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RECTIFICATIONS AND MODIFICATIONS TO SCHEDULES OF TARIFF CONCESSIONS INTRODUCING HS96 CHANGES AND THEIR CERTIFICATION

Communication from Switzerland

The following communication, dated 20 October 1997, has been received from the Permanent Mission of Switzerland.

This communication addresses legal issues pertaining to the certification of HS96 changes, in the light of the relevant WTO rules and procedures. Switzerland invites the Council for Trade in Goods to take into consideration the following clarification with a view to assist the proper and timely certification of proposed Schedules of Tariff Concessions incorporating HS96 changes.

I. RELEVANT WTO RULES AND PROCEDURES

On 8 October 1991, the CONTRACTING PARTIES to the GATT adopted the procedures to implement changes to the Harmonized System (HS) - referred to as "simplified procedures"¹, having in mind the important changes to the Harmonized System which were due to be implemented on 1 January 1996 (HS96).² Subsequently, in the decision of 13 December 1995 to introduce changes into WTO Schedules of Tariff Concessions on 1 January 1996,³ it was stated that HS96 changes have to be introduced on the basis of these simplified procedures. The Decision of 8 October 1991 constitutes the relevant WTO rules and procedures pertaining both to the presentation of information by the Member proposing HS96 changes to its Schedule and to the modalities for verification by other Members as well as the certification by the WTO of the proposed HS96 changes.

II. RIGHTS AND OBLIGATIONS OF MEMBERS UNDER THE SIMPLIFIED PROCEDURE

As to the provision of information by a Member proposing HS96 changes to its Schedule, paragraph 2 of the simplified procedures contains obligations for Members proposing HS96 changes to their Schedules of Tariff Concessions. Two different cases are covered by paragraphs 2(a) and 2(b) of the simplified procedures:

A. Case 1 (Paragraph 2(a) of the simplified procedures)

In case the proposed changes do not, in the view of a Member adhering to the principles of the World Customs Organization to implement HS changes, alter the scope of a concession, each item

¹BISD 39S/300 (simplified procedures).

²See note by the Secretariat dated 6 October 1997 (G/L/190).

³WT/L/124 (16 January 1996).

concerned should be indicated by underlining or shading.⁴ No additional information is requested from the Member proposing only changes which do not alter the scope of a concession provided that the Secretariat has circulated a communication concerning the acceptance by the CCC of a recommendation to revise the Harmonized System nomenclature made in accordance with Article 16 of the Harmonized System Convention⁵, and correlation tables prepared by the CCC Secretariat.⁶

As to the modalities for verification of the HS96 changes proposed by a Member, paragraph 4 of the simplified procedures states the right for any Member to raise an objection to the certification of the proposed changes within 90 days *on the ground that the proposed change or rectification is not of a purely formal character*.⁷ This means that an objection can be raised if, and for each item for which, the proposed change or rectification e.g. alters the scope of a concession in the view of the "objecting" Member. In such a situation the procedures for negotiations under Article XXVIII (BISD 27S/26) shall apply (see Case 2 below).⁸

In the recent past, some Members have, within the 90 days prescribed, communicated that they "reserve their WTO rights". Paragraph 4 of the simplified procedures states that a Member wishing to object to the certification of proposed HS changes has the right to do so within the 90 days prescribed. "Reserving" this right cannot prolong this time-limit and the decision of 8 October 1991 does not foresee any possibility to extend the 90 days time limit. Thus, paragraph 4 limits the right to object to the certification to the case where the "objecting" Member considers that the proposed change or rectification alters the scope of a concession. Such an assertion has to be argued and supported by evidence. A contrario, a communication of a Member indicating that "it reserves its WTO rights", without specifying the nature of its concerns cannot be regarded, in the context of existing relevant rules and procedures, as an "objection to the certification of the changes on the ground that the proposed change or rectification is not of a purely formal character".

As to the certification of the proposed HS96 changes, since the communication by a Member stating that "they reserve their WTO rights", as mentioned above, does not constitute an objection in the sense of paragraph 4, the circulation of a "procès-verbal of certification of the proposed modification to a Schedule to implement HS96 changes" ought to be performed without delay after the expiring of the 90 days in order to ensure legal certainty of the Schedules of Tariff Concessions.

B. Case 2 (paragraph 2(b) of the simplified procedures)

In case the proposed changes do, in the view of a Member, alter the scope of a concession, or if a valid objection is made under the procedure of paragraph 4, the following information shall also be submitted for the each item concerned: a concordance table (between the existing and the proposed schedule and vice versa), indication of INR holders as well as import statistics.⁹

⁴Paragraph 2(a) of the simplified procedures.

⁵Paragraph 2 (first sentence) of the simplified procedures.

⁶Paragraph 2 (second sentence) of the simplified procedures.

⁷Paragraph 4 of the simplified procedures.

⁸Paragraph 6 of the simplified procedures.

⁹Paragraph 2(b) of the simplified procedures.

As to the modalities for verification of the HS96 changes proposed by a Member, paragraph 5 of the simplified procedures states the right for any Member to request, within 90 days following the circulation of the relevant documentation, negotiations or consultations under Article XXVIII.

As to the certification of the proposed HS96 changes resulting from the completion of the Procedures for Negotiations under Article XXVIII¹⁰, a comprehensive list of all changes and the corresponding amended pages of the Schedule shall be sent to the Secretariat for certification, as stipulated in paragraph 6 of the simplified procedures.

¹⁰BISD 27S/26.