

GENERAL AGREEMENT ON

RESTRICTED

TAR/W/68/Add.1

6 April 1987

TARIFFS AND TRADE

Limited Distribution

Committee on Tariff Concessions

HARMONIZED SYSTEM AND ARTICLE XXVIII NEGOTIATIONS

Review Clause

Proposal Submitted by the Delegation of Canada

Addendum

Following the Canadian proposal on Review Mechanism (TAR/W/68) submitted to the Committee on Tariff Concessions in December 1986, and in light of the agreement reached by major HS participants on draft HS Protocol, Canada would like the Committee to consider a new proposal to resolve Canadian concerns respecting the need for a review mechanism to correct unforeseen errors in the conversion exercise for a temporary period after HS implementation.

The new proposal is for the Tariff Committee to take a decision on temporary procedures authorizing contracting parties to make certain rectifications to HS schedules after implementation, subject to explicit conditions and limitations.

Currently any changes in authentic texts of schedules annexed to the General Agreement are considered "modifications" resulting from action under certain GATT articles (e.g. XXVIII) or "rectification" of a purely formal character reflecting amendments or rearrangements which do not alter the scope of a concession. Procedures for certification of such changes are covered by the 26 March 1980 Decision of the GATT Council.¹

Canada is proposing that a decision be taken by the Tariff Committee (to be approved by Council, if necessary) that for a specific time period following implementation of the Harmonized System by a contracting party (e.g. eighteen months), that a contracting party would be able to make alterations to rates in its HS schedule without invoking Article XXVIII, but only in the following limited circumstances, and subject to review by a standing panel:

- (a) The rate change to an HS item is made where the original HS rate was established on the basis of incorrect trade allocations from an existing tariff item (or items) and concrete evidence is presented

¹BISD 27S/25

that shows trade should have been allocated differently, which would result in a different rate determination.

- (b) The HS item affected by the rate change was not an item for which a specific notification or request was made by any substantial or principal supplier or INR holder during the HS negotiations.

Other conditions designed to limit the scope of the changes permitted under these exceptional procedures would be:

- (a) The adjusted rate is not higher than the bound rate applicable to the product prior to the conversion;
- (b) The rate change does not adversely affect rate(s) on other products (downward adjustments would be made where appropriate).

Procedures for making such changes would follow the usual procedures for certification of rectifications detailed in the 26 March 1980 Decision, but would include the additional requirement that the contracting party making notification would be required to submit evidence indicating how the error was made in the rate determination. Moreover, these procedures could be used only for an eighteen month period, following which any amendments to rates would have to be submitted under normal Article XXVIII procedures.

In light of concerns expressed by some contracting parties that changes in rates without safeguards contained in Article XXVIII procedures could result in adverse effects on other contracting parties would be left without recourse, Canada considers that the rights of contracting parties would be retained in the following manner: contracting parties would be protected by existing procedures detailed in the 26 March 1980 Decision which gives a contracting party three months from the notification date to object to changes which have been notified as rectifications. If a contracting party objects to a rectification, on the basis that one or more of the limitations or conditions specified above is not met, the issue could be placed before a standing panel established by the Committee to review such objections. The panel would then advise the Committee whether the correction submitted should be approved as a rectification, or whether Article XXVIII procedures are warranted (i.e. whether compensation would need to be provided for the tariff change).