

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

TN.64/11/Rev.1

10 December 1963

Special Distribution

Trade Negotiations Committee

REPORT OF THE SUB-COMMITTEE ON THE TARIFF NEGOTIATING PLAN

1. The Sub-Committee was instructed to consider and submit to the Trade Negotiations Committee recommendations in regard to:

- (i) the depth of the tariff reductions, and the rules for exceptions;
- (ii) the criteria for determining significant disparities in tariff levels and the special rules applicable for tariff reductions in these cases.

2. The following report sets out the position which has been reached on these questions.

I. The depth of the tariff reductions and the rules for exceptions

(a) The depth of tariff reductions

3. The Sub-Committee reaffirmed the working hypothesis of a 50 per cent across-the-board reduction in tariffs. In addition, on this hypothesis, most members agreed that an objective of the tariff negotiating plan as a whole should be to arrive as close as possible to an overall 50 per cent reduction. The representative of the Community said that he could only accept that this should be stated as an objective of the negotiating plan if the settlement of disparities also were stated as an objective of the negotiating plan.

4. The Sub-Committee discussed the problem of determining the level of duties by reference to which the 50 per cent reduction would be calculated. It agreed that, subject to the general principle that in all cases, the duties used for reference purposes should be those existing after the Dillon round of tariff negotiations and should reflect the result of those negotiations, it should be left to each participating country to propose the basis on which the across-the-board tariff reduction should apply in its case, it being understood that this basis would have to be acceptable to the other participating countries.

(b) Exceptions

5. The Sub-Committee agreed that no rules for exceptions were needed additional to the proviso in the Resolution of Ministers that "there should be a bare minimum of exceptions which shall be subject to confrontation and justification".

II. The criteria for determining significant disparities in tariff levels and the special rules applicable for tariff reductions in these cases

(a) Prima facie identification of disparities

6. Most members of the Sub-Committee agreed that:

(i) as a first step in the identification of significant disparities attention should be given only to those cases where the "high" rate of duty is not less than a certain minimum percentage and exceeds by at least a certain number of percentage points rates on the same product in the other tariff or tariffs with which the comparison is made;

(ii) disparities should only be invoked in respect of high duties in the United States, the European Economic Community and the United Kingdom (the reference countries).

7. While the representative of the European Economic Community was prepared to accept (i) as a working hypothesis, he expressed reservations as to the principle involved; in the view of the Community, a significant disparity could exist wherever there was more than a certain spread between two tariffs, whatever the absolute level of the higher tariff.

8. Several members of the Sub-Committee agreed to a working hypothesis proposed by the representative of the Community that, should formula (i) above be retained, 30 per cent should be used for the minimum level and 10 percentage points for the minimum gap. Some delegations felt that a higher rate than 30 per cent should be used for the minimum level. The representative of the United States said that, in his view, the appropriate figure for the minimum level was 60 per cent and that the lower duty must be less than one third of the higher duty.

9. The representative of the European Economic Community was not able to agree to the principle in (ii) above. While he accepted that there must be some limitation on the tariffs which could be invoked for the purpose of identifying high rates in the context of the disparity exercise, he did not agree that it was necessary to go so far as to confine these tariffs to those of the three reference countries suggested by other members of the Sub-Committee.

(b) Use of additional criteria to identify where disparities are significant

10. Most members of the Sub-Committee felt that the disparities identified by the criteria set out in paragraph 6(i) above should be examined further in the light of additional criteria in order to establish whether they were meaningful in trade terms.

11. In this connexion, the following suggestions were made as to possible criteria:

- (i) disparities should be regarded as significant where there are substantial imports of the product concerned from the high duty country into the low duty country or, in a variant of this, where the high duty country is the principal supplier to the low duty country;
- (ii) disparities should not be regarded as significant where there are no, or only negligible, imports into the country with the low duty (one delegation felt that potential imports should be taken into account as well as actual imports);
- (iii) disparities should not be regarded as significant where there are substantial imports into the country with the high duty;
- (iv) disparities should not be regarded as significant where there is no production (or, in a variant of this, no actual or potential production) in the low duty country;
- (v) disparities should not be regarded as significant where the low duty country maintains protective measures not consistent with the General Agreement.

12. In addition, some members proposed the following provision with regard to the right to invoke tariff disparities:

- (vi) the special rules for tariff reductions in cases of significant disparities should not apply automatically but only if they are invoked by the low duty country; and only a country which is the principal supplier to the country with the high duty can so invoke the rules.

13. The Sub-Committee recognized that where in a disparity case the low duty was zero, any special rules for tariff reductions for dealing with disparities would not be applicable.

14. Several members of the Committee took the view that, to the extent that the maintenance of bargaining power was a factor in the disparity issue, the appropriate criterion was that set out in (i) above; since the low duty country could not derive any bargaining power from duties on products which were not exported to it by the high duty country.

15. The representative of the Community said that, while he recognized the validity of criterion (iv) above, he could not accept the need for other criteria but could only note the various suggestions that had been made.

(c) Disparities and market disruption

16. The representative of the Community said that account must be taken in the disparity exercise not only of the export interest of the low duty country, but of the extent to which, as a result of its lower duty, it took a larger share than countries with high duties of imports from third countries.

17. Most other members of the Sub-Committee felt that, while the possibility of market disruption resulting from the 50 per cent reduction in tariffs was clearly a problem which would have to be considered, it did not fall to be considered in the context of tariff disparities. Some of these members, however, felt that there might be circumstances in which a high duty, even when halved, would still be sufficiently restrictive to distort the natural pattern of trade and to deflect artificially on to other markets an unfair share of the increased exports from third countries which would be generated by the general reduction in tariffs; criterion (ii) might be relevant in such circumstances; but they pointed out that a major difficulty of attempting to deal with this type of case through any formula based on the height and effect of the United States tariff was that, where it justified exempting lower duties from the full 50 per cent cut, it would by the very nature of the case justify this for all countries with low or only moderate duties; with the result that third countries would be maintaining duties against one another for no better reason than the height of the United States tariff even though the United States might not be a material exporter of the goods in question.

III. Rules to apply where significant disparities are identified

18. It was generally agreed that any such rules would have to be based on the "high" duty being reduced by 50 per cent and the "low" duty by some smaller percentage. It was noted that there were broadly two ways of achieving this:

- (i) there should be only two rates of reduction. The high duty should be reduced by the first of these and the low duty by the second. The rate of reduction in the case of the low duty would, therefore, be the same whatever the size of the disparity between it and the high tariff;
- (ii) there should be a sliding scale which would have the effect that, the lower the low duties were, or the greater the disparity between it and the high duty, the smaller would be the reduction required in it.

19. There was a general feeling in favour of the second of these two alternatives. The United Kingdom representative put forward the following precise proposal:

- (a) all duties would be reduced first by the agreed linear cut;
- (b) after the linear cut, all "low" duties would receive a rebate of 2 percentage points, plus an extra point if the "low" duty is even less than one half of the "high" duty.

Several members of the Sub-Committee felt that this was a useful approach to the problem. The United States representative said that, while he agreed with this view, he should not be regarded as necessarily agreeing to the actual figures suggested by the United Kingdom.

20. The Sub-Committee also discussed whether, in any particular case in which a significant disparity was identified, the special rule for reductions of less than 50 per cent should apply to all duties below the high duty or only to duties in respect of which the disparity treatment could be invoked (in the sense that they met the criteria set out in paragraph 6 above and any additional criteria of the sort referred to in paragraph 11).

21. The representative of the Community said that the special rules to apply in case of tariff disparities must be multilateral in their application, and that this meant that all rates below the high rate would have to be subject to the special rules and, therefore, reduced by something less than 50 per cent. Otherwise the relation between tariffs would be destroyed; and it would be very difficult to explain why a duty of one country had to be reduced by 50 per cent when another country's duty on the same product which was at the same level, or even higher, was being reduced by less than 50 per cent.

22. Most members of the Sub-Committee, however, felt that the special rules for tariff reductions should apply only to low duties which qualified for disparity treatment in their own right, if only because this would minimize the effect the special disparity rules would have on the general objective of securing a 50 per cent reduction in tariffs.

IV. Secondary and tertiary effects

23. Many members pointed out that, where a country with a "low" duty invoked the disparity rules in order to reduce a duty by less than 50 per cent, the impact of this in terms of trade might not fall primarily or at all on the country with the "high" duty but on a third country. In particular, in the case of most of the products in respect of which the EEC would be able to invoke the disparity rules in the light of disparities between the United States and Community tariffs, most of the Community imports came not from the United States but from third countries, in particular other European countries. If, therefore, the Community made reductions of less than 50 per cent on these products, the main impact would be on those third countries. These would then feel it necessary, in order to restore reciprocity, to make cuts of less than 50 per cent in duties of interest to the Community, and inevitably to one another. This in turn could lead to the withdrawal of part of the offers of the Community and so to a series of chain reactions which would result in the general level of tariff reductions falling far below the 50 per cent objective.

24. In this connexion some members gave detailed figures of the possible effect on their countries. The Swiss representative for example pointed out that Swiss exports, to the Community as well as to the United States, consisted to a large extent of products on which the United States tariff was very high. Despite this fact, in order not to burden the Kennedy round from the very start, Switzerland did not intend to announce any exceptions in its initial offer of a 50 per cent cut in its industrial tariff. It was greatly worried, however, that the Community might invoke the items in question under the heading of disparities and, consequently, deprive Switzerland, who is the principal supplier of these same items to the Community, of the full benefit of the 50 per cent cut. This might affect more than one half of Swiss exports of main supplier items to the Community - amounting roughly to 150-200 million dollars - thus inflicting on Switzerland, a third country, having done nothing whatever to provoke such consequences, a very considerable damage.

25. In the light of these considerations, most members of the Sub-Committee felt strongly that every effort must be made to limit the scope of the disparity problem and to keep to a minimum the items to which special rules for tariff reductions would apply.

26. The representative of the Community stated that he could well understand the anxieties of third countries but he pointed out that one should distinguish between the problem and its solution. If there was a problem, it arose because, first, some of the participating countries had highly differential tariffs whereas the tariff of the Community departed very little from an average level of protection; and, secondly, because the figure of 50 per cent, taken as a hypothesis for the linear reduction in tariffs, coincided with the maximum amount by which one of the principal partners in the negotiations had authority to reduce its duties. It followed that the differences in the rates of reduction could only be in one direction.

V. Very low duties

27. The representative of the Community said that special consideration should be given to cases where tariffs were so low that a 50 per cent reduction in them would completely remove any protective effect; this would not be so in the case of the other participating countries and this could result in a tariff disequilibrium at the end of the negotiations. It might be that very low rates should be subject to the special rules for reducing tariffs in disparity cases even if disparities could not be invoked in these cases under the ordinary disparity rules. There might be yet other cases where some special provision for very low duties quite outside the field of the disparity rules, might be needed. The final form of the tariff negotiating plan might have to make some special provision for very low rates which could not be treated under the disparity rules.

28. Other members of the Sub-Committee felt that to the extent that very low rates constituted a problem in the context of tariff disparities this could be dealt with by some such provision as that suggested in paragraph 18 above. To the extent that low rates were said to constitute a problem as such apart from tariff disparities, it was pointed out that a problem of this kind did not feature in the Resolution of Ministers (which referred only to the problem for certain countries with a very low average level of tariffs); accordingly the representative of the Community was asked to circulate to the Sub-Committee a short paper explaining what he had in mind. The representative of the Community took note of this request.

VI. Other matters

29. There was general agreement that the calculation of tariff levels for the purpose of the disparity exercise should be based on the effective incidence of tariffs, and would, therefore, have to take into account such matters as were relevant to the effective incidence.

30. The Sub-Committee recognized that a disparity could only be invoked for the same product. While the Community accepted this principle, it considered that the differences in nomenclatures could raise a certain number of problems which would have to be studied more thoroughly. The Sub-Committee agreed to carry out this examination at a later date.