

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Trade Negotiations Committee

PROCEEDINGS OF THE SIXTEENTH MEETING

Held at the Palais des Nations, Geneva,
on 28 June 1967

DRAFT

Chairman: Mr. E. WYNDHAM WHITE

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I. Legal instruments embodying the results of the negotiations

1. The Chairman said that certain of the points with which the Committee had to deal were inter-related since developing countries would be making certain proposals under point III of the agenda which might lead to modifications in the Final Act. He suggested that, while other substantive questions on the legal instruments be resolved under the present agenda item, this point should be dealt with separately. The instruments to be annexed to the Final Act were listed in the report of the Legal Drafting Group (TN.64/104). He drew the attention of the Committee in particular to paragraphs 5 to 15 of this report. He asked the Committee to adopt the report of the Legal Drafting Group, to approve the text of the Final Act (subject to the qualification which he had earlier mentioned) and the annexation to the Final Act of the instruments listed in paragraph 2 of the Legal Drafting Group's report.

Delegations are requested to inform the secretariat (ext. 4448) by Wednesday, 19 July of any comments they may have on statements attributed to them.

2. In reply to a question, the Chairman confirmed that texts of the instruments (other than the detailed schedules) would be translated into Spanish as quickly as possible.

3. The representative of the United States said that his delegation could accept the wording of paragraph 6 of the Geneva (1967) Protocol (TN.64/104, page 9). The United States intended to sign the Protocol, without qualification, on 30 June with a view to starting to implement it on 1 January 1968; his delegation hoped that several other participants would also sign the Protocol on 30 June, either without qualification or subject to ratification. It was the understanding of his delegation that if, by the end of November 1967, they did not consider that a sufficiently large group of participants was prepared to start their tariff reductions on 1 January 1968, the United States Government could, of course, delay the commencement of their reductions until they were satisfied that a sufficient group was prepared to act.

4. The representative of the United States also said that changes in border tax adjustments, whether or not accompanied by internal tax changes and irrespective of their consistency with the provisions of the General Agreement on Tariffs and Trade, may have trade effects that nullify or impair concessions or other benefits provided in the Kennedy Round Protocol. In this connexion the United States declared that, given the absence of sufficient detailed information, it was unable to determine, and therefore unable to anticipate, in which specific ways particular changes in border tax adjustments may nullify or impair individual concessions or other individual benefits provided for in the Protocol. The representatives of Canada and Japan associated themselves with this declaration.

5. The representative of the European Economic Community said that the Community was harmonizing the legislation of the various member States with respect to turnover taxes. The European Economic Community was carrying out this harmonization in full conformity with the letter and spirit of the provisions of the General Agreement. It could not accept a statement implying that compensatory charges applied in conformity with the letter and spirit of the General Agreement could in any way have, within the meaning of Article XXIII, trade effects that nullified or impaired benefits accruing to its partners directly or indirectly from the concessions granted by it in the Kennedy Round. It was in the context of this same interpretation of the rules of the General Agreement that the member States and the Community had undertaken and undertook their obligations pursuant to that Agreement, and had, from the outset, taken part in all the work undertaken under the Agreement.

6. The Chairman said that certain problems still remained in the negotiations. These should be dealt with on that day since they might provoke changes in schedules. He recalled that the condition attached by the European Economic Community to its concessions on certain textile items had caused other delegations some concern. He enquired whether the Community was now able to reformulate this condition along the lines which he had suggested to them.

7. The representative of the European Economic Community said that they had studied the proposal made by the Director-General with great care but had come to the conclusion that they should use their original text. This was a matter which might be discussed bilaterally since only one participant had indicated that it had difficulties with their text.

8. The representative of the United States said that his delegation deeply regretted the decision of the European Economic Community to maintain its reservation on its cotton textile offers. His delegation had thought that the original text had been withdrawn on 15 May; they regretted that the Community had not been able to accept the proposal of the Director-General. If the Community maintained its condition in its original form the United States would be obliged to add the following note to its concessions on cotton textiles: "At such time as the European Economic Community increases rates of duty, pursuant to the provisions of note (cl), on articles provided for in items designated (cl) in its schedule (schedule XL) to the Geneva (1967) Protocol concessions provided for in this schedule (schedule XX) under the same Protocol with respect to cotton textiles, and other articles, similar to those designated (cl) may lapse." He concluded by saying that the United States would drop this note if the Community dropped its condition, even if this were agreed after 30 June.

9. The representatives of Pakistan, India, United Arab Republic and Spain said that they would be informing their Governments of the new situation and that they would in due course be communicating their reactions.

10. The representative of Japan expressed his very serious concern over the position taken by the United States, pointing out that Japan's exports of cotton textiles to the United States were valued at some \$100 million. The attachment of new conditions to the United States' offer on cotton textile items would oblige his Government to take consequential action although he could not at that time specify what that action would be. He reserved the right to take such action.

11. The Chairman recalled that difficulties had arisen in the negotiations between the European Economic Community and Denmark and the European Economic Community and Argentina relating to concessions on meat by the Community; the outcome of these negotiations would have important consequences for the participants concerned.

12. The representative of Denmark said that his delegation had been informed on that morning that the European Economic Community would withdraw its offer on live cattle. There was some doubt as to whether the Community would maintain its offer on sows. The Danish Government had decided that, in order to obtain a reasonable degree of reciprocity, it would have to modify its own offers. As it was difficult to evaluate the situation, the Danish Government had decided to be cautious and to modify its offers on one product only. Accordingly, the offer on passenger cars falling under tariff heading 87.02C would now be to reduce the duty from 15 per cent ad valorem to 12 per cent, rather than to 7.5 per cent as formerly proposed. In deciding on the adjustment it would make, the Danish Government had had careful regard to the interests of third countries. Only 5 per cent of Danish imports under the item in question came from countries outside the European Economic Community and the European Free Trade Area. He said that, should exports of live cattle and sows to the Community in fact develop in a satisfactory way, his Government might be able to make the reduction originally proposed. He concluded by saying that his Government was still prepared to adhere to the agreement reached on 15 May.

13. The representative of the European Economic Community said that, while he understood the disappointment of other participants which had expected a better result, the effort in fact made by the Community should not be underestimated. His delegation reserved its position on the Danish response to its definitive offers which had been tabled on that morning.

14. The representative of Japan pointed out that his country had about \$1 million of trade under heading 87.02C in the Danish tariff. His delegation reserved its position on the action taken by Denmark and wished to have further bilateral discussions with the Danish delegation before the matter was finally settled.

15. The representative of the United States said that his delegation understood the reasons behind the Danish action but that his delegation would need a little time to evaluate its implications.

16. The representative of Argentina said that he had reported the modification which the European Economic Community had made in its offer on frozen meat to his Government. While acknowledging the goodwill which had always been demonstrated by the Community's negotiators, he said that, in his view, the Community had, in practice, withdrawn the only thing which his delegation had requested of it. He regarded as completely unacceptable that the agreement which had been negotiated between Argentina and the Community should be disregarded and that Argentina be faced with an ultimatum. It had been argued that Argentinian exports threatened to disrupt the Community market. He pointed out, however, that Argentina had been prepared to offer effective guarantees on prices. He pointed

out also that, as a contribution to the negotiations and as a part of a far-reaching reform of its economic system, Argentina had been liberalizing its import régime. The action taken by the Community would provide an impetus for protectionist tendencies in his country.

17. The representative of the European Economic Community said that his delegation in no way under-estimated the importance of trade in frozen meat to the Argentinian economy. As was usual, however, participants in the negotiations had to consider the possibility of making concessions in the light of their own economic and social conditions. His delegation had, several weeks before, given warning to the delegation that their offers on frozen meat might be modified. He did not agree that the Community's present offer was worthless and said that, in practice, Argentinian exports of frozen meat to the Community were likely to develop in a satisfactory way.

18. The representative of Australia said that his delegation shared the disappointment of other exporters on this question. He would refer the matter to his Government to see what action they would wish to take.

19. The representative of the European Economic Community expressed surprise at this. The Community had never negotiated on this product with Australia and had never had an offer on the table to Australia on frozen meat.

20. The Chairman pointed out that several questions related to the Memorandum of Agreement on Basic Elements for the Negotiation of a World Grains Arrangement (TN.64/105). He recalled that the Japanese Government had made a reservation to the food aid provisions of this instrument and intended, on signing the Memorandum of Agreement on 30 June, to circulate a letter setting out its intentions with regard to the granting of food aid. He said that it was the established practice that a signature to a treaty which was subject to a reservation would remain ineffective unless the reservation was accepted unanimously by the other signatories to the treaty. He asked whether the participants which had drawn up the Grains Agreement would accept the Japanese reservation.

21. The representative of the Nordic delegation recalled that his delegation had not been able to accept the Japanese reservation. He expressed once again the serious concern of the four Nordic countries about the Japanese reservation. They had very grave doubts as to the advisability of watering down the food aid programme as envisaged within the context of a cereals arrangement. The Japanese reservation created a most difficult situation for other governments which were expected to contribute in cereals or in cash. The four Nordic countries did not wish, however, at that very late moment in the negotiations to press their

point of view to the extent that grave problems might arise for the cereals agreement and the whole Kennedy Round. They, therefore, could accept the Japanese reservation. They did appeal, however, as strongly as they could to the Japanese Government to apply their reservation in such a manner that its implementation would, to the fullest extent possible, be consistent with the cereals agreement. They appealed to the Japanese Government to make their contribution as extensive as possible in the form of cereals, rice included. To the extent that contributions in the form of other agricultural products was unavoidable these must be made in a manner which did not cause damage to normal patterns of trade, nor create the very grave complications for other governments to which he had referred. Furthermore the Government of Denmark, which was a minority Government had instructed him to inform participating countries that the reservation made by the Government of Japan to the Memorandum of Agreement on Basic Elements for the Negotiation of a World Grains Agreement might make difficult the acceptance by the Danish Parliament of Danish participation in the international food aid programme foreseen in the said Memorandum, in view of the inequity among participants resulting from the acceptance of that reservation. A declaration to that effect would be submitted to the Director-General prior to the signing of the Memorandum.

22. The representative of Argentina said that he could not at that time accept the Japanese reservation. His delegation was still awaiting final instructions.

23. The representative of the United Kingdom associated his delegation with the statement made by the representative of the Nordic countries. The United Kingdom had made clear from the start that it disliked the Japanese reservation. In particular, they had stressed many times in the course of discussions on it that it was essential that non-commercial disposals by Japan of agricultural material should be conducted in such a way as to avoid harmful interference with normal commercial trade in these materials. His delegation would return to this question when the details of the food aid programme established under the Memorandum of Agreement were being worked out. If it were found that there were any harmful interference with the commercial exports of the United Kingdom, the United Kingdom would take vigorous action to defend its interests. It was on this understanding that the United Kingdom was prepared to accept the Japanese reservation on Section V of Article 2 of the Memorandum of Agreement and the statement of Japanese intentions included in the letter which the Government of Japan proposed to send to the Director-General when Japan signed the Memorandum of Agreement subject to reservations.

¹In a letter dated 29 June 1967 and addressed to the Director-General the delegation of Argentina informed the signatories of the Memorandum of Agreement that its Government accepted the Japanese reservation. This letter also set out the understanding of the Argentinian Government on the manner and conditions in which Japan would grant food aid.

24. The representative of the European Economic Community said that he could not add a great deal to what had been said by previous speakers. His delegation regretted that Japan had found it necessary to maintain its reservation but could accept the reservation.

25. The representative of Switzerland associated himself with the statement of the representative of the Nordic countries.

26. The Chairman said that the position appeared to be that all the signatories to the Memorandum of Agreement on Basic Elements for the Negotiation of a World Grains Agreement, with the exception of Argentina, could accept the Japanese reservation. This was confirmed. The Chairman said that a Japanese signature of the Memorandum of Agreement subject to its reservation would therefore be ineffective until such time as Argentina accepted the reservation.¹

27. The Chairman recalled that the four Nordic countries had on 15 May made a declaration regarding their position on the shipping aspect of the food aid provisions of the Memorandum of Agreement (L/2804, page 11). He suggested that, if none of the other signatories had any difficulties with it, they should simply take note of the declaration. No objection was raised. The Chairman said that a similar question was raised by a letter, dated 14 May, from the delegation of Finland (L/2804, page 12). This was said to be a reservation to paragraphs 2 and 4 of Article II of the Memorandum of Agreement. If this were so, it would have to be subject to the formal procedures for dealing with reservations. If, however, the position described in the communication of 14 May was accepted by the other signatories as their understanding of the way in which the provisions in question would operate with respect to Finland, and in these circumstances the Finnish Government did not find it necessary to accompany its signature with a formal reservation, it would be sufficient to record this agreement.

28. The representative of the Nordic delegation said that Finland would not accompany its signature with a formal reservation on the understanding that its position had been fully discussed with, and accepted by, the delegations concerned; this also applied to the Nordic position on the shipping aspects of the food aid provisions. This was confirmed.

¹Argentina accepted the reservation on the following day - see footnote to paragraph 22.

29. The representative of the European Economic Community proposed that the words "and its member States" be inserted after the words "the European Economic Community" in line 3 on page 1 of the Memorandum of Agreement (TN.64/105). This was agreed.

30. The representative of India¹ said that on 8 May 1967 the leader of his delegation had addressed a letter to the Director-General conveying the Government of India's concern about several aspects of the proposed International Grains Arrangement, such as the fixation of minimum prices for wheat (TN.64/Ce/8). A full statement explaining his Government's point of view on different aspects of this Arrangement was also made by the representative of India on 2 June 1967 and circulated as TN.64/Ce/W/29. His delegation understood that a negotiating meeting would be held from 12 July onwards in Rome which would be jointly convened by UNCTAD and International Wheat Council. India would, no doubt, participate fully in these discussions. This statement was to reiterate their concern on certain aspects of the Memorandum of Agreement between certain importing and exporting countries (TN.64/105) and to reserve their position with regard to that document.

31. The Chairman said that some points on the Agreement on the Implementation of Article VI (annexed to TN.64/96) remained to be dealt with. He recalled that a statement had been received from the Swedish delegation concerning the provisions of the Swedish Secrecy Act (TN.64/98). This statement explained possible marginal difficulties which might arise in the implementation by Sweden of the Agreement and did not constitute a formal reservation. The Committee therefore took note of the statement.

32. The representative of Austria, commenting on the Agreement on the Implementation of Article VI, stated that the legal implications which might arise in Austria from this agreement were still under consideration by his authorities in the light of national legislation.

33. The representative of Australia said that the Agreement on the Implementation of Article VI would be considered carefully by his Government. He pointed out however that although Australia had been a member of the Group on Anti-Dumping, Australia did not, in fact, take part in those last meetings of the Group when the Agreement was drawn up. Therefore, the Australian delegation did not consider that the last sentence of paragraph 4 of the Final Act referred to Australia in relation to the Agreement on the Implementation of Article VI. This statement was noted by the Committee.

¹The delegation of India has requested the inclusion of this paragraph although, as a result of a misunderstanding, it was not possible for them to make this statement during the meeting.

34. The Committee adopted the report of the Legal Drafting Group (TN.64/104). The Committee approved the text of the Final Act annexed to that report, subject to any amendments which might be made in the light of the discussion on the participation of the developing countries.¹ The Committee also approved the annexation to the Final Act of the instruments listed in paragraph 2 of the report of the Legal Drafting Group.

II. Initial negotiating rights

35. The Chairman referred to the proposal which he had put to the Committee in TN.64/103. He said that in several Articles of the GATT reference was made to contracting parties with which concessions were initially negotiated. Such references occurred in Article XXVIII, and also in Articles XVIII, XXIV and XXVII. Under the terms of Article XXVIII, for example, contracting parties with which a concession had been initially negotiated had the right to be joined in the negotiations for the modification or withdrawal of that concession; in 1955 the principal supplier had also acquired the right to be joined in such negotiations. Article XXVIII also provided that, if agreement were not reached in these negotiations, contracting parties with a primary or a substantial interest in the concession modified or withdrawn had the right to withdraw concessions initially negotiated with the contracting party modifying or withdrawing the concession. A problem existed because, for the generality of concessions negotiated in the Kennedy Round, no initial negotiator would be specified. A consequential amendment to the General Agreement would be a slow process. He was therefore proposing that "in respect of the concessions specified in the Schedules annexed to the Geneva (1967) Protocol, a contracting party shall, when the question arises, be deemed for the purposes of the General Agreement to be the contracting party with which a concession was initially negotiated if it had during a representative period prior to that time a principal supplying interest in the product concerned".

36. The representative of Australia said that the text put forward by the Director-General would be acceptable to Australia on the basis that the words "that time" in the text referred back to "when the question arises". In other words, if a question of the type referred to in the document arose say in some five or eight years the representative period referred to in the text would be a period related to that time. The Chairman confirmed that this was the sense of his proposal.

37. The representative of the Nordic delegation said that the proposal of the Director-General would apply only in the case of concessions for which no initial negotiator was specified. The fact that in the Kennedy Round it had not been usual to grant initial negotiating rights caused difficulties for small countries. His delegation had made reservations on paragraph 3 of the

¹No amendments were, in fact, made.

Protocol but was prepared to lift these on securing the agreement of its main negotiating partners to the continuance of discussions on the granting of initial negotiating rights even after 30 June. This was confirmed by the representatives of the European Economic Community, Japan and the United States.

38. The representative of Chile said that it would presumably be open to participants other than the Nordic countries to request such discussions.

39. The representative of New Zealand said that as a delegation they saw no difficulty in the Chairman's proposal but that, because no formal reaction had been obtained from their Government, they would reserve their position on the proposal.

40. The Committee adopted the proposal of the Chairman. This would be forwarded to the CONTRACTING PARTIES for formal endorsement.

III. Participation of developing countries

41. The Chairman recalled that a note on the last meeting of the Sub-Committee on the Participation of Less-Developed Countries was before the Committee as TN.64/107. He said that he had been informed by the Chairman of the informal group of developing countries that the developing countries which had participated in the negotiations were unanimous in proposing for inclusion in the Final Act a text enumerating the issues of importance to them which had not been settled during the negotiations and calling for the continuation of negotiations on these issues. The Chairman had, he said, pointed out that the Final Act was a document with a limited legal function - the authentication of the results of the negotiations. If the Committee should decide that it was not appropriate to include a text as proposed in the Final Act, the Committee might draw up a recommendation or an agreed statement which could be put to the Committee on Trade and Development. The agreed statement might then be remitted by that Committee to the CONTRACTING PARTIES, together with an agreed programme of action on the points to which reference had been made.

42. The representative of Peru, in his capacity as Chairman of the Informal Group, confirmed that he had discussed this matter with the Chairman. All countries in the informal group which participated in the trade negotiations were unanimous in proposing that such a statement be incorporated in the Final Act.

43. The representative of the Nordic delegation said that two questions were involved - one of substance and the other of form. With regard to the question of substance, his delegation supported the drafting of an agreed statement. His delegation did not, however, feel that the Final Act was the place for such a statement.

44. The representatives of the United States, the European Economic Community and the United Kingdom said that it would not be appropriate or feasible to include a statement in the Final Act.

45. The representative of Peru proposed that such a statement should be agreed by the Committee and incorporated in another document of equal validity.

46. The Committee then examined the possibility of drawing up an agreed text. This discussion was carried out on the basis of two drafts, one submitted by the informal group of developing countries, the second submitted by the Chairman.

47. After discussion it was agreed that it would not be possible to reach agreement on a text.

48. The Chairman then confirmed that it would be open to participating developing countries to make a formal statement at the ceremony on 30 June for the signature of the Final Act. He emphasized that the matters of concern to developing participants would undoubtedly be pursued in the Committee on Trade and Development, whose Chairman had participated in the present debate. He would himself raise these questions again when presenting his report on the negotiations to the next session of the CONTRACTING PARTIES.

IV. Other business

49. The Chairman drew the attention of the Committee to the document summarizing arrangements for the signing ceremony on 30 June (TN.64/109).

50. He proposed that the documents which would be signed on 30 June should be derestricted on that date. This was agreed.

51. The Chairman then declared closed the final meeting of the Trade Negotiations Committee.