeting. The GATT secretariat had also been requested during that meeting to contact the Customs Co-operation Council in Brussels, in order to obtain a list of the substantive changes of the Harmonized System Nomenclature that would come into force on 1 January 1992. The secretariat had prepared a technical note (TAR/W/81), and the list of substantive changes that involved the transfer of a product from one 6-digit HS heading to another would be circulated as an addendum to this document. The great majority of changes were purely technical or editorial. It was therefore proposed by the secretariat that these changes be incorporated into the schedules using the Procedures of Modification and Rectification of Schedules of Tariff Concessions, while not excluding the right of contracting parties to alternatively use the Procedures for Negotiations under Article XXVIII. Depending on the amount of changes to be made to the Harmonized System schedules, it would perhaps not be necessary to submit whole schedules for certification; it would be sufficient if only the pages that contained a change be identified, for example by an asterisk or through the shading of the item in question.

5.2 The representative of the Customs Co-operation Council (CCC), Mr. Ahmad, stated that the amendments agreed to in July 1989 were due to enter into force on 1 January 1992. Most of these changes were of an editorial nature; however, there were a few substantial changes. The latter changes had been reflected in the correlation tables. The HS Committee had originally decided not to issue such tables, but following the request from the GATT secretariat it had reversed this decision. Unlike previous times, a description of the affected commodities had also been provided. The present tables were provisional and a final version of these tables would be available by mid-June.

5.3 The representative of the United States thanked the CCC representative for the provisional correlation tables. These tables allowed countries to identify cases where an item had moved from one 6-digit HS heading to another and consequently to identify cases where a change in a duty rate might occur. He stated that because the Harmonized System would be undergoing constant revision, his authorities had felt that the Committee should establish a regular procedure for dealing with such future changes. While the amendments proposed for implementation on 1 January 1992 were quite modest, there would be substantial changes proposed for implementation on 1 January 1996. It should also be noted that since many of the CCC decisions would be directed towards establishing uniform classification for particular products, it might be that what constituted a substantive change for one contracting party might not constitute a substantive change for another contracting party.

5.4 His government's proposal consisted of three types of notifications for three types of changes. Firstly, a notification of a modification which involved neither a change in the product classification nor a change in the bound rate of duty. This notification would consist simply of the proposed modification. Secondly, a notification of a modification which involved a change in the product classification but which did not involve a change in the bound rate of duty. This notification would consist of the proposed modification and the concordance information between the existing GATT schedule nomenclature and the proposed one. It was important to know where a product was coming from in the individual schedule of a participant. Thirdly, a notification of a modification which involved a change in the bound rate of duty. This notification would consist of not only the proposed modification and the concordance tables, but also trade information related to the imports of products undergoing a change in the bound rate of duty. The first two notifications would be handled under the Procedures for Modification and Rectification, while the third one would be dealt with under the Procedures for Negotiations under Article XXVIII.

5.5 The representative of the European Community thanked the CCC secretariat for producing the correlation tables and added that these provided a very useful reference point for subsequent discussions. He welcomed the United States proposal but added that it had failed to consider the situation of a transferred product which had a negligible trade volume and the situation of a transferred product which did not represent a change for some countries because they had already been classifying this product under the new HS heading. Although Article XXVIII did deal with the former situation, it might be worth examining these issues in more detail.

5.6 The representative of the CCC stated that a transferred product would not represent a change for contracting parties that had already been classifying the product under the new HS heading. The HS Committee had also not considered as substantial a transferred product which did not involve much trade. He confirmed the fact that a package of substantial changes would be agreed upon by the HS Committee in 1993 and would enter into force on 1 January 1996.

5.7 The representatives of Japan, Canada, Austria, Sweden, Australia, New Zealand and Thailand thanked the CCC secretariat for the correlation tables, and the United States delegation for its proposal on the procedures to be adopted for future amendments to the Harmonized System Convention.

5.8 The representative of Japan stated that his authorities for two reasons favoured using the Procedures of Modification and Rectification to incorporate into the GATT schedules the forthcoming changes of the Harmonized System Convention. Firstly in the past, revisions of the CCC Nomenclature, which in some cases had also resulted in minor changes in concession rates, had been incorporated into the GATT schedules using this Procedure. Secondly, in view of the fact that the date of implementation of the HS changes was 1 January 1992 and that this period of time was also

important for the market access negotiations, it was preferable to have a more rapid approach. With respect to the United States proposal he pointed out that there were some technical aspects which had yet to be discussed and agreed upon, for example the procedure to be followed in the case of an amendment to a Chapter Note, which did not result in a change in the tariff classification but which resulted in a modification of a tariff concession. He suggested that another meeting of the Committee where such technical points could be discussed would be useful.

5.9 The representative of Canada stated that the United States proposal provided contracting parties with six months in which to submit notifications. While this time period may have some relevance in the context of the present HS changes and their implementation on 1 January 1992, it would not be sufficient in the future. He had understood that the CCC secretariat would agree during the course of 1993 on the changes to be implemented on 1 January 1996. This would mean that contracting parties would get approximately twenty-one months advance notice regarding any proposed changes to the Harmonized System Convention. Consequently, it would seem possible for contracting parties to have a longer period of time in which to submit notifications. With reference to the remarks made by the Japanese delegate, he did not feel that the Modification and Rectification Procedure was appropriate to deal with all kinds of changes. There had to be a distinction between a technical and a substantive change, with the latter one warranting more serious consideration. However, he supported the suggestion of another meeting to look more closely at the various outstanding issues.

5.10 The representative of Austria indicated an error in the footnote of the CCC secretariat's document where it read "1983 version" instead of "1988 version". He pointed out that his government had always favoured simple procedures which involved less administrative work. However, he needed to examine the United States paper more carefully and would comment on it during the next meeting.

5.11 The representative of Sweden agreed with the Japanese delegate that modifications of Chapter Notes might entail a transfer of products from one chapter or tariff position to another, and might even result in a change in the existing tariffs. He also agreed with the point raised by the Canadian delegate regarding the insufficient time in the United States proposal for the submission of notifications. The Harmonized System Convention had the status of national law in Sweden and changes to it could only be effected through Parliament. This process took two to three months at least. Additional time would also be required for contracting parties to pursue either the Procedures for Rectification and Modification or the Procedures for Negotiations under Article XXVIII, depending on the kind of change involved. He added that several such points could be usefully discussed during an informal meeting.

5.12 The representative of Australia supported the Japanese delegate's suggestion of holding another meeting soon. He noted that the United States paper and the technical note produced by the secretariat envisaged a need for both the Rectification and Modification Procedure and the Procedure for Negotiations under Article XXVIII following any amendments to the Harmonized System Convention. The use of either one would depend on the kind of change that had to be incorporated into a contracting party's GATT schedule. The submission of documentation as proposed by the United States would be useful in this regard because it would help countries identify the procedures they had to use. He shared the views of the other delegations regarding the limited time provided for by the United States proposal to complete negotiations. He enquired as to the possibility of the CCC secretariat producing a similar correlation table for the changes to be implemented in 1996.

5.13 The representative of New Zealand noted that several issues of a technical and substantive nature had been raised during the present meeting. She stated that the United States proposal was a good one in principle but that it was preferable if the Committee could agree on the procedures to be followed in advance of the changes to be implemented. She supported the suggestion of holding another meeting with a view to resolving several of these issues.

5.14 The representative of the United States noted that while most of the Harmonized System amendments to be implemented in 1992 were technical, there were a few substantial ones. It was for this reason that his authorities in their proposal had envisaged a combination of the two types of procedures: the Rectification and Modification Procedure for the technical changes and Article XXVIII procedures for the more substantive ones. He said that both procedures entailed a ninety-day notification period and consequently no one procedure was more rapid than the other. He agreed that in the event of the CCC secretariat being able to give a twenty-one to twenty-four months advance notice of any HS amendments, then the six months time period provided in the United States proposal could be extended. He observed that if changes had to be introduced into GATT schedules by 1 January 1992, contracting parties would have to move quickly and provide notifications prior to the end of July. This would give delegations enough time to look at them and conclude the necessary consultations and domestic implementation procedures before the 1 January 1992 deadline. He also supported the suggestion of a future meeting to discuss the various technical issues including the handling of changes in the Chapter Notes which might result in a modification of the scope of a concession.

5.15 The representative of the European Communities requested the CCC secretariat to indicate in the final version of the correlation tables changes that had been triggered off by an amendment to a Chapter Note.

5.16 The representative of Thailand agreed that the time-frame of six months as provided by the United States proposal was too short. In view of the fact that advance notice would be given by the CCC secretariat regarding future amendments to the Harmonized System, it was possible to envisage in the United States proposal a longer time period for the submission of documentation. He pointed out that some extra time would be required to transpose the existing HS text to the new one. This extra time was needed especially for countries which had implemented the Harmonized System in more than the 6-digit level and for countries which had to translate the revised HS text into their own national language.

5.17 The representative of the CCC stated that it would be possible for the CCC secretariat to prepare correlation tables for the 1993 amendments. He also informed the Committee that according to Article 16 of the HS Convention, any substantial amendments agreed to before 1 April would be implemented on 1 January of the second year, and any amendments agreed to after 1 April as was normally the case would be implemented on 1 January of the third year. If an amendment was not substantial, the "corrigendum procedure" was followed where the amendment once approved by the Council would be implemented within six months.

5.18 Mr Kautzor-Schröder (GATT secretariat) supported the previous statements that a lead-time of six months, as foreseen in the US paper, would probably not be sufficient. Experience had shown that negotiations under Article XXVIII took much longer than was originally envisaged, and this would most likely be true for the major revision of the Harmonized System scheduled to come into effect in 1996. He suggested that it might be preferable to begin the process under Article XXVIII as soon as the Customs Co-operation Council had adopted a recommendation to revise the HS and the correlation tables (which the CCC secretariat had kindly offered to supply) had been received. Unless this process was taken in hand in good time, the danger existed that a revision of the HS entered into force whereas the Article XXVIII negotiations had not been terminated and the respective tariff schedules did not correspond to the revised HS.

5.19 The Chairman summarised the various points that had been raised during the meeting. It appeared to him that there was a general interest in adopting a more systematic approach to deal with any future short- and long-term Harmonized System amendments. However, it was also felt that a distinction should be made between a technical and a substantial change. The former would be dealt with under the Procedures for Modification and Rectification and the latter under the Procedures for Negotiations under Article XXVIII.

6. Date of the next meeting

6.1 The Chairman suggested that an informal meeting be convened during the week of 17 June 1991 where the following points would be discussed: the United States proposal regarding procedures to be adopted following amendments to the Harmonized System Convention; the contents of column 6; and the results of the Uruguay Round Negotiations which would affect the work of the Committee. A subsequent formal meeting would be fixed in consultations with members of the Committee and in light of the results reached during the informal meeting.