At the meeting of the Committee on Tariff Concessions on 3 November 1980, the Committee requested the secretariat to prepare a background document on tariff reclassification covering further aspects than the previous secretariat note, document TAR/W/14. The discussion in the Committee is summarized in paragraphs 5.1 to 5.13 of document TAR/M/3.
1. If, at any given moment, there is a divergence between a national customs tariff of a contracting party to GATT and its schedule, the international obligations of that country are those described in its schedule of concessions.

2. A national customs tariff is an instrument of commercial policy which is in a continuous process of modification and development. Many changes are a matter of pure form; others can have great commercial importance. Changes in the national tariff which do not affect bound duties would obviously not require a change in the corresponding GATT schedule.

3. To the extent that changes in a customs tariff do not give rise to less favourable treatment for a product subject to a GATT concession, there is no violation of GATT obligations. It has, however, been agreed that any discrepancies between a national tariff and a GATT schedule should be eliminated to the extent possible (see document L/4962, para.2).

4. The purpose of this paper is to examine cases of reclassification of products in national customs tariffs according to the effects of such reclassifications on obligations in corresponding GATT schedules.

5. A tariff concession negotiated in GATT relates to a particular product as defined in the "Description of Product" column of the relevant schedule. The tariff item number is a help in the identification of the product but it is the product description and not the item number which is the essential element for delimitating the coverage of the concession. This applies also in cases where the schedule indicates only a tariff item number without a description of the product, as for example in Schedule XXX - Sweden in the Third Certification of Changes to Schedules; the description is in this case the description of the item as contained in the CCCN at the time of the approval of the schedule.

6. The reason for a reclassification would normally fall within one of the three following categories:

   (i) A decision by the Customs Co-operation Council that a product shall be transferred from one item to another or that a new item shall be created. This would obviously only affect countries using the CCCN.

   (ii) A decision by a government that a product shall be transferred from one item (or sub-item) to another, or that a new item (or sub-item) should be created. The reason would normally be that the government wishes to increase or decrease the duty on that particular product by transferring it to an item (or sub-item) with a higher or lower rate of duty. In the case of countries parties to the CCC Nomenclature Convention this would only be possible as far as sub-items are concerned, the four digit items being established by the CCC.

   (iii) A decision by a court or other proper authority that a product must be classified under a tariff item different from the one under which the product has previously been classified. Such a reclassification would not automatically lead to a modification of existing item descriptions. The reason for such a decision would be that the previous classification was erroneous. For parties to
the CCC Nomenclature Convention, such a decision entailing a change from one main item to another could only be taken with the agreement of the CCC.

7. From the point of view of GATT, the following are some of the cases which may arise:

(i) A product is reclassified from one item which is not subject to a schedule binding to another unbound item. No GATT problem arises.

(ii) If the reclassification of a product not subject to a binding results in the inclusion of the product in a bound item, the legal consequence will be that the product becomes bound unless steps are taken under the rectification procedure to indicate that it is not. The situation is similar if a product is transferred from an item bound at a higher level to an item bound at a lower level.

(iii) A product, which is the subject of a ceiling binding may, as a consequence of a reclassification, become taxable at a higher rate of duty. No problem arises so long as the new, higher, rate of duty does not exceed the originally bound "ceiling".

The cases mentioned under (ii) and (iii) do not give rise to less favourable treatment but in the case of bound items, it is nonetheless required as indicated in para. 3 above that the schedule be brought into conformity with the customs tariff by the procedure of rectification.

8. After the notification of a change which, in the opinion of the notifying contracting party, does not involve less favourable treatment, several possibilities may arise:

(i) No objections are raised: the change can be made in the schedule by the usual procedure of rectification.

(ii) Objections are raised by one or more contracting parties: consultations will be held between the parties concerned. The outcome of the consultations may be an agreement that the treatment foreseen is not less favourable and the usual procedure of rectification can be followed. On the other hand one or more contracting parties may consider that the proposed changes will impair the value of a concession. If the notifying contracting party does not agree, the matter may be pursued under Articles XXII and XXIII.

(iii) Claims that a proposed change will impair the value of a concession may be accepted by the contracting party which is proposing to make the change. If this contracting party desires nonetheless to make the change effective, it will have to follow the procedures of Articles XXVIII or XVIII (the latter only for developing countries in certain circumstances). The changes will only become effective when the procedures of these articles have been fully complied with.

9. In cases where a contracting party which proposes to reclassify a product recognizes from the outset that the reclassification leads to a substantial change of an obligation under GATT, the contracting party concerned should
notify the concession for renegotiation under the relevant provisions of the General Agreement (Article XXVIII or, in the case of developing countries, Article XVIII). This would also apply in cases where the reclassification does not lead to any modification in the item descriptions (cf. para 6(iii) above).

10 If a contracting party considers that a reclassification action by another contracting party has not been properly notified, Article II:5 foresees that the affected contracting party would raise the matter with the contracting party which took the action. The GATT rule that covers such cases is set out in the first part of Article II:5:

"If any contracting party considers that a product is not receiving from another contracting party the treatment which the first contracting party believes to have been contemplated by a concession provided for in the appropriate Schedule annexed to this agreement, it shall bring the matter directly to the attention of the other contracting party."

In cases of disagreement over the scope of a concession a contracting party has the right to have its complaints ultimately examined by the CONTRACTING PARTIES.

11. A special case is that covered in the second part of Article II:5. If a contracting party declares that the treatment provided in the Schedule "cannot be accorded because a court or other proper authority has ruled to the effect that the product involved cannot be classified under the tariff laws of such contracting party so as to permit the treatment contemplated in this Agreement, the two contracting parties, together with any other contracting parties substantially interested, shall enter promptly into further negotiations with a view to a compensatory adjustment of the matter". The procedure for compensation mentioned in the final part of Article II:5 differs from that of Articles XXVIII and XVIII in that it contemplates the possibility of action being taken before negotiations and compensation.

12. Document TAR/W/14 deals with the provisions and use of Article II:5.

13. It should be noted that the reclassification of a product may have consequences outside the tariff area. The fact that a product is classified under a new item may lead to different treatment in, inter alia, the area of quantitative restrictions (Articles XI, XII, XIII or XIX), in respect of subsidies (Article XVI), state trading (Article XVII) or general exceptions (Article XX).

14. In conclusion:

(i) Reclassifications should be promptly notified.

(ii) After notification any contracting party may request consultations.

(iii) When the proposed treatment is less favourable than that provided for in the Schedule, the procedures and provisions of Article XXVIII or, where appropriate, of Article XVIII, shall apply.

(iv) If a country proposing a reclassification does not agree that the proposed reclassification provides treatment less favourable than that contained in the Schedule, the procedures of Articles XXII and XXIII shall apply.
(v) The case dealt with in Article II:5 is a special one which has only once lead to renegotiations. Contracting parties wishing to proceed under this paragraph will have to prove that they have no alternative but to comply with what "a court or other proper authority has ruled to the effect that the product involved cannot be classified under the tariff laws of such contracting party so as to permit the treatment contemplated in this Agreement", and then proceed to negotiate.

15. The maintenance in cases of modification of schedules of "a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this agreement prior to such negotiations" is recommended in paragraph 2 of Article XXVIII. Although not more than a strong recommendation this principle can be said to have been adhered to over the years, and does not appear to have ever been challenged.