

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Sub-Committee on Tariff Negotiating Plan

SUMMARY BY THE SECRETARIAT OF MAIN POINTS RAISED AT THE MEETING IN JANUARY 1964

1. The Sub-Committee met from 27-30 January 1964. The meeting was devoted to the further consideration of the question of tariff disparities. This paper sets out (a) suggestions made by the European Economic Community; and (b) the main points made in discussion. It is circulated by the secretariat on its own responsibility for the convenience of delegations. The report of the fact-finding Group, to which reference is made in paragraph 4, is annexed.

I. SUGGESTIONS OF THE EUROPEAN ECONOMIC COMMUNITY

2. The representative of the European Economic Community said that the Community had reconsidered the question of disparities with the desire to go as far as they possibly could to meet the views which had been put forward by other countries and now wished, in the light of this reconsideration, to submit the following new suggestions for the consideration of the Sub-Committee:

(a) Prima facie identification of disparities

The representative of the Community recalled that his delegation had always expressed reservations as to the principle involved in the use of a "seuil" or minimum level below which rates of duty could be disregarded in the context of the disparity rules. Disparities could be significant whatever the absolute level of the higher tariff, and any "seuil" would be entirely arbitrary. Accordingly, the Community now suggested as a possible compromise solution, that disparities should be regarded as existing wherever:

- (i) the high rate was at least double the low rate; and
- (ii) in the case of primary products and finished products, there was a gap between the two rates of at least ten percentage points. (This would not apply to semi-processed products, as defined in terms of the Classification Statistique and Tarifaire. The value added on these products was, in most cases, very small; this meant that the protective incidence of the rates was greater than in the case of other products, and that a disparity of a few percentage points could, therefore, be significant.)

Subject to the right to return to this question at a later date if necessary, the Community could agree that the rules for the identification of significant disparities should apply only in respect of the three main tariffs, namely those of the United States, the European Economic Community, and the United Kingdom only.

(b) Additional "criteria"

While the Community considered that appropriate arithmetic criteria were in themselves adequate for the identification of significant disparities, they were prepared to accept that disparities provisionally identified by the arithmetic criteria in (a) would not be regarded as significant where:

(i) there were no, or only negligible, imports into the country with the low rate, provided that the absence of imports or their low level was not due to the existence of quantitative restrictions or measures with equivalent effect;

(ii) there was no production, and no short-term plan for production, in the country with the low rate.

(c) Additional "principles" regarding the invocation of disparities

(i) Notwithstanding the existence of significant disparities in cases which satisfied the arithmetic and qualitative criteria in (a) and (b), the Community would be prepared to discuss with the high rate country the possibility of not invoking the disparity rule where that country imported substantial amounts from the Community, taking into account all the relevant factors, such as the proportion of imports in domestic consumption. It would be for the high rate country to submit a list of the cases where they felt this applied.

(ii) The Community would also be prepared to deal in a pragmatic way with cases where the application of the disparity rule might have serious consequences for exporting third countries, and the Community would hold discussions with the countries particularly affected with a view to reaching mutually satisfactory solutions.

(d) Rules for tariff reductions

The rules for tariff reductions in cases where significant disparities were identified should be based on the high rate being reduced by 50 per cent and all rates on the same product below this being reduced in accordance with a sliding scale. This scale would be linked to the absolute level of the lower rates and independent of the height of the high rate. The Community did not

have a precise formula at that stage, but felt that the average of the reductions to be effected on the lower rate entitled to the application of the special rule should be about 25 per cent. The spread of the reductions covered by the scale would run from something well above 25 per cent to something well below.

II. POINTS MADE IN DISCUSSION

3. The representative of the Community said that they had, as yet, only calculated the cases where, under their new formula, there would be prima facie disparities between the United States and the EEC tariffs. They had not yet made this calculation in respect of the United Kingdom tariff, nor had they yet calculated how many prima facie cases of disparity vis-à-vis the United States would be excluded under the two qualitative "criteria". Other representatives said they had made certain other calculations about the possible coverage of both the new formula suggested by the Community and the "30 + 10" formula previously discussed.

4. A fact-finding Group was set up to examine the material available. Their report, which was originally circulated as Spec(64)12/Rev.1, is annexed. Attention is drawn to the fact that the expert of the Community, while being disposed to take cognizance of the figures presented by other experts, was not in a position to take any stand in their regard.

5. The following general points were made in discussion:

(i) The "30 + 10" type of formula, since it limited the invocation of the disparity rule to cases where duties in the tariffs of the key countries exceeded 30 per cent, limited in advance the number of possible disparity items; by contrast, the "double-écart" formula was open ended. In all cases for which estimates were available, the "double-écart" formula appeared (bearing in mind however the reservation of the Community mentioned above) to yield a larger number of prima facie disparities than the "30 + 10" formula. Under the "double-écart" formula, for instance, the EEC would appear to be entitled to invoke the disparity rules vis-à-vis the United States and the United Kingdom on almost half of the items in its industrial tariff. Similarly, disparities which could be claimed by the United States vis-à-vis the United Kingdom and the EEC would be greatly increased.

(ii) The eventual coverage of the disparity rules would depend, among other things, on the extent to which countries actually invoked disparities which they would have a right to claim. The United States representative said that, while they did not wish to invoke disparities at all, they doubted whether, once a disparity rule existed, they would be able to withstand domestic pressure to make use of it.

Representatives of other delegations similarly said that, while their countries did not wish to invoke disparities, the situation might be different if disparities were invoked by other countries on a large number of items.

- (iii) Several members of the Committee emphasized the importance they attached to the effect of the disparity rule on third countries and expressed disappointment that the Community had not found itself able to adopt the rule earlier proposed by the Swiss representative, that disparities could be invoked only by the country which was the principal supplier to the country with the high rate. The representative of Sweden, supported by several other delegates, suggested that it should be recognized that the country with the "low" duty would have the right to invoke the disparity rule wherever the provisions of the arithmetic formula and the additional criteria were met, but that, without prejudice to that right, it would be understood that it would not normally be invoked where a third country was the principal supplier of the country with the "low" duty; and that where, exceptionally, the latter wished to invoke the right, it would consult first with the principally interested third countries.
- (iv) Furthermore the three preceding points reinforced the concern of some members of the Committee lest the numbers of disparity cases and by inference the chain reaction springing from their special treatment should be on a scale to endanger the linear cut.
- (v) While accepting that the use of any seuil was arbitrary in its effect, several delegations pointed out that the figures chosen for the arithmetic criteria put forward by the Community were similarly arbitrary.
- (vi) In reply to questions, the representative of the Community said that, if a country with a high rate in respect of which a disparity was claimed put the product concerned on its exceptions list, then it was logical that no tariff reduction at all should be required of the country with the low rate, since any reduction would inevitably increase the disparity.

- (vii) Some delegations asked whether discussions under the two "principles" proposed by the Community would take place before the formal opening of the negotiations, so that countries would know by then what the field covered by the disparity formula would actually be. The representative of the Community said that his delegation was ready to enter into discussions with interested third countries as soon as they wished. It would, of course, be most desirable to complete such discussions well before the formal opening of negotiations but there could be no guarantee that they would be finished before that time.
- (viii) In reply to questions, the representative of the Community said he did not think it possible to define the meaning of "negligible" in the first of the two suggested "criteria" in such a way as to cover the great complexity of the cases invoked. The Community would, however, shortly be circulating a list of the products which, in their view, would be covered by this criterion.
- (ix) The representative of the United Kingdom suggested that the general effect the Community wished to secure in the rules for tariff reductions in respect of disparity cases could be achieved more simply by providing that all rates below the high rate should be reduced by 50 per cent but should then have three percentage points added back.
- (x) There was considerable discussion of the secondary problem that will arise with respect to rates of third countries whose own rates do not entitle them to invoke but which, after the linear cut, would be lower than that of the invoking country. One representative suggested a rule under which such a third country would not be required to reduce his rate to below the ultimate rate of the invoking country. It was pointed out, however, that such a rule would not only itself give rise to anomalies but could multiply the effects of any disparity rule in limiting the average tariff cut achieved in the negotiations. It was suggested that, in order to avoid these difficulties, the problem could be solved by requiring a deeper tariff reduction of the country initially invoking the disparity.
- (xi) The United States representative suggested that the provision relating to quantitative restrictions in the first of the two criteria would have the effect of, as it were, rewarding the country which maintained such restrictions. The representative of the Community said that the provision was in their view necessary since the effect of the tariff disparity would emerge whenever the restrictions were removed.

- (xii) The representative of Norway asked whether members of EFTA would be able to invoke the disparity rule in respect of rates in the United Kingdom most-favoured-nation tariff on the ground that, if their lower rates were reduced by 50 per cent, the result would be to divert third country exports from the United Kingdom market into their markets. The representative of the Community felt that, under the rules under discussion, disparities should be invoked only in respect of rates actually applied to the exports of the invoking country. Other speakers, however, pointed out that under the Community proposals, the significance of disparities was assessed solely on the basis of a comparison of two tariff rates regardless of the level or conditions of trade between countries maintaining those rates and that in these circumstances it was logical that an EFTA country should have the right to claim disparities in respect of the United Kingdom most-favoured-nation tariff.

III. OTHER MATTERS

6. It was agreed that the Sub-Committee should hold its next meeting on 17 February 1964 or such later date as the Chairman might decide in consultation with delegations.

ANNEX
REPORT OF FACT FINDING GROUP

Summary of Material Available on Possible Coverage
of Different Disparity Formulae

Revision

1. In view of the limited information available, the Group concentrated on the extent to which disparities could be invoked as between the United States, the European Economic Community and the United Kingdom. It was not in detail able to consider how far the field covered by the disparity formula would be increased by its possible invocation by other countries. Nor did it find it practicable at that stage to try to examine the extent to which countries which could not themselves invoke the disparity rule on a particular product might nevertheless, under some of the proposals under discussion, find themselves free to make a reduction of less than 50 per cent on that product as a result of the invocation of the rule by another country.

Extent of problem in terms of number of tariff items

2. Table 1 annexed summarizes the available estimates as to the number of disparities which each of the three key countries could claim against the other.

3. It should be made clear that the information about the number of disparities is based on provisional calculations and cannot be taken as definitive. In this connexion the expert for the Community stated that while being disposed to take cognizance of the figures presented by other experts, he was not in a position to take any stand in their regard before having been able to carry out the necessary verification. Subject to this reservation, it will be noted that:

- (a) in all cases for which estimates are available the "double-écart" formula would appear to yield a larger - in the case of the disparities the United States could invoke, a considerably larger - number of prima facie disparities;
- (b) under the "double-écart" formula, the EEC would appear to be able to invoke prima facie disparities in respect of about half the headings in the industrial sector of the Common External Tariff.

Extent of problem in terms of trade coverage

4. The expert of the Community pointed out that trade figures considered as such could fail accurately to reflect the situation on account of two elements of uncertainty which inevitably affected them:

- (a) the approximation inherent in the transposition of headings from the national statistics of EEC member States into the lines of the Common External Tariff;
- (b) the fact that most of the disparities noted between the Common External Tariff and the other key tariffs concern "ex" headings in the Common External Tariff and it is practically impossible to estimate what proportion they represent of total imports under the heading as a whole.

5. The United States representative circulated to the Group some tables setting out provisional calculations about the value of the trade covered by the products in respect of which the United States would be able to claim disparities vis-à-vis the EEC, and the EEC vis-à-vis the United States, under the "double-écart" and 30:10 formulae. In some cases, these broke down imports by country of origin. The representative of the Community said that the breakdown of these figures by supplying countries constituted only an element of fact, and the use of these figures was without prejudice to questions of principle.

6. Table 2 reproduces the first of these tables, which shows United States exports to the EEC and in total (and United States imports from the EEC and in total) of disparity items the EEC could invoke against the United States; and the value of United States imports from the EEC and other countries of disparity items the United States could claim against the EEC. The United States representative explained that, since the figures in this table were based on the actual United States export and import trade in the specific disparity items, this table was not in his view open to the reservation set out in paragraph 4(b).

7. While noting the reservations of the EEC representative referred to in paragraph 4 above, the other members of the Group felt it was nevertheless worth drawing attention, among other things, to the fact that the value of the United States imports of items on which the United States could claim a disparity vis-à-vis the EEC would apparently be very much greater under the "double-écart" than under the 30:10 formula. Under the "double-écart", the prima facie disparity items would cover 27 per cent of total United States dutiable imports.

8. The second table circulated by the United States representative (Table 3) is designed to illustrate the interest of certain countries in exports to the EEC of the items in respect of which the EEC could invoke disparities against the United States. The table is based on available trade figures which in many cases cover a wider field than the actual product in respect of which the disparity could be invoked. Accordingly, they exaggerate the trade involved. Nevertheless, members of the Group felt that these figures could be regarded

as giving a very rough indication of the relative scope of the two formulae in trade terms. They also felt that it might be noted that the table suggests among other things, that the value of United States trade affected in absolute terms is greater than that of any other country under either formula, and its relative position is worsened under the "double-écart" formula.¹ The representative of the Community pointed out that the elements of uncertainty which he had mentioned had a still greater incidence with respect to this table because any value of comparison could be attached to it only if one could assume that the same errors affected the figures used in both cases.

Operation of qualitative criteria

9. The group also considered whether it was yet possible to quantify the extent to which the number of disparity cases might be reduced by the operation of the two qualitative criteria proposed by the Community. The representative of the Community said that the Commission had not yet concluded some provisional calculations it was making in this field. The American representative said that they had provisionally estimated that about 20 per cent of the prima facie disparity cases which the EEC could claim against the United States might be excluded by the "nil or negligible imports" criterion (though by definition the trade coverage would be little affected), and that a further six items might be eliminated by the "no production" criterion.

Invocation of disparity formula by "third" countries

10. The Swedish representative indicated that, under the "double-écart" formula, 585 headings in the Swedish tariff (BTN) would be involved if Sweden invokes the disparity formula against the United States, the United Kingdom and the EEC together. Under the 30:10 formula, 281 headings would be involved. In the Swedish tariff, duties are levied in respect of 681 headings (BTN).

11. Similar information was not available in respect of other third countries. It was, however, pointed out that, in the majority of cases where there was, in the case of semi-manufactures, a positive duty or, in other cases, a duty exceeding 10 per cent in the tariff of any one of the three key countries, it was likely that one or more other countries would be able to invoke a disparity in respect of that duty.

¹The representative of Switzerland recalled, however, that the exports of certain European countries to the Community affected by the disparity formulae discussed so far accounted for a larger percentage of their total exports to the Community or of their exports to the world, than would be the case for the United States.

TABLE 1

Summary of available estimates of the number of cases in which disparity could be claimed by the EEC, the United Kingdom and the United States against each of the others under (i) the 30 : 10 formula and (ii) the 2 : 1 + 10 formula.

	Claims against EEC	Claims against UK	Claims against US
Claims by 30 : 10 EEC	/	546 CET lines about 800	about 520 CET lines (estimated)
Total lines in industrial tariff: 2:1+10 2,163*		698 CET lines 1030	633 CET lines
Claims by 30 : 10 UK	about 10 UK tariff lines	/	n.a.
Total lines in industrial tariff: 2:1+10 2,800	51 UK tariff lines		n.a.
Claims by 30 : 10 US	71 TS US lines	n.a.	/
Total lines in tariff: about 5,000 2:1+10	407 TS US lines	n.a.	

Footnote: Cases where the "low" duty is zero are not included. Cases on agricultural products are excluded from all figures except those for claims by the US against the EEC.

* This figure excludes ECSC items whereas some other figures in the table may include them.

TABLE 2

Cases in which the EEC could claim a disparity against the United States and in which the United States could claim a disparity against the Community under (i) the 30:10 formula and (ii) the 2:1+10 formula

(Trade data for 1961, in millions of dollars)

I. Claims by EEC against US

<u>Formula</u>	<u>Number of TSUS Items</u>	<u>Total US Exports</u>	<u>US Exports to EEC</u>	<u>Total US Imports</u>	<u>US Imports from EEC</u>
2:1+10 - all items *	1,220	1,415	460	768	157
Excluding items with zero EEC rates	925	694	155	448	111
30:10 - all items	873	800	125	487	124
Excluding items with zero EEC rates	818	n.a.	n.a.	458	120

II. Claims by US against EEC

<u>Formula</u>	<u>Number of TSUS Items</u>	<u>Total US Imports</u>	<u>Imports from EEC</u>	<u>Imports from other countries</u>
2:1+10 - all items *	566	3,915	618	3,297
Excluding items with zero US rates	407	2,327	552	1,775 **
30:10 - all items	72	794	75	719
Excluding items with zero US rates	71	794	75	719

* Part I calculations take account of proposed special treatment (no 10-point spread requirement) for semi-manufactures. Part II calculations do not, and therefore somewhat understate the coverage.

** Of which: Canada, 362; UK, 243.

n.a. - not available.

Note: This table does not exclude agricultural items.

TABLE 3

Cases in which the EEC could claim a disparity against the United States under (i) the 30:10 formula and (ii) the 2:1+10 formula - leading third country export interest

First Leading Supplier	2:1+10		30:10	
	No. of BTN Items	EEC Imports from leading Supplier (in millions of dollars)	No. of BTN Items	EEC Imports from Leading Supplier (in millions of dollars)
1. United States	115	899	40	245
2. United Kingdom	102	271	55	126
3. Switzerland	55	186	36	165
4. Austria	26	40	18	19
5. Japan	20	37	19	34
6. Sweden	17	36	6	3
		1787		540
		515		238
		362		279
		74		58
		108		90
		98		9

Total number of BTN Items involved under 2:1+10 rule is 417.

Total value of EEC imports for these items is \$5.0 billion.

Total number of BTN items involved under 30:10 is 217.

Total value of EEC imports for these items is \$2.3 billion.

Note: This table does not exclude agricultural items