Summary of The GATT legal system and the world trade diplomacy by Hudec

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*Traders and diplomats* by Ernest. H. Preeg describes the negotiations during the Kennedy round. This book is particularly interesting as it is the first time that reductions across-the-board are put into practice. In this summary I will follow the chronological order privileged by the book. As a consequence, I will first focus on the difficulties to reach the general formula or tariff concession. Then, as all sectors could not be treated the same, I will present how exceptions were handled. In conclusion, I provide the principal features which may be worth considering in the frame of other negotiations.

# Reaching the general agreement

The Kennedy round is a round of change. Not only the process of negotiation is drastically changed but Agriculture is added to the list of concessions as a major issue, the GATT has to fight the new wave of particularism which spread because of the formation of new custom unions (the EEC, the EFTA) and, finally, developing countries are getting more and more importance in the effective the GATT, changing the balance of power. The difficulties could have been dealt one by one on the long run if the limitation of the time for negotiating allowed to the US were not limited until June, 1967. As extension was impossible, this deadline loomed the Contracting Parties and put pressure to conclude an agreement. They managed to agree only at the very last moment.

### Context for the major belligerents

1. The European economic integration

The EEC created by the Treaty of Rome in 1957 was already problematic during the Dillon round in which renegotiations had to take place. However, the scope of the Kennedy round and the enthusiasm linked to it highlighted the new economic order. The EEC, like the US or the USSR, is a partner of first importance. With the EFTA and the US, they form a trio of divergent interests. Contrary to the notion of free trade area, like the EFTA, the EEC is a custom union which implies not only no barriers between members but also united tariffs. As such, they formally negotiate together during the round (contrary to the EFTA members). The common market had prior to the beginning of the round been labeled as a challenger of the international trade. The Chicken War of 1962 sketched the opposition that will take place between the United States and the EEC during the round. The challenge of the Kennedy round is to reduce tariff by an amount large enough to enable non-members of the EEC to compete within the Common market. Indeed, since the creation of the EEC, the United States lost a volume of 132 million dollars, the principal beneficiaries of this loss being the members of the EEC. Meanwhile, the creation of the EFTA hurt a lot the interests of the EEC. As a consequence, its members want the Kennedy round to reduce the differential in tariffs which affect the Contracting Parties outside the free trade area.

The decision making process of the EEC is far more complex than any other Contracting Party. Indeed, the Council of Ministers give the power to the Commission which send a delegation to Geneva. The problem is that the Council of Ministers still decides in 1963 with an absolute majority, and the French president De Gaulle is really attached to that voting process. As a consequence, the Commission has a very small margin to negotiate in Geneva. This will ultimately lead to a crisis in 1965 which endangered greatly the negotiations.

2. The United States and the Trade Expansion Act of 1962

In the 1960s, the American economy is not as booming as it used to be. It is not a real crisis but a small recession. The first attacks against the dollar happen and the gold reserve decreases. It is necessary to avoid another Dillon round where the peril point limit the possibility of negotiating. The presence of a bold president could overcome this issue. The Trade Expansion Act was necessary to avoid the former item-by-item negotiations, which limits the scope of the agreement and rise tensions between the Contracting Parties. The Trade Expansion Act sets the frame of the negotiation: the President has the authority to cut by 50% the tariff which are more than 5% and suppress the one lower than 5%. This authority only last for 5 years. Some exception are included in the deal: an escape clause is introduced as well as a different treatment for products deemed as essential for national security. The reactions toward the TEA were mixed. The EEC was glad to be able to negotiate but some dark clouds were already above the negotiations. The issue of disparities, the fact that some countries may have actually lower base rate than others, and especially the difference between the 10-% range EEC and some very high American tariffs, was really worrisome. It does not seems that the French and the EEC will go with the linear cut. As a consequence, the Ministerial Meeting of the Kennedy round started on a divergence on the rule to apply.

### Making offers

This is an intense period that will end by the final proposals in matter of linear cuts and specific offers. It spreads from May 1963 to July 1965, moment at which the tensions explode.

1. Establishing the Rules

All Contracting parties agree on two elements. First, it is necessary to have across-the-board negotiations. Second, the disparities constitute an issue that it is necessary to handle. This is the conclusion of the ministerial meeting. As it does not precise the method for linear cut nor the way to handle disparities, it actually solves nothing. Disparities is an important source of conflict. A first issue is the definition of a disparity. At which threshold a gap between two tariff lines is called a disparity, that is a real mystery in May 1963. The second issue worsens the first one: how handling disparities. This is critical and the focal point of all discussion until May 1964. Indeed, disparities are a problem already mentioned in Torque and, as the Kennedy Round is the first of its type, setting the things right at start may prevent any costly change in future negotiations. Two methods are in competition. The EEC, under the pernicious influence of the French delegation, abandoned the linear cut for the method of "ecretement", which consists in a sort of tariff harmonization. They advocated that the linear cut would worsen the gap between in protection between the United States and lower-average-tariff countries like the one in the EEC. Some other arguments were raised: the fact that reduction on dispersed tariff represents actually a lower average on trade than a concession on homogeneous tariff lines, the relative unfairness of high tariff lines compare to lower and less objectionable duties, the strategy concerns over the impossibility of reciprocity in the next rounds (the fact that EEC countries, under the rule of reciprocity, were giving up a lot a bargaining power to decrease high tariff line). Moreover, the fact that the group of high tariff were well identified and in the spotlight compared to the rest of the tariff added some unnecessary tensions in the negotiations. Indeed, the different nomenclatures, especially in textile and chemicals, made the talk even harder. The problem of disparities is that there is not any good solution. The supplementary cut which would be necessary by the United States seems pretty unfair and was forbidden by the 50%-cap set by the TEA of 1962. Using the "ecretement" method and putting the concession on high-level tariff lines at 50% would reduce the scope of the agreement and eventually harm 3rd parties. The problem is not solved on a general basis and the future of the round depends on the specific negotiations in touchy areas. Other negotiations issues were raised during the Round. First, it was the occasion of the empowerment of the developing countries. They had few possibilities but, as agreement need to be reach on the largest basis, their role was more important than in the previous bilateral negotiations. Another problem was non-tariff barriers, and in particular the American Selling Price (ASP), which would play an important role at the end of the round. Finally, agriculture was at the center of the US policy which was afraid of the proportion the Common Agricultural Policy of the EEC (remember the Chicken War).

2. Specific offers

From May 1964 to June 1965, the Contracting Parties agree on the 50% linear cut as a "working hypothesis" and prepare exemption list. The display of them triggered some problems which led to the interruption of the negotiations during 8 months Disparities led to the proposition of exemption list. Most of the item contained in the list were in problematic sectors: agriculture, textile and chemicals. With the submission of the exemption list, a problem arose in the negotiations. Linear cut preserved the scope of the Round but did not help to establish a working process to handle disagreement on exemption lists. Some questions remained unanswered: how should the negotiations be completed (bilateral? Linear country together? MFN?)? How to negotiate in sectors that considered as strategically critical? The solution was to create sector groups who would deal with the particularly burning issues. 5 industrial sector groups were created: pulp and paper; aluminium; iron and steel; cotton textiles; and Chemicals. Pulp and paper disagreement lied between the EEC and the Nordic countries. The discussions were a success. For aluminium, several actors had substantial interest. The explosion of the use of the metal made it harder to conclude an agreement even with the support of the private actors. The outcomes of the negotiation were not really satisfying and the Contracting parties involved maintain some of the barriers the group had to take down. The negotiations for iron and steel were also difficult. Only a major concession of the UK to the ECSC saved the day in the very last months of the round. Cotton textile agreement was a clear disappointment for exporting countries. Even if tariffs were down by 20%, the fact that they were not bound to this level (they could "snap-back" if the long-term arrangement was interrupted for some period) reduced the scope of the concessions. Chemicals triggered the crisis, the American Selling Price (ASP) and the high disparities in the sector reduced the proposals of the United States and particularly upset the UK and the EEC.

The political crisis that stroke the EEC in 1965 is not directly linked to the Kennedy Round. However, the issues precendently raised may have worsen the situation. even if the Kennedy round is not directly related to it, the crisis deeply influenced the negotiations.

# Going through the EEC crisis and reaching an agreement

### An anxious interlude

The crisis stems from a trial to reform the EEC working process. Indeed, one of the fundamental innovation was to give to the Parliament some kind of power (rather than only consultative one). The negotiations in Geneva were explicitely mentioned to justify the move. As France objected, the negotiations stoped in Geneva. No agreement have been reached and therefore the EEC delegation has no power to negotiate. As the EEC was one of the major player in the negotiations, it has the effect of stopping the march of the negotiations, each Contrating Party waiting for the return of the EEC. Side problems were tackled and sector groups pursued their analysis of the situation. However, no breakthrough could bedone without the EEC. The Contracting Parties themselves to wait for an improvement of the situation. The United States moved ahead on subsidiary topic however, the continuous French rebuff, also known as the policy of the "chaise-vide", limited this initiative. Negotiating without the EEC would considerably reduce the scope of the agreement and the Kennedy round appeared to be really disapointing during that period. No real alterntive could be found to the European particiaption. The Deadlock ended when the French and the other members of the EEC agreed on the impossibility to currently solve the problem.

### Negotiations resume

The EEC crisis implied that the Contracting Parties only have a year adn a half to conclude the negotiations. At that point, no concession has been agreed on and a lot needed to be done in the matter of exemptions. Some features facilitatied the conclusion of the negotiations: the Nordic countries gathered to negotiate under the delegation of Sweden; the US deadline of June 30 1967 forced the Contracting Parties to accept offers; and no reciprocity was expected from developing countries (which simplified the negotiations and reduce the size of the necessary concensus). In 1966, four issues were at stake: concluding the infant negotiations in the sector groups; establishing EEC disparity claim (the previous list was not precise enough, especially in partial concessions); the status of agriculture as a non-compensatory sector for industrial concessions; improvement of bilateral offers, the exemption lists from Canada and Japan appearing as unacceptable. As usual in the GATT, measuring reciprocity added itself to the particular problems. Different factors were employed: depth of the concession, trade volume, loss of duties collectible (import \* absolute tariff concession), projected trade impact (based on elasticities). The massive employment if statistics help to contend the issues to a small number. The offers were not considered as satisfactory by any Contacting Party. The United States found the EEC to mild on agriculture. The EEC was hurt that its efforts had not been noticed by the US. One of the problem in the Kennedy-type of negotiation is that withdrawal from a Contracting Party can trigger a chain of withdrawal from the others and therefore reduce the scope of the round. Luckily, the internal disunion of the EEC prevent any possibility of withdrawing the list they submitted. As a consequence, they did not appear as a threat to the negotiation anymore and fostered concessions from other delegations. Agriculture stand out as a particular issue.