

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Tariff Concessions

LOOSE-LEAF SCHEDULES BASED ON THE
HARMONIZED SYSTEM NOMENCLATURE

Note by the Secretariat

At the meeting of the Committee on Tariff Concessions on 19 July 1985, several delegations requested the secretariat to give its views in writing on the legal issues raised in the paper submitted by the delegation of Japan (document TAR/W/51). These views are set out in this paper which is divided into two parts. The first part outlines the procedures which have been followed in the past concerning the publication of the results of negotiations, whether carried out during a round of multilateral negotiations or following Article XXVIII negotiations. In the second part, the secretariat has attempted to reply to the questions raised in the Japanese paper.

I. Procedures used in the past

1. Protocol

At the end of all multilateral rounds of tariff negotiations, the results were embodied in a protocol which contained the schedules of all countries which had granted concessions during the rounds in question. In some cases, when all negotiations had not yet been terminated at the official closing date of the conference, additional concessions were incorporated into a supplementary protocol (e.g. Dillon Round, 1961-1962, and Tokyo Round, 1974-1979). Protocols had to be signed by all countries that had schedules annexed to the protocols. Such protocols entered into force for any contracting party which had a schedule annexed to them on the thirtieth day following the day upon which it was accepted by that contracting party and the schedule of tariff concessions of each signatory became a schedule to the General Agreement on the day on which the protocol entered into force for that contracting party.

Protocols which embodied results of tariff negotiating rounds normally only contained tariff reductions. One exception from this rule was the protocol embodying the results of the 1960-1961 Tariff Conference (Dillon Round) which also contained increases in certain bound rates resulting from Article XXVIII negotiations (see reply to question 6).

Until 1959, protocols were also used to embody rectifications and modifications of schedules, e.g. results of Article XXVIII negotiations, new consolidated schedules, schedules established under Article XXVI:5(c). These protocols which also contained increased rates, only entered into force on

the day on which they had been accepted by all governments that were on that day contracting parties to the GATT. Because of the difficulties of obtaining the acceptances of all contracting parties, the practice of using protocols of rectifications and modifications to the schedules to the GATT was given up in favour of the certification procedure (see paragraph 2 below).

2. Certification

On 17 November 1959 (BISD 8S/25) the CONTRACTING PARTIES decided to use a certification procedure under which rectifications and modifications to schedules annexed to it were considered to be approved unless objections were raised before a specific time-limit. The 1959 certification procedure has later on been improved through further decisions of the CONTRACTING PARTIES, i.e. on 19 November 1968 (BTS/16S/16) and on 26 March 1980 (BISD 27S/25), but the basic principles remained the same, i.e. the certification entered into force unless objections were raised within a certain period of time (three months).

Under these procedures, certifications contained rectifications or modifications to schedules, as well as consolidated schedules or schedules established under Article XXVI:5(c). They were circulated for approval whenever a sufficient number of individual submissions had been received, i.e. at irregular intervals.

In connection with the adoption of the loose-leaf system in March 1980, the intention was that, contrary to the previous practice, amendments to schedules and new consolidated schedules would be certified on a country-by-country basis whenever such amendments would be submitted, i.e. without awaiting submissions by several contracting parties and their consolidation into a common certification. However, because of the delay in the submission and approval of loose-leaf schedules, this new certification procedure has so far not been used.

II. Questions raised in the Japanese document

Question 1: It could be suggested that each contracting party should
(ref. III.1.) incorporate the results of the negotiations, together with rectified parts, directly into draft consolidated schedules of concessions in a loose-leaf form, without drawing up such documents as required by Annexes A & B of C/113 and Corr.1 (BISD 27S/26). This will reduce the paper work significantly. Does this cause any problems?

Reply: The documents in question reflect the results of bilateral negotiations. If the two parties agree that such documents are not required and that the results of their negotiations can be directly incorporated into a consolidated schedule, it would not seem that such a simplified procedure would cause any legal problem. Its only disadvantage would be that no record would exist in the GATT of the results of the bilateral negotiations.

Question 2: What kind of legal documents are to contain the above-mentioned consolidated schedules? Protocol, certification or any other documents?
(ref. III.2.)

Reply: Two types of legal instruments have been used in the past, as explained in Part I above: protocol and certification.

Question 3: When is a certified true copy of such a legal document to be furnished by the Director-General of the GATT for initiation of domestic procedure for acceptance?
(ref. III.2.)

Reply: In the case of protocols, a certified true copy is being furnished by the Director-General as soon as the protocol is open for acceptance, i.e. before it is actually accepted by all the contracting parties. For certifications, certified true copies are circulated only when the period for possible objection (three months) has expired and the certification has entered into force (this applies to certifications relating to several schedules, and would also be applicable to certifications related to one schedule only).

Questions related to the protocol approach

Question 4: Should the protocol contain consolidated schedules of all contracting parties who have participated in the Harmonized System negotiations? If this were the case, it will undoubtedly take a long time before the protocol can be established.
(ref. III.2.(1)(A))

Reply It would not be necessary that the main protocol would contain schedules of all contracting parties which participated in the negotiations. The possibility of issuing supplementary protocols was mentioned above and could be used. Delegations may, however, consider whether in the case of the Harmonized System renegotiations a key-country approach should be adopted whereby the protocol would not be opened for acceptance until the schedules of certain specified contracting parties are ready and have been annexed to it.

Question 5: In what way can the agreement of all contracting parties, including those who have not participated in the Harmonized System negotiations, for the entry into force of the protocol be obtained, bearing in mind that the results of the Harmonized System negotiations will contain not only reductions (as is normally the case for protocols at the end of tariff negotiations rounds, i.e. Tokyo Round) but also increases and withdrawals of bound tariff items?
(ref. III.2.(1)(B))

Reply: It could be decided that the protocol would not enter into force until it had been accepted by all contracting parties which took part in the Harmonized System

renegotiations as countries having initial negotiating rights or as principal or substantial suppliers even if they have no schedule of their own annexed to the protocol.

Question 6: (ref. III.2.(1)(C)) The protocol based on Harmonized System, if established, includes not only the reductions of the tariff rates but also increases or withdrawals of bound tariff rates. Is it necessary to insert the expression "to replace previous schedules" in the Harmonized System protocol like in the case of consolidated schedules based on the certification procedure, although such expression is not included in protocols concluding multilateral tariff negotiations in the past?

Reply: It would seem advisable, if only for clarity's sake, to include such an expression in the protocol. This was done in the Dillon Round Protocol which, as already indicated, also contained increases or withdrawals of bound rates. Paragraph 4 of this Protocol reads: "In each case in which a schedule in Annex A to this Protocol provides for any product imported into the territory of a contracting party treatment less favourable than was provided for such product in a schedule applicable to such contracting party on 1 September 1960, such provision for less favourable treatment in the schedule annexed to this Protocol shall, when such schedule becomes a Schedule to the General Agreement pursuant to paragraph 1 or 2 above, terminate the provision for such product in such prior schedule."

Questions related to the certification approach

Question 7: (ref. III.2.(2)(A)) There is a merit that no positive actions of all contracting parties for acceptance are needed, but the demerit is that a certain period of time is required to finalize the content of the certification. Is it possible to shorten the period?

Reply: The period foreseen in the decision on certification procedures presently in force (see BISD 27S/25) for the raising of objections is three months from the date of circulation of the schedule to contracting parties. It does not appear that this period can be shortened, as experience has shown that the examination and approval of draft schedules by contracting parties has usually taken a much longer time than the three months foreseen in the decision mentioned above.

Question 8: (ref. III.2.(2)(B)) Is it necessary that all schedules of participants to the Article XXVIII negotiations are annexed to the certification, as a whole? Or is a certification able to be drawn up for each schedule?

Reply: A certification can be established for each individual schedule, as it becomes available. This was the procedure foreseen for the certification of loose-leaf schedules as described above.

Question 9:
(ref. III.2.(2)(C)) In case of current certification procedures, the content of certifications are "finalized" as well as "entered into force" when no objections are raised in a certain period. Is it not necessary to include an effective date in the certification ("finalization" and "entry into force" are treated separately), since the Harmonized System is to come into effect after January of 1987.

Reply: For a certification embodying the results of the Harmonized System renegotiations, it would be advisable to include a date for the entry into force of the new schedules, which would presumably be the date for the implementation of the Harmonized System, bearing in mind the possible adoption of a key-country approach mentioned above (reply to question 4).

Question 10:
(ref. III.2.(3)) Are there any other legal documents and procedures required for entry into force, in addition to points 1 and 2 above?

Reply: The points dealt with above seem to cover the essential elements required for the entry into force of the results of the forthcoming Harmonized System renegotiations.

¹ i.e. the issues raised in questions 1 to 9.