

GENERAL AGREEMENT ON TARIFFS AND TRADE

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COMMITTEE ON TARIFF CONCESSIONS

Minutes of the Meeting held in the Centre William Rappard on 3 November 1980

Chairman: Mr. J. Dugimont
(Commission of the European
Communities)

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The Chairman welcomed participants to the third meeting of the Committee on Tariff Concessions and presented the agenda for the meeting which had been circulated in document GATT/AIR/1674. The agenda was adopted without amendment.

1. Introduction of a loose-leaf system for the schedules of tariff concessions

1.1 The Chairman recalled that the question of the introduction of a loose-leaf system for the schedules of tariff concessions had been the main subject of discussions at past meetings and that solutions had been found to some of

the problems which still remained to be settled. He also recalled that a delay had been set by the Council for the submission of draft lists which was 30 September 1980. He noted, however, that the deadline could not be respected because of the problems encountered by countries in drawing up their schedules for the loose-leaf system. The Chairman asked Mr. Linden to give an account of the present situation.

1.2 Mr. Linden (secretariat) said that at the date which had been agreed as the deadline for the submission of the lists, i.e. on 30 September 1980, no list had been received, and that, at present, the situation had not changed. The secretariat had, however, been in touch with quite a number of contracting parties which had asked questions about the preparation of their schedules. In certain cases, the work was well advanced and it was expected that the lists would be received shortly. In other cases, it was clear that it would take a fairly long time for the countries to prepare their schedules and that they would not be able to submit them to the secretariat before early next year. He added that insofar as developing countries were concerned, the secretariat had been asked to give them technical help for the preparation of their lists. According to information received from about fifteen countries, it was clear that most countries would submit their schedules typed with the special OCRB characters as suggested by the secretariat. He added that a number of difficulties had been raised by delegations that had not been foreseen when discussing the introduction of the loose-leaf system but that there were no important questions that were not settled.

1.3 The Chairman invited delegations to inform the Committee what the situation was concerning their respective schedules, and, if possible, towards what date they would be in a position to submit their lists to the secretariat. He noted that the deadline of 30 September 1980 had not been respected and admitted that it might have been too optimistic in view of the work involved in the preparation of the loose-leaf schedules. He was hoping that the draft schedules would be submitted to the secretariat as soon as possible.

1.4 The representative of the European Communities drew the attention of the members of the Committee to the samples pages of their schedule which they had given to the secretariat and which were distributed to some delegations. He asked whether they could have observations on the samples supplied from the other delegations. Insofar as the work on the schedule was concerned, it was proceeding well but it was not possible for him to give an exact date of submission.

1.5 The representative of Japan said that work on the preparation of the schedule was in progress. He indicated that his delegation would follow the advice of the secretariat to use OCRB characters but that particular kind of characters proved not to be available in Japan for the typewriters regularly used by the Government departments. He was therefore not in a position to indicate an exact date for the submission of their draft schedule, but it was possible that they could do so in a month's time. He had examined carefully the sample pages supplied by the European Communities and had some comments which he would take up bilaterally. He added that Japan had also supplied the secretariat with an example of what their own schedule would look like.

1.6 The representative of New Zealand said that his delegation had difficulties in forecasting when they would complete their schedule but work was progressing well. He added that New Zealand had particular difficulty in

adjusting its existing schedule to line it up with the current national tariff. From the information he had he was hoping to be able to submit the whole schedule by the end of the month.

1.7 The representative of Sweden recalled that at the last meeting Sweden had been somewhat over-optimistic regarding the date for the submission of their schedule, but from the information he had received he could say that work was well in progress but would not mention any date. The schedule would be typed with OCRB characters. He also had some comments on the sample prepared by the European Communities but would take them up bilaterally.

1.8 The representative of Austria stated that the work in Vienna was proceeding well but that it would be difficult for his country to submit the schedule before the end of the year, due to technical problems concerning its presentation.

1.9 The representative of Finland informed the Committee that preparations were well advanced. Finnish experts had indicated that the schedule might be ready in a month's time. He added that they had not encountered technical problems and that they were using OCRB letters. He pointed out that Finland had a number of subdivisions in its schedule which were out of date and which would have been difficult to incorporate in the loose-leaf system. For that reason they had submitted a list of rectifications to their schedule. Some comments had been received which were taken into account. Some talks were still going on but he expected that they would not last for too long. He added that the consolidated schedule would be based on the national tariff in its rectified form; in case negotiations would not be terminated at the time the loose-leaf schedule was submitted, the items which were still being negotiated would be indicated.

1.10 The representative of Canada reported that approximately two months work were still needed for the completion of the Canadian Schedule.

1.11 The representative of Hungary said that his country had recently submitted a consolidated schedule and had started the technical preparation for the submission of the schedule in loose-leaf form. He could not, however, give any indication of the time which would be necessary to complete the work. He presumed that it would take a minimum of three to four months to have the Hungarian schedule prepared in the new form as proposed in document TAR/W/9/Add.1.

1.12 The representative of Australia said that although Australia would not be the first country to submit their schedule they would hope not to be the last either. On the examples submitted by the European Communities, Australia had a number of comments to make and would follow the example of other delegations and take them up bilaterally.

1.13 The representative of Ivory Coast informed the Committee that preparatory work concerning the consolidated loose-leaf schedule had started, that her delegation had a problem with its presentation in OCRB characters but that if her delegation could submit the schedule in an ordinary typed way, it could be done before the beginning of 1981.

1.14 The representative of Czechoslovakia reported that work in his country was in progress and that the schedule would be submitted in January or February 1981.

1.15 The representative of the United States said that work on the schedule was progressing and that the current estimate was that his delegation would be able to submit the body of the US schedule by the end of January next year. It would be on floppy disks using the VYDEC word processor and the disks would be supplied to the secretariat. They would also supply, if necessary, a hard copy printed in OCRB characters. He had just received from Washington some examples of what the schedule would look like, which were randomly selected, so that different types of treatment could be shown. He explained that the pages were typed on normal size paper and then reduced in order to keep the size of the document within manageable proportions. They would have difficulties in some cases in putting the product description in that reduced format.

1.16 The representative of Norway informed the Committee that his country would prepare its loose-leaf schedule typed with OCRB characters. He referred to the fact that Norway having a consolidated schedule annexed to the Geneva Protocol, it was impractical not to include immediately earlier initial negotiating rights: his authorities were therefore already including them and although they had not indicated to him the date at which the schedule would be ready, he was hoping that it would not be too far in the new year.

1.17 The representative of Brazil said that the work on the loose-leaf schedule had already started in Brasilia and in Geneva and that his delegation had asked the assistance of the secretariat to complete it.

1.18 The representative of South Africa regretted not to be in a position to indicate any date for the submission of the loose-leaf schedule; his authorities were faced with extensive problems due to large changes as a result of Article XXVIII negotiations and also because the schedule was being metricated; they also undertook to change the wording of concessions extensively in order to bring them into line with their national tariff. Indications were that the schedule would be typed in an ordinary way but he was still hoping that it would be possible to use OCRB characters.

1.19 The representative of Spain said that the work on the preparation of the Spanish loose-leaf schedule was well advanced but that in any event, as he had mentioned at the last meeting, his country was waiting for the publication of the Fifth Certification of Changes to Schedules in order to incorporate the changes in the loose-leaf pages which he hoped to submit to the secretariat at the beginning of next year.

1.20 The representative of Switzerland pointed out that, like others, his delegation was not in a position to give an exact date when the complete loose-leaf schedule would be submitted but that it was in contact with the secretariat.

1.21 The Chairman thanked the delegations for the useful information they gave to the Committee and, from the discussions on that point, he noted that the work was progressing in capitals. Several delegations expected to be able to submit their schedules within a month or so. He pointed out that it was clear that the date of 30 September for the submission of the loose-leaf schedules had been too optimistic. He was however of the view that it would not be advisable to set a new time-limit and he suggested that in the report he would present to the Council, he would remind delegations of the need to present their schedules as quickly as possible. The other point raised by several

delegations was the question of circulating examples which, he thought, was a good idea. He also felt that the comments delegations would have on the examples regarding the format and layout could be made known bilaterally or perhaps through the secretariat.

1.22 Mr. Linden (secretariat) explained that the loose-leaf schedules would be circulated for approval with the normal three months' period for objections and would, after that period, constitute a certification in themselves; it was consequently possible to include in the loose-leaf schedules items which had not yet passed through the certification procedure. The secretariat was in the course of preparing a Fifth Certification of Changes to Schedules which would be the last certification under the present system. It was clear that certain changes which were submitted for incorporation in the Fifth Certification would not be approved in time and would therefore not be incorporated in the Certification. That should however not prevent countries from including such items in the loose-leaf schedule, on the understanding that they were subject to the 90 days' approval period. Concerning the question of samples, Mr. Linden said that the secretariat was aware that some countries had circulated samples of their loose-leaf schedules, like the European Communities. There had not been any general distribution of those pages. If governments were to submit such samples of their lists, it would be useful for the secretariat to know whether they expected the secretariat to circulate them or to issue a note indicating that it had received such samples, since they might help other countries in the preparation of their own schedules. About the technical question concerning the presentation and the typing of the schedules, he referred to the information given by the representative of the United States and suggested that governments which were prepared to submit their lists on disks should get in touch with the secretariat in order to check whether the disks could be processed as such by the secretariat. Concerning the OCRB characters Mr. Linden drew the attention of the Committee members to the fact that in order to be read by an optical reader, the texts should be clean originals not painted over or very good photocopies. There might be a possibility to process texts typed with other characters than OCRB through the optical reader but that might be technically more complicated and would require adjustments of the optical reader. If delegations had problems concerning the presentation of their loose-leaf schedules, they were welcome to consult with the secretariat.

1.23 The representative of the European Communities requested the secretariat to distribute the samples of the Community loose-leaf schedule that had already been submitted and said that it would be useful if other parties could provide examples of their schedules in order to see how problems were dealt with elsewhere.

1.24 The Chairman repeated that it would be a good idea if delegations would forward to the secretariat examples of their loose-leaf schedules which could be circulated for comments. The Chairman reckoned that there had been useful discussions on that point and asked the delegations to pursue their efforts so that the loose-leaf system could be implemented without delay.

2. Status of acceptances of the (1979) Protocol and the Supplementary Protocol (TAR/W/2/Rev.2 + Add.1)

2.1 The Chairman gave an account of the present situation and pointed out that regarding the Geneva (1979) Protocol all the countries that had schedules annexed to the Protocol had signed it but five countries had not yet ratified

it; Belgium, Canada, Fed. Rep. of Germany, Spain and Yugoslavia. Concerning the Supplementary Protocol, three countries had not signed it: Korea,¹ Haiti and Pakistan. Several countries had not yet ratified their signature: Brazil, Canada, Chile, Israel, Ivory Coast, Spain and Zaire. Reminders had been sent to those countries. The Chairman stated that it was clear that the deadline for acceptance which was extended until the end of the year would have to be extended further. The secretariat had prepared for the consideration by the Council at its next meeting a draft decision concerning the extension of the time-limit for the acceptance of the Protocols until 30 June 1981.

2.2 The representative of the Fed. Rep. of Germany indicated to the Committee that the law accepting the Protocol had been signed on 18 July and entered into force on 30 July 1980; the instruments of acceptance would be delivered to the secretariat in a one or two days.¹

2.3 The representative of Yugoslavia informed the Committee that the procedures of ratification were being terminated and he hoped that his delegation would be able to ratify the Protocol before the end of the year.

2.4 The representative of Belgium said that the matter was with the Parliament which, however, had an extensive work schedule.

2.5 The representative of Canada could not give any indication as to when the legislation would be enacted into law; however, the tariff concessions had been implemented since 1 January 1980 on a de facto basis. He questioned whether the deadline for signature also applied to ratification. His authorities understood that that there was no legal limit for acceptance following the signature and he wished to have some clarification from the secretariat on the subject.

2.6 The representative of Spain referred to items 2 and 3 of the agenda and informed the Committee that his delegation had provided the secretariat with a note on a decree according to which the tariff concessions granted by his country in the MTN were being implemented. However, as to the texts of the Protocols, they were at present being considered by the Parliament and they would be ratified as soon as possible without it being possible for him to give an exact date.

2.7. The representative of Ivory Coast indicated to the Committee that her authorities were duly examining the question of ratification of the Geneva Supplementary Protocol, and that her delegation was expecting at any moment a reply from the Government. Her delegation would not fail to inform the secretariat in due course.

2.8 The representative of Brazil recalled that Brazil had signed the Protocol ad referendum in June and that examination of the Protocol by the Congress was under way. He was hoping that Brazil would be able to accept the Protocol at an early date.

¹Korea has accepted the Supplementary Protocol on 6.1.1981.

²The Federal Republic of Germany accepted the Protocol on 7 November 1980.

2.9 Mr. Linden (secretariat) pointed out that the text of the Protocols specified that they were opened for acceptance by participants, by signature or otherwise. Acceptance had always been interpreted in GATT as being the final acceptance and, if a protocol was signed by a country subject to ratification or ad referendum, a letter or an instrument lifting the reservation needed to be submitted within the time limit fixed by the protocol. He added that in reply to the letters which were sent to the countries that had not signed, or not ratified, the Protocols, the secretariat had received a communication from Chile that it would be in a position to accept the Supplementary Protocol before the end of the year.

2.10 The Chairman confirmed that, although several delegations would be able to sign or to ratify the Protocols before the end of the year, it was clear that for some of them it was not possible to do so and it was necessary to request the Council to extend further the time-limit for acceptance of the Protocols until 30 June 1981.

3. Implementation of MTN concessions (TAR/W/8/Rev.1 +Add.1)

3.1 The representative of Switzerland informed the Committee that his country had implemented the first stage of tariff reductions concerning a certain number of items for which a special staging was foreseen, according to special rules contained in the schedule. They concerned some chemical products, films and parts of footwear; those reductions were applied in parallel with the reductions granted by the European Communities and the United States.

3.2 The representative of Ivory Coast asked whether it would be possible for the secretariat to prepare a list of stagings for certain products, for example indicating the exact date of tariff reductions of products for which her country and the United States had signed a bilateral agreement.

3.3 Mr. Linden (secretariat) replied that in document TAR/W/8/Rev.1 only the beginning of the cuts was indicated on the assumption that the following cuts would be made in accordance with the general rules of the Protocol, i.e. one cut per year up to the last cut on 1 January 1987. There was no indication regarding staging rules of particular products since that information was sometimes bulky: for instance for the United States the special staging rules consisted of about 100 pages. It would be difficult to reproduce all that material in secretariat documents. Document TAR/W/8/Rev.1 indicated with an asterisk when there were special staging rules which were contained in the individual schedule of a particular country

3.4 The representative of Sweden indicated that, in respect of staging rules, his delegation had some questions to put to the delegation of Canada concerning certain steel products depending on measures taken by the United States; his delegation had some problem in finding out what had happened regarding the implementation of those reductions.

3.5 The representative of Canada expressed the wish to take up those questions bilaterally.

3.6 The representative of New Zealand, referring to the question put by the representative of Ivory Coast, wondered whether it would not be advisable for the secretariat to consider putting that sort of information on computers, once the work on the loose-leaf schedules were terminated.

3.7 Mr. Linden (secretariat) said that it was a question which had come up in the technical discussion of the loose-leaf system. For the concessions that were granted in the MTN, the staging rules would not be indicated in the loose-leaf schedules; these would only contain the final rate and an indication that the concession was granted in the MTN and would consequently be subject to staging. Necessary material might be available on tapes in the secretariat or could be incorporated in the tariff files, but that question would be taken up in connexion with the discussion on the Tariff Study. Mr. Linden requested delegations that would deviate from the staging rules indicated in their schedules to inform the secretariat.

3.8 The Chairman suggested that the secretariat continue bringing the document on tariff implementation up-to-date and invited delegations to communicate to the secretariat any appropriate documentation including details of staging, as well as any modification which could take place in that respect.

4. Procedures for negotiations under Article XXVIII (TAR/2 and TAR/M/2)

4.1. The Chairman referred to the discussions on that subject which took place at the previous meeting (TAR/M/2, pages 5-8) and recalled that certain modifications had been suggested. At that time no decision could be taken. He enquired whether delegations were in a position to express an opinion on the paper in order to submit it to the Council for formal approval. Two problems concerning firstly the provision of statistics and secondly the indication of compensatory adjustments were still open.

4.2 The representative of Czechoslovakia said that his delegation had considered again the problem of providing statistical evidence and was of the view that certain flexibility was needed in that area since not all contracting parties initiating negotiations under Article XXVIII were in a position to comply with all the requirements of the procedures related to the provisions of statistics. However, if the majority of the Committee members supported the deletion of the words "whenever possible" his delegation would not object to it, provided that it would be the understanding of the Committee that procedures concerning the provision of statistics would be implemented in a flexible and reasonable way, and would anyway not prevent a contracting party from carrying out negotiations under Article XXVIII.

4.3 The representative of Canada supported the suggestion for the deletion of the words "whenever possible" since for his country the availability of statistics was an important aspect of Article XXVIII negotiations and, without the required statistics, it was difficult to engage such negotiations.

4.4 The representative of Finland stated that although his delegation had no strong view regarding the words "whenever possible", their experience of Article XXVIII negotiations showed that it was practically impossible to enter into negotiations without statistics. He felt that negotiations might easily become more difficult if all requirements in the document had to be met in each case. He noted, however, that those requirements were formulated in a flexible way and that the word "should" was almost always used. It was particularly important when considering notification of intended new levels of bindings. The proposed procedures should be looked at as recommendations and not obligations. Another point he wished to raise concerned paragraph 3, referring to prior notification of the nature and amount of compensation, which, in many cases, might be difficult. When entering into Article XXVIII

negotiations one should always think in terms of compensation and be prepared to act accordingly. For him, written prior notification of what the compensation could be was not always practical; it obviously depended on the case.

4.5. The representative of Ivory Coast added that as developing country she supported the position taken by the delegation of Czechoslovakia since her country did not have the appropriate services to provide the required statistics.

4.6 The Chairman referred to the comments made by delegations in connexion with the provision of statistics and interpreted their views as meaning that most delegations preferred the deletion of the words "whenever possible" in paragraph 2. He understood that the delegation of Czechoslovakia would be ready to accept its deletion on the condition that in case of difficulties to provide statistics for the last three years the contracting party could anyway enter into negotiations. In that respect he referred to paragraph 4 of the document and its footnote which dealt with exceptional circumstances and which indicated that in the absence of statistics the contracting party initiating the negotiations should take into account export statistics provided by other contracting parties involved in the negotiations.

4.7 The Chairman took up the question of the character of the document and recalled the comments made by the representative of Finland that the terms used in the text and particularly the word "should" meant that the document should be interpreted as guidelines and that contracting parties entering into Article XXVIII negotiations were invited to follow those guidelines but should not consider them as binding obligations.

4.8 The representative of Australia recalled that at the previous meeting of the Committee his delegation had proposed the deletion of the second sentence in paragraph 2 ("It should be indicated whether the intention is to modify a concession or withdraw it, in whole or in part, from the schedule.") which had raised comments from the delegations of Japan and Sweden. Given the degree of flexibility attendant to the procedures, his delegation was ready to drop its objection.

4.9 The Chairman noted that the Australian delegation no longer requested the deletion of the second sentence of paragraph 2. As to the end of paragraph 3 concerning compensation, he pointed out that the Finnish delegation had referred to a written notification; he said that the text spoke of informing contracting parties with which concessions were initially negotiated and those which had a principal supplier interest, thus implying a bilateral procedure and not a procedure via the secretariat. He proposed the replacement of the last words "whether it is prepared ..." by the original version contained in L/4651, ... "the compensatory adjustment which it is prepared to offer."

4.10 Several delegations supported the return to the original text which, according to them, reflected better the spirit of Article XXVIII.

4.11 The representative of Sweden said that he had no problem with the text but recalled the idea expressed at the last meeting by his delegation regarding a possible annual report on ongoing Article XXVIII negotiations. His delegation thought that the Committee could play a supervising role and could put some pressure on delegations in order to accelerate the conclusion of the negotiations.

4.12 The representative of Japan reiterated the comments he had made at the last meeting and did not consider such a report as very appropriate in view of the bilateral character of Article XXVIII negotiations. He confirmed that the position of his delegation on that point had not changed.

4.13 The representative of the United States saw some merit in the proposal made by Sweden and his delegation could generally support it provided that it did not include deadlines for completion of those essentially bilateral negotiations.

4.14 The representative of South Africa referred to the first hand experience his delegation had in Article XXVIII negotiations which could go on for years; his delegation would oppose the suggestion for the same reasons as the delegation of Japan. He also recalled that, at the previous meeting, the representative of Sweden had suggested the deletion of Section 2 in Annex C of TAR/2 reading "Agreement was not reached with", which his delegation would support.

4.15 The representative of Japan said that his delegation would have difficulty to give the sort of information described in Section 2 in the course of the negotiations but Annex C referred to the results of negotiations and he could see a great value in that kind of information at that stage. He therefore supported the maintenance of that item in Annex C.

4.16 Mr. Linden (secretariat) indicated that Section 2 had not been used very frequently. He felt, however, that there would be some use of having such a section, one reason being that if agreement had not been reached, it could possibly lead to a retaliatory action by the other country which might withdraw a concession and it could be of certain importance to other contracting parties to have an early warning of such a possibility. It could also put some pressure on the country starting the renegotiations to come to an agreement.

4.17 The representative of South Africa maintained his objection to that section and pointed out that it was not always the country that did the reporting which was at fault.

4.18 The Chairman replied that the report was a statement of facts which was made by the country conducting negotiations and it implied no judgement; the report only showed that negotiations had taken place, that agreement had been reached with certain countries and that agreement had not been reached with other countries.

4.19 The representative of South Africa said that in the absence of any support and in view of the Chairman's arguments, he withdrew his objection.

4.20 The Chairman summarized the discussion on the procedures of negotiations under Article XXVIII and felt that following a thorough debate on the question, the Committee could now draw the attention of the Council to the proposal so that it could formally approve the new procedures. He recalled that in the course of the discussion, several delegations had insisted on the fact that the exercise aimed at modernizing guidelines for Article XXVIII negotiations ought to be followed with all the necessary flexibility. It had been recognized that import statistics should be provided for the last three years. If, in exceptional circumstances, such statistics did not exist in the form required, flexibility should apply, so that countries wishing to open

negotiations under Article XXVIII could initiate them relying on other elements, as for instance, export statistics as mentioned in footnote 1 to paragraph 4 of document TAR/2. He believed that the document, with the appropriate modifications, could now be brought to the attention of the Council.

4.21 The representative of Switzerland reverted to Annex C, Section 3, and wondered whether the words "consultations have been held with the following contracting parties having a substantial interest" were not ambiguous. In his view, it implied a definition of "substantial interest". He therefore suggested to modify the title to read simply "consultations have been held with the following contracting parties."

4.22 The representative of Austria supported the Swiss proposal to amend the title of that section since it was in the interest of the whole GATT system that countries were prepared to consult as widely as possible without recognizing automatically a substantial interest.

4.23 The Chairman confirmed the modifications to be made to the text:

Paragraph 1: unchanged

Paragraph 2: to delete the words "whenever possible".

Paragraph 3: to delete the phrase "whether it is prepared to offer compensatory adjustment and, if so, the nature and amount thereof" and replace it by "the compensatory adjustments which it is prepared to offer".

Annex C: to delete in the title of Section 3 "the following contracting parties having a substantial interest".

He also confirmed that the proposal made by the delegation of Sweden concerning an annual report on ongoing negotiations had been rejected by several delegations in order to keep the bilateral aspect of those negotiations. It should be borne, in mind, however, that they should be terminated as quickly as possible.

5. Tariff reclassification (TAR/W/14)

5.1 The Chairman reminded the Committee that the question had been raised at the last meeting under "other business" and that a number of delegations had stressed the importance of the matter. According to a suggestion made by the delegation of Japan the secretariat had been requested to prepare a note which would cover both the legal aspects, any precedents, as well as the procedure to be used in such cases. The document was published as TAR/W/14. He asked delegations whether they had comments to make on the document or on the general problem of tariff reclassification.

5.2 The representative of the European Communities said that his delegation had raised that problem at the 7 July meeting and wanted to make some additional remarks. At that meeting, he had stressed the importance of the matter. He was aware that not all cases of reclassification would cause concern in GATT, as for example, cases of products classified in positions which were not bound or cases of reclassification which did not involve an increase of a bound duty. The delegation of Japan had mentioned that the best way of handling the matter should be discussed by the Committee but that the

secretariat should be invited to study the various aspects of the question in a document which the Committee could use for continuing its discussion. His delegation had examined document TAR/W/14 issued by the secretariat and felt that it was not fully satisfactory and did not respond exactly to what was expected of it as a result of the meeting of 7 July. With respect to GATT obligations the paper referred mainly to Article II:5 and it quoted only authors outside GATT. Nothing had been said about the procedure to be followed in cases of reclassifications and he further pointed out that in paragraph 5 of document TAR/W/14 there was a sentence with which the European Communities could not agree: "It would seem that questions of this kind have come up from time to time in connexion with reclassification recommendations by the Customs Co-operation Council, but up to now they have presumably been settled bilaterally or did not involve changes of substance." In that respect he referred to a list of modifications to the Schedules of the Communities submitted in 1977.¹ That list contained a large number of new sub-divisions which had been created in order to maintain the level of bindings which would otherwise have been affected by reclassification recommendations adopted by the CCC. In the opinion of the Communities there were several problems which needed to be studied. Firstly, to define the problem of reclassification within the GATT context. Secondly, there was a need to define the rights and obligations of contracting parties in cases of reclassification. It was his understanding that the first obligation of each GATT contracting party was to maintain the level of its bindings as required by Article II:1(b) of the General Agreement. If, for technical reasons, that did not prove feasible, for instance because of the impossibility of creating a new sub-division with the former rate, renegotiations under Article XXVIII should be considered. In such a case it should be envisaged to delay the application of the measure until after the negotiations. The representative of the European Communities mentioned a third possibility, for use only if the two first ones could not be applied, namely that of invoking Article II:5 of the General Agreement. It was on the basis of all the ideas already mentioned that the Community envisaged the study of the problem of tariff reclassification, which was very important not only in regard of the present situation but in view of the future situations which the contracting parties would be faced with at the time of the adoption of the Harmonized System. He repeated the wish to maintain insofar as possible the level of the concessions granted. He was wondering whether, through the secretariat, it would not be possible to know what were the legal possibilities available in various countries in order to be able to maintain obligations under GATT in reclassification cases.

5.3 The representative of Austria reported that the problem of tariff reclassification had attracted increasing interest in Vienna and that his authorities were studying actively the comments made by various members of the Committee, as well as the documentation prepared by the secretariat. The problem only arose directly in respect of consolidated items but it affected indirectly all items, since when transferring a GATT bound item from one heading to another with the same rate of duty, there might be a difference with respect to the so called "other charges". In his view, in certain cases, the impact of tariff reclassifications could go beyond the mere tariff field, for instance with respect to products covered by Article XVI. Regarding the note prepared by the secretariat, he considered it as a very factual study but shared the views of the representative of the European Communities concerning the last sentence of paragraph 5, since at any time the CCC had changed its nomenclature - and consequently his authorities had changed theirs - his

¹See document L/4537.

delegation had followed the procedure of rectification and certification which He added that what in his view was missing in the secretariat's document was a definition of a concession in GATT terms. He questioned whether there was any rule in GATT which related to the content of a concession as there were rules applying to the question of other charges, for which there was a specific date - the date of the first concession. If there were no possibility of keeping the level of obligations under the GATT in reclassification cases, what procedure should then be followed?

5.4 The representative of Japan recalled that his delegation was the one who had suggested that the secretariat should look into the matter and prepare a note. He indicated that his delegation shared and supported the comments made by the representative of the European Communities. He hoped that the secretariat would find it possible to revise the document to include a more extensive coverage. He suggested three points to be included in the revised version of the paper. Firstly, the question whether a tariff reclassification of an item for which a GATT tariff concession was granted could entail an increase in the level of the concession. He believed that the principle that there should be no upward modification of the level of a given concession needed to be clearly established in GATT. He further explained that in practical terms, it would mean that the tariff concession concerned must be transferred together with the tariff item itself. His second point derived from his first suggestion and concerned the problem of reclassifications not entailing a modification of the level of concessions. He understood that those cases did not create any problem and were dealt with by certification procedures. It would be useful, however, to have it confirmed that this was the procedure which had been followed in the past and which should be followed in future in such cases. Thirdly, depending on the first point he had raised, it should not be considered desirable to raise the level of a concession as a result of a tariff reclassification for whatever reason. If such an increase were unavoidable, it should be strictly limited to a minimum. His delegation believed that this should be recognized as a principle. Moreover, in cases involving a change in the level of a tariff concession, the contracting party intending to carry out the reclassification should initiate procedures under Article XXVIII.

5.5 The representative of Australia offered the following general remarks on the subject of tariff reclassification. For his delegation, a tariff classification should be considered as a medium to assist in delineating a product and it should correspond to the requirements relevant at the time of the framing of the concession. A product subject to a concession retained all the legal connotations of the specified duty treatment provisions of the concession irrespective of the classification positions allocated to that product whether in whole or in part. The terms of the concession remained whether or not the product, or part thereof, might be subject under any new classification to a lower rate of duty than that specified under the concession. Any reclassification that would entail a rate of duty in excess of that specified in the concession would be a breach of Article II, unless prior release from the obligation had been obtained under the Article XXVIII process. He emphasized that such had been Australia's understanding from the initiation of the GATT. If a contrary opinion were to prevail, allowing a transfer out of a tariff item as a release from a binding obligation, then Australia would have been relieved of most of its GATT tariff concessions. He also referred to the expected adoption of the Harmonized System of tariff classification which would involve practically all GATT members in some way. The concern for GATT members with schedules of concessions was the daunting

prospect of transferring current schedules into the new system. Many current concessions would become split up while others would be amalgamated. Concessions would be reshaped and a massive Article XXVIII exercise could well be inevitable. Perhaps, it would be useful to explore ways whereby an exchange and acceptance of new draft schedules could be facilitated in order to provide a basic flexibility for schedule drafters and to short circuit the otherwise clumsy Article XXVIII hurdle.

5.6 The representative of the United States, referring to the secretariat's paper, had the impression that it tended to confirm his own view that tariff reclassifications which impaired GATT concessions did not occur very often. For instance, the vast majority of United States reclassifications, according to a quick survey, had resulted in duty reductions. Even when a tariff had been increased as a result of a reclassification, tariff concessions had not necessarily been impaired. United States reclassifications were generally court decisions that determined where a product should be properly classified under existing law. Those actions were independent from his country's trade policy and he found it difficult to see what alternate procedures might be used in dealing with complaints where a concession might be impaired other than those which existed in Article II:5. Commenting on the statement made by the representative of Australia concerning the adoption of the Harmonized System, he pointed out that his delegation would consider it as a somewhat different matter since it would presumably involve changes in the domestic law and, consequently, the procedures for carrying out negotiations might be different.

5.7 The representative of the European Communities explained that when he had made his statement he had not intended to refer to any country in particular. He learned with satisfaction that most of the United States reclassifications resulted in duty reductions, although he had some doubt in that respect. He wanted to ask the representative of the United States whether, because a reclassification decision was made by a court or administrative authority, it relieved a country from respecting its GATT obligations.

5.8 The representative of the United States replied that a court action did not relieve a country from its GATT obligations and that had been the reason for inserting in the General Agreement a provision to take care of those particular cases. His intention had only been to point out that if such a case arose, Article II:5 was the provision his country would apply.

5.9 The representative of the European Communities pointed out that under Article II:5 it was not the country changing its classification that invoked the Article but the injured country.

5.10 The representative of the United States agreed that it was up to the injured party, if there was an injured party, to invoke that Article provision and he repeated that as his delegation saw it, most reclassifications did not result in impairment of tariff concessions and that, for those rare cases where there might be a problem, the injured party could have recourse to Article II:5 of GATT.

5.11 The Chairman summed up the discussion and said that a number of delegations had emphasized the importance of the problems caused by tariff reclassifications both in respect to present and future situations. The importance of the problem at present did not seem to be recognized by all

delegations; however, several delegations had pointed out that in future, when the time of the adoption of the Harmonized System would come, and if massive Article XXVIII negotiations should be avoided, some reflection by the Committee would be required. Some delegations had expressed their views on document TAR/W/14 and had invited the secretariat to prepare a revised version of the document. Some delegations felt that it would be helpful to have more precise information about the maintenance of the bindings under the GATT, in particular with reference to Article II 1(b) of the General Agreement. He mentioned that concerning procedural matters, some suggestions had been made, not so much in order to establish new procedures but rather to specify existing procedures. In that context reference had been made to Article II: 1 (b), to the procedure for the certification of rectifications and modifications of Schedules, and to procedures under Article XXVIII for negotiations before the implementation of any changes in tariff items or increases of duty. Reference had also been made to Article II:5 which covered the cases of changes of bound duties due to a reclassification decision taken by legislative or administrative authorities. Particular stress had been put by some delegations on the need for greater transparency under the various procedures. He believed that the discussion had shown that there was a problem in the field and he noted that a number of delegations had expressed the wish that the Committee should request the secretariat to prepare a new note on the subject of tariff reclassification, bearing in mind the discussion and the suggestions made by delegations so that it could be considered at the next meeting of the Committee. It was so agreed.

5.12 The representative of the European Communities recalled that at the end of his general statement he had expressed the wish to obtain, through the secretariat, information from contracting parties on the legal possibilities, which were at their disposal in reclassification cases, to allow them to respect the terms of the General Agreement. He repeated that such information would be very useful, and with the agreement of the Chairman, he would insist on such an exercise.

5.13 The representative of New Zealand stressed that one of the points which had been raised by another delegation and which he wished to be taken up in the revised note of the secretariat was the need to widen the issue, beyond the question of purely tariff consideration, and to go into other implications of reclassifications because, in his opinion, it had a bearing on a wider range of GATT provisions than just the question of the level of tariffs contained in schedules.

6. Tariff Study (TAR/W/15)

6.1 The Chairman referred to the discussion which had taken place at the previous meeting where it had been recognized that it would be advisable to update the Tariff Study prepared for the MTN (TAR/M/2, page 11). A number of delegations had drawn the Committee's attention to the problems of methodology. It had also been suggested that the Study be expanded in order to cover a larger group of countries and that the Committee deal not only with collection of basic data but likewise with the various uses which could be made of those data in the various types of work that the Committee might be asked to undertake. The Chairman also drew the attention of the Committee to document TAR/W/15 on the Tariff Study, which gave the background to the establishment of the Study and which contained some remarks on the updating of the various tariff files.

6.2 The representative of Hungary expressed the interest of her country in the expansion of the Tariff Study and asked the secretariat to include Hungary into the Tariff Study in due course. Her delegation would consult with the secretariat in order to discuss all the necessary technical details concerning its participation.

6.3 The representative of Norway referred to the third paragraph from the end of document TAR/W/15 and detected an invitation from the secretariat "to review the product categories and averaging procedures presently in use." He felt that the invitation should not be rejected. In that context, however, it would be necessary to have a document in which those questions would be taken up. Commenting on the paragraph dealing with tariff escalation, he said that in light of the observations made by the secretariat, it was desirable to consider the matter further. The aim should be to arrive at a consensus as to what calculations should be made in order to illustrate as fully as possible the effects of tariff escalation. At the same time, it would be useful to have a clear idea on the shortcomings of such calculations. He emphasized the necessity for a more extensive document by the secretariat which could be used as a basis for discussion.

6.4 The representative of the European Communities recalled that he had intervened at the previous meeting to support ideas expressed in the field of methodology. A secretariat study should in the first place take into account the product categories already being used and describe the problems which could be encountered in a study of the impacts on protection of tariff escalation. He added that his delegation was also in favour of a larger participation of various countries in the Tariff Study and asked whether, as far as Hungary was concerned, the information that would be provided would be on the same basis as that given by the other participants, i.e. the detail of imports for each of the supplying countries entering into the declarant country.

6.5 The representative of Australia said that on the subject of the expansion of coverage of the Tariff Study his delegation would have some difficulties due in particular to two specific problems: (1) The picture that the Study presented of the treatment accorded to imports into Australia of industrial items was, because of the nature of the Study, somewhat inaccurate as it did not take into consideration the system of tariff exoneration for goods not manufactured in Australia. (2) The Tariff Study did not take into account non-tariff measures imposed by some of Australia's trading partners on imports of agricultural products. Thus, while the tariff of a country, or of a group of countries, would show a rate of duty on a product, non-tariff measures imposed on the same product might result in imports of that product being either reduced or, on some occasions, precluded. The second factor would be important for any developing country to which extension of the Tariff Study was envisaged because such developing countries were likely also to be agricultural exporters. His delegation would thus query the justification for extending the coverage of the Tariff Study, unless it included agricultural products and, in particular, products subjected to non-tariff measures.

6.6 The Chairman pointed out that there were three problems which had been raised. Firstly, the problem related to the extension of the coverage of the Tariff Study to other countries and, on that point, the delegation of Hungary had expressed its wish to become a new participant, but on the other hand the delegation of Australia had just expressed some doubts on the subject and, although it would not be opposed to such an expansion, it would nevertheless

wish to lay down certain conditions, namely the inclusion of agricultural products as well as those products submitted to non-tariff measures. The second point which related to a possible change in methodology and there the representative of Norway had requested the secretariat to specify what was meant by the sentence "to review the product categories and averaging procedures presently in use". That could be linked to the delegate of Australia's statement that he would like the Tariff Study to take account of the particular system of tariff exoneration for goods not manufactured in Australia. The third point concerned the question of tariff escalation and the delegation of Norway wished to arrive at a consensus regarding the type of calculations to be made, in respect of the progression of the level of tariffs and to have also some indication on the methodological difficulties involved. The Chairman asked the secretariat to give some details to the members of the Committee concerning those various points and in particular the question of modernization of the Tariff Study and the problem of tariff escalation.

6.7 Mr. Till (secretariat) said that, as far as the methodology of the Tariff Study was concerned, i.e. the calculation of averages and definition of categories of products, that question would only come up in case the Committee were to undertake a new study for a well determined purpose, but, as long as the question had not been more clearly specified, he did not think it feasible to write a paper on those problems. He added that it would be much simpler to prepare a note on areas of tariff escalation where problems had already been encountered. He referred to the tables that the secretariat had prepared in the past which obviously were not entirely satisfactory but on the basis of which a different approach could possibly be studied. In that respect, the secretariat could certainly prepare a note on what could be done on the basis of the data already available in the GATT.

6.8 The representative of Norway, in view of what Mr. Till had explained did not want to insist on the first of the two documents he had mentioned.

6.9 The Chairman confirmed that the secretariat was presently updating the tariff files to include 1978 statistics, as well as other pieces of information on tariff rates, i.e. base rates and the rates resulting from MTN concessions, including the rates corresponding to the first stage of reductions as well as the preferential rates under the General System of Preferences. That would answer the question put by the delegation of Ivory Coast on the possibility of obtaining information on staging, as well as the preferential rates under the General System of Preferences. Another question had been raised concerning the presentation of the results of the tariff study. In this context, reference was made in the secretariat's document to the volumes which had been published in 1970 and later updated. The Chairman asked the Committee whether it was advisable to proceed to a new publication of those volumes. On that point the question put by the delegation of Norway would come up, whether it would be advisable to revise the categories of products and the method of calculation. That could be done only if the Committee agreed that the presentation should be changed. He invited delegations to let the committee know what they felt in that respect. On the question of tariff escalation, he would suggest that as a result of the discussion, the secretariat would prepare a document on the question of methodology in answer to the question put by the representative of Norway. In so far as the expansion of the Tariff Study in respect of Hungary was concerned, that country would contact the secretariat. He asked whether other countries would either volunteer to participate in the Tariff Study or would wish that any other other country should be included in the Study.

6.10 The representative of Sweden reiterated the position of his delegation in favour of the enlargement of the Tariff Study but he said that it was not yet clear how the enlargement could take place. It was for the Committee to decide which countries should be included in the Study. He also questioned whether the planned enlargement of the Study should take effect simultaneously with the updating of the Study or at a later stage.

6.11 The Chairman recalled that the Study covered at present 11 countries (10 individual countries plus the European Communities) which were all developed countries that had taken part in the Study since its inception.

6.12 Mr. Till (secretariat) said that technically there was no problem for the secretariat to expand the coverage of the Study and to include new countries. He further explained that there were two stages involved in that work, firstly preparations in the country itself in order to supply the necessary figures since relevant trade statistics were not always available. Moreover, if a tariff system was complex it was sometimes necessary to supply further information in order to identify the regime under which certain exchanges took place and that was a reason the various tariff files were in some cases fairly complex. As the representative of Australia had mentioned, there was the problem of by-laws which in fact had been taken into account to the extent possible in the files although difficulties could vary from one country to another. Certain countries that had been approached in the past had felt that their statistical machinery could not supply the secretariat with the information in a form that would make it possible to compare data. Since then the secretariat had changed its data processing system in order to cover a larger number of tariff files and to simplify the updating procedures. In conclusion, he made it clear that as far as the secretariat was concerned, it was possible to increase the number of tariff files but that of course it was up to the Committee to take the decision. He suggested that either the Director-General or the Chairman of the Committee on Tariff Concessions take the necessary steps to approach potential countries.

6.13 The Chairman, in summing up the debate, reminded the members of the Committee that work on the updating on the Tariff Study with the 1978 data was being carried out by the secretariat, but that there was a problem concerning the question of the utilization of that information and its possible publication. In case delegations had suggestions to make, they were invited to submit them to the secretariat. He confirmed that the secretariat would prepare a note for the next meeting on the question of tariff escalation. In relation to the question of the enlargement of the Tariff Study to include other countries, he suggested that delegations reflect further on that question and make suggestions at the next meeting of the Committee.

6.14 The representative of New Zealand pointed out that the secretariat paper referred to a group of experts who met in October 1968 and he was wondering whether, although the representative of Norway had withdrawn his request for a note on the subject of methodology, there could not be a base paper from the secretariat summarizing briefly both the conclusions of the 1968 meeting and any suggestions the secretariat could make on the possibilities that were now available, in terms of computing possibilities and capacity to achieve more work at the same or lower cost and, at the same time, the methodological improvements that could be expected in the light of 12 years' experience.

7. Report to the Council

7.1 The Chairman explained that he had consulted with the secretariat and that the question was whether the committee felt it useful to have a written report to the Council on the Committee's activities during the year. It would not be possible for the Committee to adopt the text of a written report in time to have it considered by the Council at its meeting on 10 November. He therefore suggested to make an oral report, on his own responsibility, firstly on two particular points which would be submitted to the Council. The first point concerned the adjustment of specific duties which should be for consideration by the Committee on Tariff Concessions and not the Balance-of-Payments Committee (document C/112). The second question which should be considered during the 10 November meeting of the Council and on which he would report were the procedures for negotiations under Article XXVIII (document TAR/2). He further pointed out that in view of the forthcoming session of the CONTRACTING PARTIES, it would be useful also to report verbally on the major activities of the Committee over the year, mainly the question of the establishment of a loose-leaf system. On the question of the supervision of tariff reductions and the status of acceptance of the Protocols, he would also explain the situation. He would mention that, in accordance with the third point on its terms of reference, the Committee had also considered the question of updating and enlarging the Tariff Study. The proposed procedure of making an oral statement at the next meeting of the Council was accepted by the Committee.

7.2 The representative of Norway requested that the oral statement which the Chairman would make at the Council meeting be distributed subsequently as a document.

7.3 The representative of Australia agreed with the statement made by the representative of Norway and supported the idea of having an oral report made at the Council meeting of 10 November. He asked whether there should not also be a written report prepared for the session of the CONTRACTING PARTIES.

7.4 The Chairman replied that since a written report to the Council could not be approved by the Committee in time for its inclusion in the Council agenda of the 10 November meeting he would propose, as Chairman of the Committee, to present a fairly detailed oral report to the GATT Council which would sum up the various activities within the Committee since its creation. It would then be up to the Council, in its report to the CONTRACTING PARTIES, to summarize the activities of the Tariff Committee. He asked members of the Committee if, in addition to the oral statement, it was necessary to prepare a written report to be formally adopted by the Committee. He further pointed out that detailed minutes of the present meeting would be prepared as usual by the secretariat.

7.5 The representative of Australia agreed with the Chairman's suggestion and did not insist on having a written report.

8. Date of next meeting of the Committee

8.1 The Committee agreed that it would meet at the beginning of 1981 at a date to be fixed by the Chairman in consultation with the delegations.