

GENERAL AGREEMENT ON TARIFFS AND TRADE

COMMITTEE ON TARIFF CONCESSIONS

Minutes of the Meeting held in the Centre William Rappard on 20 October 1983

Chairman: Mr. W. Lavorel (United States)

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1. Adoption of the Agenda (GATT/AIR/1951)

1.1 The Chairman welcomed the participants to the eleventh meeting of the Committee and called their attention to document GATT/AIR/1951 containing the agenda and the list of documents for the meeting. The agenda was adopted without modification.

2. Submission of Loose-Leaf Schedules (TAR/W/23/Rev.7, TAR/W/32 and TAR/W/37)

2.2 Referring to document TAR/W/23/Rev.7, the Chairman noted that little progress had been made since the last meeting of the Committee: a few additional schedules in loose-leaf form had been received, some reservations had been lifted, but only four schedules were ready for certification (Burma, Nigeria, Poland and Singapore). Once again, the Chairman urged delegations to make an effort towards accelerating the verification process in order to clear at least some of the not too complicated schedules which had been under consideration for almost two years. He recalled that there were still schedules from industrialized countries which had not yet been submitted in loose-leaf form or where column 7 was missing, as well as schedules which had been prepared by the secretariat and for which approval by the respective authorities was necessary to circulate them. The Chairman also recalled that at the last meeting of the Committee two documents relating to the description of sub-headings referred to as "other" or "n.e.s." had been discussed in the Committee and some delegations had expressed the wish to come back to this matter.

2.3 The representative of Finland, speaking on behalf of the Nordic countries, expressed concern about the slow speed in which the loose-leaf exercise was moving. He agreed with the Chairman and urged delegations to accelerate the verification work. He also asked those countries that had not yet submitted their loose-leaf schedules to do so as soon as possible, the aim being to obtain a maximum loose-leaf schedules certified before the initiation of the negotiations related to the adoption of the Harmonized System.

2.4 The representative of South Africa informed the Committee that the compilation of Schedule XVIII - South Africa in accordance with the loose-leaf requirements had been completed, including column 7. The text of the schedule was at present being scrutinized by the authorities concerned and it was the intention of his delegation to submit the content of column 7 to interested contracting parties for verification of the bindings before formally transmitting the whole schedule to the secretariat.

2.5 The representative of Indonesia informed the Committee that the Indonesian schedule had been circulated to contracting parties in document TAR/76. This schedule represented the outcome of the renegotiations carried out by the Government of Indonesia and interested contracting parties for the establishment of a new Schedule XXI following the waiver granted to Indonesia in 1976. She explained that her Government would be grateful if contracting parties could expedite the verification process and, if possible, not exceed the time-limit foreseen in order to allow the Minister of Finance to include Schedule XXI into the new Indonesian Customs Tariff which would become an integrate part of Indonesia's next Five Year Development Plan, scheduled to commence 1 April 1984.

2.6 The representative of Australia, although not being in a position to announce that the Australian loose-leaf schedule was ready, shared the concern expressed by the representative of Finland regarding the time taken by the exercise; his authorities were making every effort towards accelerating the discussions they were having on the conversion of Australia's pre-CCCN schedule into the new nomenclature. He was hoping that his delegation would be in a position to submit Australia's schedule in loose-leaf form in early 1984.

2.7 The representative of Switzerland informed the Committee that his country had completed the work related to the establishment of the Swiss loose-leaf schedule and expected to send a computer tape copy to the secretariat within the next few weeks.

2.8 The representative of the European Communities agreed with the comments made on the necessity to accelerate the work related to the establishment of schedules in loose-leaf form, especially in view of the forthcoming negotiations for the Harmonized System.

2.9 The representative of Canada said that the work regarding completion of column 7 in the Canadian loose-leaf schedule was proceeding and that it had received high priority in view of the forthcoming work on the Harmonized System.

3. Legal Status of Loose-Leaf Schedules (TAR/W/39)

3.1 The Chairman explained that at the last meeting of the Committee the Japanese delegation had informed the Committee that its authorities had further questions regarding this matter. Those questions had been circulated in document TAR/W/39 and the secretariat had replied in a letter dated 2 May 1983. However, he understood from the delegation concerned that the matter should be carried over to the agenda of the next meeting of the Committee.

4. Harmonized System and GATT Concessions (L/5470/Rev.1 and TAR/W/41)

4.1 The Chairman recalled that the GATT Council had approved document L/5470/Rev.1 containing procedures for the rectification and re-negotiation of GATT schedules in connection with the introduction of the Harmonized System. He also recalled that the International Convention on the Harmonized System, adopted in the Customs Co-operation Council in June, was due to be implemented as of 1 January 1987. At its February meeting the Committee had suggested that a small group of experts of interested contracting parties might draft proposals for establishing a common data base containing the information necessary for Article XXVIII negotiations. The proposals of the Group were summed up in a secretariat note reproduced in document TAR/W/41. He drew the attention of the Committee to the fact that Article XXVIII negotiations should take place between mid-1984 and the end of 1985 and that the secretariat should be in a position to start the preparatory work as soon as possible in order to have the data base compiled in time for the negotiations. He insisted that the technical details contained in the secretariat note did not have to be resolved prior to an agreement in the Committee requesting the secretariat to begin work on a common data base. Such technical details could be worked out at a later date in consultation between the secretariat and delegations. He also pointed out that any agreement on a common data base did not obligate any contracting party to furnish such data, that participation would be on a voluntary basis and that it did not prejudice the position of any contracting party with respect to its adoption of the Harmonized System.

4.2 The representative of the European Communities stated that a common data base would be indispensable for the future Article XXVIII negotiations. The data base should be established with a view to allowing as wide a participation as possible. His delegation agreed that an early decision should be taken to instruct the secretariat to start with the technical work on the data base. The solution of technical details will be important at a later stage for the good functioning of the data base on an equitable basis for everyone. He also pointed out that other important aspects should be discussed at a later stage, such as the control of the quality of the information submitted as well as the updating and frequency of the updating of the data base.

4.3 The representative of Canada expressed the hope that a common data base would be established with a possibility of on-line access, but his delegation was not in a position to take a decision as to their participation at this stage.

4.4 The representative of Finland speaking for Nordic countries said that they did not envisage participating in the exercise at this stage since they did not have the necessary technical means. They would, nevertheless, provide part of the information in computerized form and were not opposed to the creation of the data base provided it would have no budgetary implications.

4.5 The representative of Switzerland said that a common data base would certainly be useful for the negotiations since these would have to be conducted on a product-by-product basis. His delegation still had some technical problems but it nevertheless envisaged to participate in a common data base accessible on-line and regularly updated, on the principle of reciprocity between participants on the basis adopted for the Tariff Study exercise. Participants should have access to the data itself and to users' programmes for processing and retrieving the information. In his view the data should be restricted at this stage to bound items.

4.6 The representative of Japan said that his delegation had no objection to the principle of establishing a common data base. With regard to the form of the base, Japan had budgetary limitations and did not envisage an on-line access to the data base but would process the information in the capital from tape copies of the data base information.

4.7 The representative of Australia said that his authorities still needed some time to fully examine the secretariat note. Although they were attracted to the idea of having access to up-to-date foreign trade statistics, and did not expect a negative attitude on the data, they were not in a position to advise the Committee as to their participation before the next meeting.

4.8 The representative of New Zealand said that his delegation was basically in favour of a common data base. Although the secretariat note was still under examination by his authorities, he did not expect particular problems in participating in a data base accessible to participants on the same basis.

4.9 The representative of the United States urged the establishment of a common data base with on-line access and tape copies of the data base information. Initially the United States would process the information in the capital from tape copies, but as the negotiations progress they expected to have on-line facilities for processing the information. He shared the views expressed by other delegations with regard to the principle of reciprocity in exchanging information but did not agree with the delegation of Switzerland that the exercise should be limited to bound items.

4.10 The representatives of Brazil, Hungary and Spain stated that the question was still under examination in their capitals and that as a first impression their position was similar to that stated by the Nordic countries.

4.11 The representative of Argentina stated that it was in his view too early for the Committee to take a decision committing the secretariat to the exercise. The data base might have some effect on Article XXVIII negotiations in the sense that it would give technical superiority to countries participating in the data base. This point should be clarified before a decision was taken.

4.12 The representative of Brazil reminded the Committee that in the early discussions on the question of the introduction of the Harmonized System, her delegation had pointed out that participation in the exercise would depend on the extent to which the secretariat could provide the necessary technical assistance.

4.13 The Chairman summed up the discussions by saying that given the diversity of views expressed by delegations and the need for further time to reflect on the matter, it would be necessary to revert to the subject at a future meeting of the Committee. He indicated that given the time constraints it might be necessary to hold another meeting before the next regular meeting of the Committee scheduled for the month of March or April 1984.

5. Application of Article XXVIII to new products (L/5522 and C/W/424)

5.1 The Chairman recalled that following the statement made by the representative of Japan at the last meeting of the Council on 3 October, and the views expressed by other delegations, the Council had agreed to refer this matter to the Tariff Committee and requested it to report in due course to the Council. He drew the attention of the members of the Committee to documents L/5522, C/W/424 and the minutes of the last Council meeting (C/M/171).

5.2 The representative of Japan introduced the subject by reminding the Committee of his country's position explained in detail in the documents referred to by the Chairman; he also called attention to paragraph 2 of document C/W/424. His authorities had raised the following points: (a) would it not be appropriate to refrain from invoking Article XXVIII with respect to new products at a stage where there was no sizeable trade; (b) if invocation of Article XXVIII were to be allowed, how could "initial negotiator", "main supplier" and "substantial interest" status be specified in the absence of sizeable trade; (c) how could compensation be calculated in such a case? The representative of Japan invited the members of the Committee to give preliminary comments on those issues and suggested, if necessary, pursuing the discussion in a meeting of informal nature.

5.3 The representative of the United States shared Japan's concern about withdrawals under Article XXVIII of bindings covering new products which had not been traded but which had prospects of significant future trade. Although recognizing the availability of Article XXVIII in that situation, he believed that the application of Article XXVIII to new products created an unfortunate precedent with serious implications for the stability of the tariff concessions system. In his view, Article XXVIII should not be applied to new products so as to provide a relatively easy way to protect domestic

producers of such products from import competition. The representative of the United States said that he would comment more specifically at a later stage on the points raised by Japan and indicated that, in the meantime, it would be useful if the secretariat could prepare a background paper for the Committee, using as a basis document MTN/SG/W/2 of 21 May 1975 and update the listing of Article XXVIII actions taken under its various paragraphs, as well as providing any relevant material the secretariat could find on the issue under consideration by the Committee.

5.4 The representative of the European Communities said that his delegation had accepted to discuss this issue in the Tariff Committee because of its technical aspects, but it was clear for his delegation that the invocation of Article XXVIII in respect of those products could not be questioned. Moreover, the discussion in the Committee should in no way affect the procedures under way. He agreed, however, that there could be some technical problems regarding the application of Article XXVIII, but the basic principle underlying the application of Article XXVIII could not be questioned. He added that the technical problems to be considered should not specifically refer to new products but to all products for which there were difficulties with statistical data, e.g. separate statistics did not exist for a particular product. However, the absence of such statistical data had never meant that Article XXVIII was not applicable to the products in question.

5.5 The representative of New Zealand welcomed the discussion of this item in the Tariff Committee and expressed interest in participating in any informal discussions that might take place on the matter. His authorities were of the view that the particular circumstances provided a useful opportunity to clarify the application of Article XXVIII. Given the potential importance of new products in world trade, it was essential to clarify the applicability of relevant GATT provisions. Article XXVIII:2 provided that parties should endeavour to maintain a general level of concessions "not less favourable" to trade; thus, the withdrawal of bindings on products that had not actually been traded might still fall within the ambit of this Article. However, it would be precipitate to assume that the volume of import benchmark used in past renegotiation cases was the definitive criterion to be employed in assessing whether a given tariff modification resulted in conditions that were less favourable to trade. In respect of the Japanese query, the New Zealand authorities suggested that Article XXVIII did not inherently exclude cases where there was little actual trade. Concerning the calculation of compensation, they thought that the deficiencies of the volume of import criterion had already been apparent in cases where substantial trade already existed. This criterion ignored the vital issue in any raising of tariffs by a certain percentage, i.e., the extent to which the protective effect was increased. In industries where demand was highly elastic, for instance, a very slight percentage increase might be sufficient to reduce imports dramatically. Conversely, there was no guarantee that an equivalent percentage decrease in another area of trade selected by reason of its equivalent trade volume would result in a compensatory advantage. This particular instance suggested that there might be scope for the evolution of a more flexible and sophisticated set of criteria to assess the trade restrictive effect of any modification of bound rates within the context of Article XXVIII. It was important that the GATT be able to solve emerging problems with new products.

5.6 The representative of Canada said that his delegation attached great importance to ensuring that the role of Article XXVIII was clear. The New Zealand representative had touched on the key question which was how to evaluate compensation in Article XXVIII cases where the volume of imports did not provide sufficient guidance. He suggested reflecting on how to develop new approaches to the principle of Article XXVIII. His delegation would be interested in participating actively in these discussions, whether in formal sessions of the Committee or in informal meetings that might be required.

5.7 The representative of Australia indicated that, at this stage of the discussion, it would be essential to consider whether the GATT was able to adapt itself to a changing international trade world. Regarding the question raised by the delegate of New Zealand on the calculation of compensation and assessment of trade effects in the absence of any trade, he questioned whether a country should get a windfall gain for developing a new product which fortuitously fell in a bound tariff item. Other questions were whether the existence of a binding influenced the direction of investment into this area and how an action on new products would fit into the broad objective of the GATT and more specifically to paragraph 7.1 of the Ministerial Declaration.

5.8 The representative of India recalled that his statement of the meeting of the Council on 30 October had implied that the issue was of a larger concern than the immediate case under consideration. Article XXVIII was one of the more important articles in the General Agreement, and developments in international trade should be taken into account in the evolution of this provision. Whilst his authorities were still studying the points raised in document C/W/424 and were therefore not in a position to take a final stand, it was their understanding that it was not the intention of the discussion to imply that any contracting party should renounce its rights under Article XXVIII in specific cases. They viewed this exercise as a possibility to arrive at some guidelines for cases of this kind. The exercise itself should be viewed in terms of the basic objectives of the GATT. The points raised by the Japanese delegation were very pertinent, particularly regarding the formula for calculating compensation in cases where there was no sizeable actual trade. His delegation would look forward to participating in whatever discussion would take place. The representative of India proposed holding informal consultations to be undertaken by the Chairman. He added that his delegation would find it difficult to subscribe to a view that in certain situations, Article XXVIII rights would be suspended.

5.9 The representatives of Argentina, Brazil, Japan and Finland, on behalf of the Nordic countries, supported the proposal made by India and expressed interest in participating actively in the informal consultations to be undertaken by the Chairman.

5.10 The representative of the European Communities noted that most delegations which had spoken clearly identified the technical problems which were to be examined by the Committee, i.e. the evaluation of compensation, but they had recognized the right of any contracting party to invoke Article XXVIII for any product. This approach would prevent a discussion whether the

invocation of Article XXVIII for new products was protectionistic in nature. Article XXVIII foresaw that measures taken under that Article were subject to compensation in order to restore balance and there was no reason to think that the Article was a protectionistic instrument. He added that the European Communities were not among the main users of Article XXVIII and, in that respect, he expressed interest in having the background document on the utilization of the Article up-dated by the secretariat. With respect to the procedures, the European Communities accepted the idea of holding consultations before the next meeting of the Committee but whatever the results of those consultations, the Tariff Committee would have to resume the discussion in order to take a final decision on the technical problems arising from the invocation of Article XXVIII for these products.

5.11 The representative of Switzerland recalled that the aim of GATT was to progressively liberalize world trade, with a balance of rights and obligations within a stable and foreseeable multilateral framework. He stressed the importance in that process of the question of maintaining concessions already granted. To invoke Article XXVIII, as envisaged by the European Communities in the particular case could not merely create a precedent but could be regarded as a protectionist type of measure, since its effects were similar to those of a pre-emptive safeguard measure without the obligation to prove the existence of injury. His country was also interested in participating in the discussion to be held, the aim of which should be to elaborate guidelines within the context of Article XXVIII.

5.12 The representative of the European Communities, in reply to the Swiss intervention, stressed that the discussion should be of a general nature and not refer to a particular case. The problem under consideration referred to new products or products for which statistics covering imports for the last three years were not available. He did not think it appropriate to talk of a preemptive safeguard measure and to require the proof of injury in this case. His delegation was eager to remain in the framework of Article XXVIII and respect the obligations attached to it concerning the payment of compensation.

5.13 The Chairman confirmed that the Committee was engaged in a general discussion and that in the consultation, he intended to keep the discussion in general terms.

5.14 The representative of the United States agreed to pursue the discussions in an informal group. He felt it was important to examine the points raised by the Japanese delegation but that other questions of a general nature should not be excluded.

5.15 The representative of Canada recalled that at the Council meeting his delegation had raised other technical problems related to the length of time needed by countries to complete negotiations and to difficulties encountered with some contracting parties that had no legal authority to enter into negotiations.

5.16 The representative of Romania supported the idea of holding informal consultations and having a background paper prepared by the secretariat.

5.17 The Chairman took note of the views expressed and pointed out that a number of questions had been raised that needed further examination. He felt that there was a general recognition of the importance of the matter and of the need for the Committee to look into the matter in greater depth. The Committee would have to revert to the item at its next meeting. The Chairman agreed to undertake informal consultations among interested delegations as had been suggested and requested the secretariat to prepare a background paper on the utilization of Article XXVIII.

6. Report to the Council

6.1 The Chairman explained that as the Committee was meeting late in the year, it would not be possible to have a written report circulated and approved by the Committee before the next Council meeting in early November. He suggested therefore that, like in past years, he would give an oral report at the Council on the activities of the Committee and that the text of his statement would¹ be distributed to all members of the Committee in a TAR series document.

7. Date of the next meeting

7.1 The Chairman indicated that, depending on the outcome of the informal consultations, it might be necessary to call a meeting of the Committee before next spring, the date to be fixed in consultation with delegations.

¹Subsequently distributed as TAR/77 on 4 November 1983.