

COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT

on the tariff negotiations which it conducted under
Article XXIV(6) of the General Agreement on Tariffs and Trade (GATT)

DRAFT DECISION

approving Schedule LXXII (European Economic Community)
containing the concessions resulting from the conclusion of the
negotiations under Article XXIV(6) of the GATT

DRAFT DECISION

by the Representatives of the Governments of the Member States
of the European Coal and Steel Community meeting within the Council
approving Schedule LXXII bis (Member States of the ECSC) containing
the concessions resulting from the conclusion of the negotiations
under Article XXIV(6) of the GATT

(presented by the Commission to the Council)

COM (84) 290 final

The Commission presents to the Council:

A report on the tariff negotiations which it conducted under Article XXIV(6) of the General Agreement on Tariffs and Trade (GATT) SECTION I

A draft decision approving Schedule LXXII (European Economic Community) containing the concessions resulting from the conclusion of the negotiations under Article XXIV(6) of the GATT SECTION II

A draft decision by the Representatives of the Governments of the Member States of the European Coal and Steel Community meeting within the Council approving Schedule LXXII bis (Member States of the ECSC) containing the concessions resulting from the conclusion of the negotiations under Article XXIV(6) of the GATT SECTION III

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In view of the results obtained, the Commission considers that it is in the interests of the Community to conclude these negotiations. The Council is invited to act by 31 July 1974, when the obligations resulting from the new lists of tariff concessions are to come into effect.

I. REPORT ON THE NEGOTIATIONS

A. Introduction and general remarks on the particular difficulties of the negotiations

1. During its session of 18-19 December 1972 the Council authorized the Commission, in accordance with Article 113 of the Treaty, to conduct negotiations under Article XXIV(6) of the General Agreement on Tariffs and Trade (GATT) with a view to withdrawing the concessions relating to the various customs territories making up the enlarged Community and to replacing them by a new schedule of concessions relating to the Community as a whole (I/198/72 - COMER 103).
2. As might well have been expected, these were difficult and delicate negotiations. Experience has shown that such negotiations are always very onerous for the developed countries which have to participate, in that only the country modifying its bound customs duties is called upon to make concessions; as a conclusion must be reached, the partners are well-placed to bring pressure to bear in order to satisfy their demands to the maximum.
3. The psychological climate surrounding the negotiations was hardly a favourable one. When a GATT working party examined the Accession instruments in 1972, many countries expressed serious misgivings as to the effects of the enlargement on their trade. Their fears were intensified by the fact that the enlarged Community is itself party to a network of arrangements involving either customs unions or free-trade areas. A strong difference of opinion arose within the working party over the methods to be used for comparing the incidence of the customs duties and other regulations of commerce of the enlarged Community to such incidence under the Community of the Six plus the acceding countries (in accordance with Article XXIV(5)(a)). This difference of opinion, which led the working

party to suspend the comparative examination pending the results of the negotiations under Article XXIV(6), strengthened certain countries' determination to obtain from the negotiations concrete results in the form of a significant reduction in the Community customs tariff.

4. The principal difficulty facing the Community was its partners' tendency to try to make the negotiations do more than simply maintain concessions at as favourable a level as before enlargement as required by Article XXIV(6). This, for example, is why, in their appreciation of the Community's offer, the United States, Japan, Canada and other countries took into consideration the incidence on their exports of the preferential effect created by removing customs duties not only between the constituent territories of the enlarged Community, but between the enlarged Community and the many third countries with which it is linked. The Commission rejected this idea as being incompatible with the principle which appears in Article XXIV(4) of the General Agreement, which recognizes that it is desirable to increase freedom of trade by the creation of free-trade areas or customs unions and that the expansion of trade resulting from the formation of a customs union or a free-trade area is more important than any effects of deflection of trade. But even if under GATT rules third countries have no right to postulate "preferential effect" as a basis for compensation, it is still no less the case that they have a considerable interest in obtaining from the Community a reduction in its, and thus in its partners', protection.

5. The problem arising from the preferential links between the United Kingdom and many Commonwealth (particularly developing) countries, illustrates this tendency to widen the scope of the negotiations. Many countries benefiting from these preferences asked for their loss of advantages to be taken into consideration during the negotiations. The Community, for its part, recognized a right to compensation only in the case of those few bound customs duties in the preferential part of the list of United Kingdom concessions (for Canada and Australia). In the case of the developing Commonwealth countries, as of the other developing

countries in general, the Community's system of generalized preferences and the improvements to it made it easier to bring the negotiations to a conclusion.

6. Mention must still be made of certain countries' insistence on obtaining concessions for specific products which had already been the subject of discussions or negotiations with the Community well before enlargement, and on their determination to use the negotiations - without taking too much notice of the rights and obligations implied by GATT - to obtain the concessions which they had failed to obtain previously.

7. In the face of these numerous difficulties and sometimes excessive demands for compensation, the Commission attempted to confine negotiations within the limits specified by the General Agreement and to keep to the practices and criteria usually used when negotiating compensatory measures.

B. The negotiations themselves

There were three stages to the negotiations - the tabling of a first offer of concessions in January 1973, a supplementary offer in December 1973 and finally in May 1974, a decision on a final offer followed by completion of the negotiations.

(a) The first stage

8. On 2 January 1973, the Commission informed the Contracting Parties to the General Agreement that the Communities were willing to begin negotiations and that they were offering to apply the same tariff concessions in the enlarged Community as in the original Community in order to compensate for withdrawal of the old concessions. When this initial position was put forward, the Communities specified that Article XXIV did

not imply any obligation for the enlarged Community to grant the same concessions as the original Community, and that they considered such concessions to be of greater value than any compensation which any third country might obtain under Article XXIV(6).

9. Negotiations were begun with sixteen¹ Contracting Parties:

Argentina	India	Romania
Australia	Japan	South Africa
Brazil	Malaysia	Sri Lanka
Canada	New Zealand	United States
Chile	Poland	Uruguay
		Yugoslavia

As Ireland invoked Article XXXV of GATT (non-application of the General Agreement between Contracting Parties) with regard to Japan, the Community pointed out that the negotiations with Japan would cover the constituent territories of the enlarged customs union but with the exception of Ireland, and that the opening of negotiations with Japan would not imply that Ireland renounced Article XXXV. The concessions granted by the Community thus do not apply to imports into Ireland of products originating in Japan.

Further, the Commission did not begin negotiations with the Contracting Parties to which it is linked by agreements coming under Article XXIV of GATT. However, at the request of Israel and Spain, exchanges of letters temporarily reserved those countries' rights of negotiation under Article XXIV(6) until such time as the current negotiations in Brussels on the conclusion of bilateral agreements between the Community and the two countries were completed. The attitude of Israel and Spain was provoked by fear of being excluded if the bilateral agreements were not concluded.

The countries with whom negotiations took place account for 83% of the enlarged Community's imports (other than those from countries with which there are special bilateral arrangements).

¹Seventeen if Pakistan, which did not come forward until December 1973 is included.

10. At the opening on 15 March 1973 of the negotiations - which, as the rules specified, took place on a bilateral basis - the Commission reminded each of its partners that the exercise undertaken under Article XXIV(6) had an important but limited object, namely to transfer and maintain in the tariff of the enlarged customs union the general level of tariff concessions previously granted in the customs tariffs of the Six and of the three acceding countries. The Commission asked its partners not to extend the negotiations beyond the limits stipulated by GATT rules by confronting the Community with requests for larger concessions than those that would be consequent upon the introduction of the new common customs tariff, as such requests would involve dealing with questions which perhaps pertained to other sectors.

11. Most of the third countries immediately pointed out that they did not consider the Community's offer to be adequate compensation for the withdrawal of concessions due to enlargement.

12. The negotiations first dealt with the applications for recognition of the legal rights of negotiation (direct beneficiary, principal supplier, substantial interest) submitted by third countries under Article XXVIII. Two bones of contention arose when these rights - from which, for the third countries, the right to compensation derives - were determined. The first concerned the definition of substantial interest (the Community fixed this interest at a minimum level of 10% of total imports of the product in question into the Member State which had granted the concession at issue). The second concerned the way of calculating the rights of third countries while taking into account the rights of the Six and of the three acceding countries vis-à-vis each other.

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13. When detailed figures on imports into the Nine were available, the Community drew up for each of its partners a table which set out, on the basis of the nomenclature of the Common Customs Tariff, the bilateral situation of concessions which had been withdrawn and concessions offered by way of compensation.

In presenting these "balance sheets", the Commission explained the reasons behind the Community's adoption of a mainly quantitative approach to its assessment of the withdrawals and offers of concessions following enlargement. This approach is, in fact, current practice under the GATT, which requires that in all negotiations any modifications of tariff concessions be expressed in terms of customs receipts and volumes of trade. Most of the concessions at issue were made during the Kennedy Round and were negotiated as an overall offer rather than between the principal supplying countries with the grant of concessions to countries by name. Each concession was made to apply to all the countries in question whatever their status as suppliers. To back up its argument, the Commission explained that the Community had not adopted a selective - nor, consequently, qualitative - approach in its withdrawals and its offers. Quantitative assessment was thus particularly useful, but did not exclude considerations of a qualitative order.

14. Further, the Commission indicated to its partners the concessions in the EEC's overall offer which it was willing to grant to them by name and stated that it was willing to examine case by case any other applications of this order.

15. In accordance with the terms of the Community's first offer of 2 January 1973 the Commission also pointed out that the tariff quotas bound previously by the Six would be reduced to the extent of the shares taken by the three acceding countries. This ruling was only applied in three cases¹.

¹Mechanical pulp for paper, herrings and salt-cod.

16. During bilateral meetings with the EEC, most countries expressed their opinions on the statistical tables. Many of them pointed out that the compensation offered cannot be assessed exclusively in statistical terms but must also be seen from a qualitative angle, to take account of the impact of tariff modifications on their export possibilities. These countries reiterated their request for additional compensation, in a few cases for industrial products, but mainly for agricultural products.

(b) First supplementary offer of concessions

17. After four months of negotiations, the Commission considered, largely in the light of information contained in the statistical tables, that the first offer of 2 January 1973 was valid as a whole but involved imbalances in both the agricultural and industrial sectors for certain countries seen in isolation.

In July 1973 therefore, mindful of Article XXVIII(2), which specifies that concessions must be maintained at a level not less favourable than previously, the Commission considered it necessary to put further proposals to the Council improving upon its first offer. The Council was not able to make a supplementary offer before early December (Doc. I/184/73 - COMER 69). This offer, however, fell short of the Commission's proposals.

18. The Commission immediately presented this supplementary offer to its various partners and made the point that these offers were, in the Community's opinion, sufficient compensation to warrant winding up the negotiations with all third countries on all products. The Community did not, therefore, consider it possible to embark upon a series of improvements to the concessions set out in the offer.

19. Twelve of the sixteen Contracting Parties which were asked for an early reply gave their opinions at the end of March 1974. The following countries stated that they were willing to conclude the renegotiations on the fresh bases proposed by the Commission: Sri Lanka, in view of the EEC's system of generalized preferences; South Africa, Yugoslavia and New Zealand providing that certain concessions were made to them by name, which posed no problems to the Community. Brazil and Japan did not reject the offer but hoped to obtain certain promises from the Community as to its future intentions regarding some of their export products - soluble coffee and cocoa butter (Brazil) and preserved tuna-fish and mandarins (Japan).

20. Other countries - the United States, Australia, Canada, Poland and Argentina - which thought the improved offer was still inadequate as regards quantity and quality, submitted additional applications for supplementary tariff concessions or other commitments (e.g., bacon for Poland; cereals for the United States, Australia and Canada; beef and veal for Argentina). India confined itself to stating that it was dissatisfied. Uruguay and Romania did not formulate additional requests until May and June.

In spite of many urgent reminders, Chile and Malaysia remained silent.

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(c) The second supplementary offer of concessions

21. At its meeting of 1 and 2 April 1974 the Council reexamined the state of the negotiations, particularly in the light of the additional requests made by the United States. The Council invited the Commission to investigate together with the United States Delegation how it would be possible to conclude the negotiations on a mutually satisfactory basis. These results were to be communicated to the Permanent Representatives Committee, which was empowered to modify the negotiating directives as and when necessary.

22. The Commission carried out these exploratory talks and examined the state reached in the renegotiations with the various countries which had submitted additional requests for concessions.

23. Finally, in order to bring the negotiations to a close, the Community made offers which involved additional tariff concessions for some of the countries which had refused to conclude, a formula for regulating the three acceding countries' concessions for cereals, and an answer to a request by Poland for bacon and by Brazil for cocoa butter and soluble coffee¹. The Community also specified that all the tariff reductions and corresponding adjustments in the alignment of the three acceding countries would take effect on 1 January 1975, subject to any indications to the contrary in the schedule of tariff concessions, and announced that the schedule of concessions of the EEC (Six) and of the three acceding countries would be replaced on 31 July 1974 by the new schedule of concessions on the common customs tariff of the enlarged Community. As from that date the Community would consider itself bound by the fresh obligations on its common customs tariff involved by the new schedule.

24. At time of writing, the winding up of the bilateral negotiations (initialling procedures) with each of the partners was in process.

¹The solution involves the two countries in question in sending a letter to the Community, which must formally acknowledge receipt thereof.

25. Of course, until conclusion by the Council, the Community may review its concessions and, if necessary, withdraw those which apply to any country refusing to conclude. As these would be withdrawals for all countries, the Community should ensure that concessions granted to each of the other countries are maintained at no less favourable a level than before any such withdrawals.

26. Once the Council has concluded the results of the negotiations, the Community will set in motion the GATT "certification"¹ procedure applicable in cases of modification of concessions resulting from negotiations under Article XXVIII (referred to in Article XXIV(6)). According to this procedure the codified schedules of concessions² of the EEC and ECSC are considered to be certified if no contracting party has raised any objection within the sixty days following distribution of such schedules.

¹See GATT decision of 19 November 1968 (BISD Supplement No 15, p. 69).

²In the case of certification, the schedules of concessions do not indicate the countries which are the beneficiaries by name of the concessions.

C. Results

27. For each of the partners, the statistical tables giving figures for withdrawals of concessions and offers of compensation are in terms of customs receipts and volumes of trade, the traditional criteria for GATT negotiations. Increase or decrease of customs receipts has been calculated by comparing receipts obtained under the old concession arrangements of the Community of the Six and of the three acceding countries with those resulting from the offers of concessions by the enlarged Community. Volumes of trade were calculated for tariff headings which were the subject of concessions in the tariff of one or more acceding countries and which are not bound in the customs tariff of the enlarged EEC (volumes of trade unbound), and vice versa (volumes of trade recently bound).

28. In these tables, all concessions have been included regardless of the supplier status of the country in question to take into account the fact that most of the concessions at issue in the negotiations were granted during the Kennedy Round, that is without indication of the country which is the direct beneficiary and which thus has certain special rights of compensation. This method of presentation made it possible to give the proposed concessions maximum application.

29. In quantitative terms, according to the parameters of customs receipts and volumes of trade, the final results of the negotiations are as follows:

- i. Customs receipts : a balance of \$ 45 million for the partners of the Community. This is due to a credit in the industrial sector, of which part went to compensate the agricultural debit. It should be pointed out that a large part of the credit in the industrial sector goes to the United States since, because of its very diversified range of exports, that country has reaped the full benefit of all tariff

reductions that have been made. The initial offer vis-à-vis the United States showed a credit of \$22 million in customs receipts. There are other countries which have had the benefit of this credit: Canada \$6.5 million, Japan \$2.8 million, India \$1.4 million, Brazil \$1.2 million, etc. This means that for some of these countries the initial debit has either been converted to credit or has at least been reduced. However, customs receipts for some countries (e.g. Australia, Argentina and New Zealand) still showed a slight debit even after the offer was improved but for most of them the volumes of trade showed a credit balance.

ii. Volumes of trade bound and unbound: Overall, the concessions granted by the Community are translated in the tariffs of the three acceding countries by further binding of duties worth \$1600 million and unbinding worth \$850 million in volume of trade. The principal products to be bound for the first time are tea, tobacco, copper, wool and mutton. Those products to be unbound are cereals, lard, butter, preserved pigmeat, leathers, hides and skins, wood, etc.

30. Quantitative considerations apart, the Commission gave its partners to understand that, seen from the qualitative angle, the offers of compensation were fully satisfactory. Tariff reductions due to enlargement were made mainly in industry, where the United Kingdom's customs tariff was on average 1.5 to 2 points higher than the EEC's. Trade in this sector tends to be particularly dynamic and is relatively sensitive to modifications in customs duty. In agriculture, however, frontier measures are not generally very indicative of the real degree of support provided. The Commission also pointed out that over the last ten years agricultural imports into the Six rose far faster than into the three acceding countries - particularly the United Kingdom - and that, consequently, the Community's offer in this sector should be assessed qualitatively, as a function of this more dynamic evolution

of trade.

31. The withdrawal of the three acceding countries' concessions for cereals was one of the crucial points of the negotiations. The United States, Canada, and Australia, which were the countries mainly concerned, stated that they considered it to be of the utmost importance, to maintain their rights to compensation in this sector, given the concessions they had obtained from the acceding States concerned. The Community did not consider itself able to make any commitments in this sector and did its best to show that the offers for other products fully compensated the withdrawal of all the concessions including those for cereals.

The solution which was ultimately retained involved a formal record of disagreement. The United States considers, for its part, that the negotiations on these products are not yet at an end and reserves the right to continue them and, if they prove unsuccessful, to withdraw concessions which are substantially equivalent; whereas the Community considers the negotiations on all products with all countries to be at an end. If one or more countries should withdraw concessions, the Community reserves the right to make counterwithdrawals itself so that the balance of concessions is reestablished¹.

In spite of this difference of opinion and in view of the complexity of the cereal problem, the United States and the Communities have agreed to hold further discussions with a view to seeking suitable solutions to the problems of international trade through international negotiations.

This proposal was communicated to Canada and Australia but no answer had been received at time of writing.

¹ A note to this effect was inserted in the codified schedule of concessions.

D. Conclusions

32. There are a considerable amount at stake during the negotiations under Article XXIV(6). The enlargement of the Community had to be presented to the GATT to have it, as it were, accepted and recognized by the GATT. Given the difference at the beginning of the negotiations between the position of the Community -- founded on rights and obligations in accordance with GATT rules -- and the position of the many third countries who wished to use the negotiations to obtain a unilateral lowering of the EEC customs tariff, the Commission considers that the results are satisfactory.

Conclusion by the Council on the proposed bases will allow the Community to take part in the multilateral trade negotiations on the basis of a customs tariff recognized by its partners in the GATT.

SECTION II

Draft

COUNCIL DECISION

approving Schedule LXXII of the European Communities containing the concessions resulting from the conclusion of the tariff renegotiations under Article XXIV(6) of the General Agreement on Tariffs and Trade

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof;

Having regard to the report of the Commission on the results of the tariff renegotiations under Article XXIV(6) of the General Agreement on Tariffs and Trade which it conducted on behalf of the Communities with the Contracting Parties to that Agreement;

Whereas the results of these renegotiations are satisfactory;

HAS DECIDED:

Article 1

Schedule LXXII of the European Communities containing the concessions resulting from the renegotiations under Article XXIV(6) of the GATT is hereby approved on behalf of the Community. This schedule, reproduced in the annex hereto, indicates the Contracting Parties to which concessions are accorded by name. As from 31 July 1974 it replaces the following schedules: XL (European Economic Community), XIX, Section A, Parts I and II (United Kingdom, Metropolitan Territory), XII (Denmark), and LXI, Parts I and II (Ireland), annexed to the General Agreement.

Article 2

The President of the Council is hereby authorized to designate the person empowered to undertake the formalities of conclusion and to confer on him the powers required to bind the Community.

Annex to SECTION II

Draft Schedule LXXII (European Economic Community)

The text of this Annex will be distributed separately.

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SECTION III

Draft

DECISION

of the Representatives of the Governments of the Member States of the European Coal and Steel Community meeting within the Council approving Schedule LXXIIbis (Member States of the ECSC) containing the concessions resulting from the conclusion of the tariff renegotiations under Article XXIV(6) of the General Agreement on Tariffs and Trade

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COAL AND STEEL COMMUNITY MEETING WITHIN THE COUNCIL,

Having regard to the report from the Commission on the results of the tariff renegotiations under Article XXIV(6) of the General Agreement on Tariffs and Trade which it conducted on behalf of the Community with the Contracting Parties to that Agreement;

Whereas the results of these renegotiations are satisfactory;

HAVE DECIDED:

Article 1

Schedule LXXIIbis (Member States of the ECSC) containing the concessions resulting from the renegotiations under Article XXIV(6) of the GATT is hereby approved on behalf of the Member States of the European Coal and Steel Community. This schedule, reproduced in the annex hereto, indicates the Contracting Parties to which concessions are accorded by name. As from 31 July 1974 it replaces Schedule XLbis (Member States of the ECSC) annexed to the General Agreement.

Article 2

The President of the Council is hereby authorized to designate the person empowered to undertake the formalities of conclusion and to confer on him the powers required to bind the Member States of the Community.

Annex to SECTION III

Draft List LXIIbis (Member States of the ECSC)

The text of this Annex will be distributed separately.