

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/3062

29 August 1968

Limited Distribution

CONTRACTING PARTIES
Twenty-fifth Session
12-29 November 1968

PROCEDURES FOR MODIFICATIONS AND RECTIFICATIONS

Note by the Director-General

When the CONTRACTING PARTIES decided to abandon the Protocol Amending Part I and Articles XXIX and XXX, the Director-General was requested "to propose solutions to arrive at the same result" (see SR.24/12, 153-4). It is the procedure for recording modifications and rectifications of schedules, which would have been established by the addition of a paragraph to Article XXX, that requires urgent attention.

The paragraph which would have been added to Article XXX reads:

"Any amendment to the schedules annexed to this Agreement which records rectifications of a purely formal character or modifications resulting from action taken under paragraph 6 of Article II, Article XVIII, Article XXIV, Article XXVII or Article XXVIII, shall become effective on the thirtieth day following certification to this effect by the CONTRACTING PARTIES; provided that prior to such certification, all contracting parties have been notified of the proposed amendment and no objection has been raised, within thirty days of such notification by any contracting party, on the ground that the proposed amendments are not within the terms of this paragraph."

The present document contains a proposal for establishing a procedure similar to that which would have been established had the Protocol entered into force. A draft decision¹ is annexed for consideration. The decision can be adopted by the CONTRACTING PARTIES under paragraph 1 of Article XXV, under the voting provisions of paragraph 4 of that Article.

Several provisions of the GATT - contained in Articles II, XVIII, XXIV, XXVII and XXVIII - permit action by contracting parties, in certain circumstances and subject to specified procedures and conditions, to modify concessions in their schedules. The modifications are legally valid upon the completion of the action and the contracting parties are informed of the results of each action. But there remains the formality of making the changes, in appropriate form, in the authentic texts of the schedules. It is proposed that this be done by means of certifications issued by the Director-General after all contracting parties have had an opportunity to examine the text. One of the purposes served by affording

¹This draft replaces that contained in L/2975. A further note relating to these matters was distributed in L/3021.

this opportunity is for contracting parties to satisfy themselves that any reformulation of a concession does not impair the value of other concessions. It is, of course, understood that "modifications" include the withdrawal of concessions and the addition of new compensatory concessions.

In the past, instruments recording such modifications have frequently included rectifications of errors and rectifications of a purely formal character. This practice would be continued by including both modifications and rectifications of schedules in the proposed certifications. This procedure could also be used, as in the past, for establishing consolidated schedules and schedules set up under Article XXVI:5(c).

The draft decision provides for the correction of any errors that may be discovered in the authentic text of the GATT or its annexes, as well as in schedules. This is in accordance with accepted international practice - see, for example, Article 74 of the Draft Law of Treaties (A/CONF.39/C.1/L.370/Add.7). Further, it is suggested that the certification procedure should be available for making rectifications of a purely formal character which can in no way affect a contracting party's rights or obligations, for example, deleting an obsolete passage or bringing a passage up to date. It would be understood that any contracting party, when a draft certification is distributed, could object to any proposed rectification on the ground that it was not "of a purely formal character". In that event, the proposed rectification would not be included in the certification issued by the Director-General.

All certifications issued under the decision would be registered with the Secretary-General of the United Nations and would therefore be published in the United Nations Treaty Series.

The first certification issued under the decision should validate the three certifications issued under the Decision of 17 November 1959 (8S/25, 12S/20-23 and 15S/57), the modifications and rectifications now being prepared for the fourth such certification and also the modifications and rectifications contained in any protocols which at that time have still not entered into force.

Annex

PROCEDURES FOR MODIFICATIONS AND RECTIFICATIONS

Draft Decision

Considering that the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade decided at their ninth session to amend the General Agreement to establish a procedure for the certification of amendments to the Schedules annexed to the Agreement which record rectifications of a purely formal character or modifications resulting from action taken under paragraph 6 of Article II, Article XVIII, Article XXIV, Article XXVII and Article XXVIII, and to this end provided, in the Protocol Amending Part I and Articles XXIX and XXX, for the addition of a paragraph to Article XXX;

Considering that the said Protocol has not entered into force and that the CONTRACTING PARTIES decided at their twenty-fourth session to abandon the Protocol;

Desiring to establish a procedure for the certification of such changes to the Schedules; and

Desiring further, to provide that such certifications may include, as appropriate, changes of a purely formal character in the Articles and Annexes of the General Agreement;

The CONTRACTING PARTIES decide that:

1. Changes in the authentic texts of Schedules annexed to the General Agreement to reflect modifications which have entered into force in accordance with the provisions of paragraph 6 of Article II, Article XVIII, Article XXIV, Article XXVII or Article XXVIII, shall be certified by means of Certifications.
2. Changes in the authentic text of the General Agreement (including Schedules annexed thereto) which are rectifications of errors or rectifications of a purely formal character shall be made by Certifications.
3. A draft of each Certification containing changes described in paragraph 1 or 2 shall be communicated by the Director-General to all the contracting parties and shall become a Certification provided that no objection has been raised by a contracting party within sixty days on the

ground that, in the case of changes described in paragraph 1, the draft Certification does not correctly reflect the modifications or, in the case of changes described in paragraph 2, a proposed rectification is not within the terms of that paragraph.

4. Whenever practicable Certifications shall record the date of entry into force of each modification and the effective date of each rectification.

5. The procedure of certification under this Decision may be applied for the establishment of consolidated Schedules or of new Schedules under paragraph 5(c) of Article XXVI, wherein all changes are modifications or rectifications referred to in paragraph 1 or 2.