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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Tariff Concessions

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HARMONIZED SYSTEM AND ARTICLE XXVIII NEGOTIATIONS

Review Clause

Proposal Submitted by the Delegation of Canada

As members of the Tariff Committee are aware, Canada has had a long-standing concern that other contracting parties may not have sufficiently focussed on. That is, the need for a mechanism, for a temporary period after implementation of the Harmonized System, to correct inadvertent errors in the conversion exercise without the need to re-enter formal Article XXVIII negotiations. Underlying our concern is the fact that while most countries were converting from the CCCN to the Harmonized System and thus had the benefit of converting to a similar tariff structure, for Canada the conversion was more complex. While every effort was made to ensure an accurate transposition between the Customs Tariff and the Harmonized System, there may be instances where mistakes were made, resulting in products being dutiable at rates other than what they should be.

More specifically, we anticipate that when imports begin to flow under the Harmonized System, there may come to light instances where Harmonized System rates have been based on incorrect data. In such cases an industry may be adversely affected as a result of lost tariff protection on a product it manufactures because the product is classified under a Harmonized System item at a rate different than what the rate would have been had there been no error. We suggest three (or possibly four) examples of the types of inadvertent errors which, when and if these occurred in the rate determinations (as recorded in the Article XXVIII concordance documents), could have resulted in rates on products in the Harmonized System schedule being higher or lower than they ought to have been:

(a) Technical error by officials in classifying products from existing item to Harmonized System item. For example, a product may have been properly classified under an existing tariff item and when trade flows under the Harmonized System, the product is properly classified under a certain Harmonized System item. However, the statistical data provided may not indicate any trade allocations, either hypothetical or actual, for this combination of existing item to Harmonized System item. The rate under the Harmonized System item may not be the same as the rate under the existing item. This type of error could occur where products under one existing item, such as mining machinery product, were allocated to a number of Harmonized System items; however, in

preparing concordances, account was inadvertently not taken to allocate or break out one or more of the mining machinery products to the correct Harmonized System item.

(b) Misclassification of goods in the base year statistics. For example, a misclassified product in the base years results in the product also being incorrectly concorded to a Harmonized System item. The proper concordance of the product to the Harmonized System, which only comes to light after implementation, will therefore not have been taken into account in determining the Harmonized System rate.

(c) Incorrect trade allocation. The allocation of trade from an existing item to a number of Harmonized System items was for some contracting parties in some instances done arbitrarily. For example, trade under a "basket item" was arbitrarily allocated to a number of Harmonized System items (i.e. ten Harmonized System items each allocated 10 per cent of trade). After implementation, evidence is provided indicating that the allocations were incorrect, resulting in higher or lower rates than expected or indeed warranted.

(d) Obvious errors. For example, an existing tariff item with a rate of 15 per cent clearly has the majority of trade under a given Harmonized System sub-division. However, because of an oversight or misprint the proposed rate is indicated as free. This type of error may not come to light in the negotiations because the error is in favour of the exporting country and they are not likely to question the rate change. Could this type of error be corrected under existing rectification procedures without having recourse to Article XXVIII after 1 January 1988?

The Government of Canada (and national governments of other contracting parties) can expect significant pressure from domestic industry to correct errors of this nature quickly. The Government of Canada would obviously want a flexible and internationally acceptable mechanism to correct these errors. It would pose significant difficulties should it be necessary to open Article XXVIII negotiations and provide compensation each time an unanticipated error is corrected. Indeed, we are seriously concerned about the potential difficulties in making corrections after implementation if nothing is done to address this problem.

Of course, the problem is not restricted to imports generally (or even Canadian imports, should that be the case) but also affect exports, both Canadian and other contracting parties'. For instance, in cases where an exported product is classified under a Harmonized System item which carries a higher rate than it ought to have, it would appear that signatories would have to resort to Article XXIII re impairment in order to request any rate adjustment. We think that a less complex and onerous procedure would be

preferable to correct these unforeseen cases. Contracting parties would identify the items where their products have become subject to a higher rate of duty than ought to apply with an explanation of the apparent error and the importing contracting party could make changes under a review mechanism with respect to its conversion. We do not know at this time whether there will be more errors requiring rate increases or decreases. However, we expect initially that requests to restore lower rates will be more numerous than requests from domestic interests to restore the protection.

We think that the majority of these types of unforeseen errors will be discovered and corrected in the first year; therefore a special mechanism is only needed for that year. Changes made subsequent to the year would need to be made under regular Article XXVIII or rectification procedures. We believe that such a mechanism is required, whether it be in the GATT Protocol, as a Committee decision or understanding reached by major participants in the Harmonization System exercise. We believe that if a review clause is approved by contracting parties, it should be appropriately worded to present abuse by contracting parties and not be contrary to the spirit or rules of Article XXVIII negotiations, that is, it should not compromise the nature of bound schedules. Indeed, a key element of the clause should be restoration of rates to levels applicable prior to Harmonization System implementation. Other conditions should be that changes are only to correct inadvertent errors and that the overall neutrality of the conversion exercise is not substantially altered.

The following is proposed for consideration by the Committee: "The transposition of schedules of tariff concessions to the Harmonized System may result, after implementation, in rates of duty on certain products different from those that ought to apply due to inadvertent errors in the classification of those products under existing schedules or the new schedules. Any such errors affecting bound items may be corrected for a period of one year following implementation of the new schedule by adjusting the rates of the bound items concerned, without the need to negotiate such changes, provided that:

(1) The adjusted rate is not higher than the bound rate applicable to the product prior to conversion;

(2) The rate change does not adversely affect the rate(s) on other products;

(3) The rate change does not substantially affect the overall neutrality of the tariff conversion of that participant's schedule; and

(4) Participants taking action under this section communicate changes with appropriate explanation to the Director-General within six months of taking action.