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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Tariff Concessions

HARMONIZED SYSTEM NEGOTIATIONS UNDER ARTICLE XXVIII

Note by the Secretariat

At its meeting on 3 October 1986 the Committee on Tariff Concessions requested the secretariat to prepare a note in response to certain questions of a legal nature which were raised by the delegation of the United States (see TAR/W/64 paragraph 2.38).

The replies to the questions are contained hereunder and are without prejudice to the position of any delegation.

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1. As of 1 November 1986 a total of thirty-nine GATT schedules in loose-leaf form have been submitted; of these only ten schedules have been approved and are ready to be certified and to be included in the Sixth Certification. Although the uncertified loose-leaf schedules represent important sources of information and bases for negotiations they have no legal status. It follows that past protocols and other legal instruments continue to keep their legal status until the time of certification of the respective loose-leaf schedules or their entry into force by means of a Protocol.

2. It is recognized that participants will find it difficult within the time-frame envisaged for the implementation of the Harmonized System to include in their draft consolidated schedules which are to be annexed to the Harmonized System Protocol information under column 6 (concession first incorporated in a GATT schedule) and column 7 (INRs on earlier concessions) of the loose-leaf model (see Annex of TAR/W/62). Since the inclusion of this information is mandatory under the Decision of the GATT Council of 26 March 1980 (BISD 27S/22) on the introduction of the loose-leaf system a schedule which is annexed to the Harmonized System Protocol and which contains information relating only to columns 1-5 would be considered a legally valid consolidated - but incomplete - schedule of concessions. In order to comply with the requirements of the above-noted decision the missing information (relating to columns 6 and 7) would have to be submitted at a later stage. At that time it will be necessary to certify the completed consolidated schedule a certification limited to the columns 6 and 7 information not being a practical approach; it would however be understood that no objections could be raised against the information contained in columns 1-5 provided no changes were made to this information.

3. Concerning column 4 of the loose-leaf model (present concession established in) it should be borne in mind that the concessions resulting from the transposition from an earlier nomenclature (CCCN TSUS CTN etc.)

to the Harmonized System nomenclature should be considered as new concessions, especially since many of the latter will be subject to renegotiations and furthermore since many, if not all, product descriptions and tariff item numbers will change. The most appropriate reference in column 4 would therefore be G/HS/86 or 87 (as the case may be).

4. No relationship exists between the points raised in the previous paragraphs and paragraph 2 of the draft Protocol contained in TAR/W/63. Paragraph 2(a) simply stipulates that for products which are the subject of a new concession granted during the Harmonized System Article XXVIII negotiations, no "other duties or charges imposed on or in connection with the importation in excess of those imposed" on the date of annexation of a particular schedule for inclusion in the Protocol may be levied. In the absence of such a provision in the Protocol, contracting parties having granted a concession would be able to impair or even nullify its value by imposing, after the date of annexation, additional charges on the importation of the product concerned. For concessions which existed prior to the Harmonized System negotiations and which remain unchanged, the words at the end of paragraph 2(a) "but without prejudice to any obligations in effect on that date", make it clear that the relevant cut-off date beyond which additional duties or charges may not be imposed remains the date at which the concession was initially granted. Finally, for specific duties paragraph 2(b) of the draft Protocol contains the same idea relating to the depreciation of the currency in which the concession is expressed.

5. On the question of floating INRs, in view of the fact that through the Harmonized System negotiations the tariff schedules of a considerable number of contracting parties, among which the major trading nations, will be put on a completely new basis, it would appear necessary that - once the Harmonized System Protocol and the annexed schedules have entered into force (i.e. after 1 January 1988) - the CONTRACTING PARTIES take a decision along the lines of the decisions taken by them at the end of the Kennedy and Tokyo Rounds. For illustrative purposes, a draft decision on floating INRs is annexed to this note.

Annex

1. The CONTRACTING PARTIES note that as a result of the tariff negotiations in connection with the introduction of the Harmonized Commodity Description and Coding System, the Geneva (1986) Protocol to the General Agreement on Tariffs and Trade has been drawn up.

2. The CONTRACTING PARTIES adopt the following decision:

In respect of the concessions specified in the Schedules annexed to the Geneva (1986) Protocol to the General Agreement on Tariffs and Trade, a contracting party shall, when the question arises, be deemed for the purposes of the General Agreement to be a contracting party with which a concession was initially negotiated if it had during a representative period prior to the time when the question arises a principal supplying interest in the product concerned. This decision does not affect initial negotiating rights which are the result of bilateral negotiations and which have been duly notified.