

ARTICLE XXX

AMENDMENTS

I.	TEXT OF ARTICLE XXX	1001
II.	INTERPRETATION AND APPLICATION OF ARTICLE XXX	1002
A.	SCOPE AND APPLICATION OF ARTICLE XXX	1002
1.	Paragraph 1	1002
(1)	<i>Amendments to the General Agreement</i>	1002
(2)	<i>“except where provision for modification is made elsewhere in this Agreement”</i>	1003
(3)	<i>Procedure for submission of amendments for acceptance</i>	1003
(a)	<i>Majority required</i>	1003
(b)	<i>Inclusion of multiple amendments in a single Protocol</i>	1004
(4)	<i>“amendments to the provisions of Part I or to the provisions of Article XXIX or of this Article”</i>	1004
(a)	<i>Unanimity requirement</i>	1004
(b)	<i>Modifications or rectifications of Schedules</i>	1005
(5)	<i>“in respect of those contracting parties which accept them”</i>	1006
(6)	<i>“other amendments to this Agreement shall become effective ... upon acceptance by two-thirds of the contracting parties”</i>	1007
(7)	<i>Reservations regarding acceptance of amendments</i>	1007
2.	Paragraph 2	1008
B.	RELATIONSHIP BETWEEN ARTICLE XXX AND AGREEMENTS MODIFYING OR SUPPLEMENTING RIGHTS AND OBLIGATIONS BETWEEN CERTAIN CONTRACTING PARTIES ONLY	1008
III.	PREPARATORY WORK AND SUBSEQUENT MODIFICATIONS	1009
IV.	RELEVANT DOCUMENTS	1009

I. TEXT OF ARTICLE XXX

Article XXX

Amendments

1. Except where provision for modification is made elsewhere in this Agreement, amendments to the provisions of Part I of this Agreement or to the provisions of Article XXIX or of this Article shall become effective upon acceptance by all the contracting parties, and other amendments to this Agreement shall become effective, in respect of those contracting parties which accept them, upon acceptance by two-thirds of the contracting parties and thereafter for each other contracting party upon acceptance by it.

2. Any contracting party accepting an amendment to this Agreement shall deposit an instrument of acceptance with the Secretary-General of the United Nations within such period as the CONTRACTING PARTIES may specify. The CONTRACTING PARTIES may decide that any amendment made effective under this Article is of such a nature that any contracting party which has not accepted it within a period specified by the CONTRACTING PARTIES shall be free to withdraw from this Agreement, or to remain a contracting party with the consent of the CONTRACTING PARTIES.

I. INTERPRETATION AND APPLICATION OF ARTICLE XXX

A. SCOPE AND APPLICATION OF ARTICLE XXX

1. Paragraph 1

(1) Amendments to the General Agreement

The General Agreement has been amended a number of times. The First Session of the CONTRACTING PARTIES, which was held during the Havana Conference, agreed to three protocols of amendment: two which replaced Articles XIV and XXIV respectively with the texts of the corresponding ITO Charter Articles negotiated at Havana,¹ and the Protocol Modifying Certain Provisions of the General Agreement on Tariffs and Trade, which added Articles XXV:5(b) and (c) and XXXV and amended Articles XXXII and XXXIII.²

At the Second Session of the CONTRACTING PARTIES, a Working Party on Modifications to the General Agreement decided to replace Articles III, VI and XVIII with their Havana counterparts, to rewrite Article XXIX and to make a few other minor amendments.³ Due to the different acceptance requirements applying to different provisions of the General Agreement under Article XXX, two protocols were prepared: the Protocol Modifying Part II and Article XXVI of the General Agreement on Tariffs and Trade, signed at Geneva on 14 September 1948, which entered into force on 14 December 1948⁴ and the Protocol Modifying Part I and Article XXIX of the General Agreement on Tariffs and Trade, signed at Geneva on the same date, which entered into force on 24 September 1952.⁵

The Third Session in 1949 agreed on amendments to the territorial application provisions of Article XXVI:4. These were effected through the Protocol Modifying Article XXVI of the General Agreement on Tariffs and Trade, signed at Annecy on 13 August 1949, which entered into force on 28 March 1950.⁶ The Fifth Session in 1950 agreed to an amendment to Article XXVIII, which was effected through paragraph 6 of the Torquay Protocol to the General Agreement on Tariffs and Trade,⁷ opened for signature on 21 April 1951, which entered into force with regard to paragraph 6 on 19 October 1951.

The Review Session of 28 October 1954 to 8 March 1955 resulted in agreement on a number of amendments to the text of the General Agreement, and on an Agreement on the Organization for Trade Cooperation (OTC). These amendments were incorporated in three instruments, all done at Geneva on 10 March 1955. The Protocol Amending the Preamble and Parts II and III of the General Agreement on Tariffs and Trade⁸ entered into force on 7 October 1957 for all provisions except those providing for a later effective date. The entry into force of the Protocol of Organizational Amendments to the General Agreement on Tariffs and Trade was contingent upon the entry into force of the Agreement on the OTC; the Agreement on the OTC failed to gain the required number of acceptances by the required deadline and was abandoned. The Protocol amending Part I and Articles XXIX and XXX of the General Agreement on Tariffs and Trade failed to gain the required acceptance by all contracting parties. At their Twenty-fourth Session, the CONTRACTING PARTIES decided to abandon the Protocol if, by 31 December 1967, it had not entered into force. This condition having been fulfilled, the Protocol was abandoned.⁹

The Protocol Amending the General Agreement to Introduce a Part IV on Trade and Development¹⁰ was done at Geneva on 8 February 1965, and entered into force on 27 June 1966.

¹Special Protocol Modifying Article XIV of the General Agreement on Tariffs and Trade, signed at Havana on 24 March 1948, entered into force 9 May 1949, 62 UNTS 40; Special Protocol Relating to Article XXIV of the General Agreement on Tariffs and Trade, signed at Havana 24 March 1948, entered into force 7 June 1948, 62 UNTS 56.

²Protocol Modifying Certain Provisions of the General Agreement on Tariffs and Trade, signed at Havana 24 March 1948, entered into force 24 March 1948, 62 UNTS 30. See further in section III under Articles XXV, XXXIII and XXXV.

³Report of the Working Party on "Modifications to the General Agreement", adopted 1 and 2 September 1948, GATT/CP.2/22/Rev.1, II/39, para. 3.

⁴62 UNTS 80.

⁵138 UNTS 334.

⁶62 UNTS 113.

⁷142 UNTS 34.

⁸278 UNTS 168.

⁹15S/65.

¹⁰572 UNTS 320.

(2) “except where provision for modification is made elsewhere in this Agreement”

This phrase was introduced during the drafting of the General Agreement in Geneva to cover changes in Schedules which may be made in accordance with other provisions. Specific reference was made in the original draft to Article II:6 and Articles XXVII and XXVIII. In the course of the discussion Articles XVIII, XIX and XXIII were also mentioned.¹¹ Also, a Secretariat Note of 1956, addressing the question of whether waivers of obligations under Part I of the General Agreement could be granted by less than a unanimous vote, states:

“The phrase ‘Except where provision for modification is made elsewhere ...’ [in Article XXX:1] provides a clear exception for action taken under the provisions of Article XXV:5(a), for

“(i) if the waiver of an obligation in Part I is not considered to represent a ‘modification’ it can hardly be a change that would require the application of the amendment procedure; and

“(ii) if such a waiver is considered to be a ‘modification’, this phrase provides an explicit exception from the unanimity requirement for amendment for Part I. ...”¹².

(3) Procedure for submission of amendments for acceptance**(a) Majority required**

During the Review Session of 1954-55, the Legal and Drafting Committee considered the procedure for deciding which amendments should be submitted to governments for acceptance pursuant to the provisions of Article XXX. The Report of the Committee on this issue notes that in the view of certain of its members, the decision to draw up a Protocol and submit it to governments as well as the determination of the contents of such a Protocol was a decision requiring only a simple majority, as the Review was “an activity of the CONTRACTING PARTIES within the terms of Article XXV of the General Agreement” for which the required majority was that specified in Article XXV:4.¹³ Other members of the Committee were of the view that the Review Session “must be regarded as in the nature of a constituent meeting of the parties to the Agreement, and the rules to be followed regarding agreement on amendments must be those generally applicable to the amendment of treaties. ...it is reasonable to seek guidance from the provisions of the General Agreement and for this purpose they consider that the provisions of Article XXX are relevant. It would, in their view, be appropriate that the incorporation of amendments in the Protocol should be subject to voting requirements analogous to the acceptance requirements laid down in that Article, i.e., that amendments which require acceptance by two-thirds of the contracting parties in order to enter into force should be adopted by a two-thirds vote, and of those requiring acceptance by all contracting parties by a unanimous vote.”¹⁴ As a practical solution, the Committee proposed the following Resolution:

“The CONTRACTING PARTIES resolve that, as a rule of procedure applicable to the discussion of Item 3 of the Ninth Session agenda, amendments to be submitted to contracting parties for acceptance pursuant to Article XXX of the General Agreement shall be approved by a majority of two-thirds of the votes cast.”¹⁵

This Resolution was approved by a vote of 31-0.¹⁶ The Protocol Amending Part I and Articles XXIX and XXX, which was agreed in the Review Session, would have amended Article XXX to provide that amendments to the provisions of the General Agreement would be submitted for acceptance to the contracting parties provided that they had been approved by the CONTRACTING PARTIES by a majority of two-thirds of the votes cast.¹⁷ This Protocol did not achieve the required acceptance by all contracting parties, and was abandoned.¹⁸

¹¹EPCT/189, p. 58.

¹²L/403.

¹³W.9/151, “Report of the Legal and Drafting Committee on the Procedure for the Approval of Amendments to the General Agreement,” dated 21 January 1955, p. 1, paras. 3-4. See also L/304, Spec/44/55.

¹⁴*Ibid.*, p. 2, para. 5.

¹⁵*Ibid.*, p. 3, para. 9.

¹⁶SR.9/36, p. 3. See also W.9/224, Note on procedures for concluding plenaries of the Steering Group, and SR.9/47, voting on amendments.

¹⁷Protocol Amending Part I and Articles XXIX and XXX.

¹⁸15S/65.

(b) Inclusion of multiple amendments in a single Protocol

The Legal and Drafting Committee also considered whether amendments could be combined in a single ‘amendment’, or in a single Protocol containing a number of amendments:

“The Committee agreed that, for a legal point of view, there would be no objection to including in a single Protocol all the amendments the entry into force of which is dependent on the acceptance of two-thirds of the contracting parties in accordance with paragraph 1 of Article XXX. This procedure would mean that contracting parties would have to accept or reject the amendments embodied in the Protocol as a whole, and thus would avoid the difficulties (of having several different agreements in force simultaneously) which might arise if contracting parties were free to accept some of the amendments while rejecting others.

“Such a procedure would not deprive any contracting party of any right it enjoys under the General Agreement, since the CONTRACTING PARTIES can decide what would constitute ‘an amendment’ in the sense in which the word is used in Article XXX, and can, therefore, adopt a procedure which has the effect of treating as one amendment all modifications to provisions amendments to which enter into force upon acceptance by two-thirds of the contracting parties.

“... if modifications requiring unanimous acceptance were included along with others requiring only a two-thirds majority and treated as a single amendment for the purposes of acceptance and entry into force, there would be no room left for the procedure under paragraph 2 of Article XXX even for those modifications which require acceptance by two-thirds of the contracting parties. Moreover, in that case any contracting party would have a right of veto regarding the entry into force of all modifications included in the amendment whether or not these modifications require unanimous acceptance.

“The Committee concluded that, while there would be no legal objection to treating as a single amendment all the modifications requiring acceptance by two-thirds of the contracting parties, it would not be legally possible to include as part of that single amendment any modification requiring acceptance by all the contracting parties.

“The Committee ... was of the opinion that, provided the Protocol foresaw separate conditions of acceptance and entry into force for the two types of amendments, it would not be imperative to provide for two or more protocols ...

“The general view of the Committee was, however, that the advantages of drafting two or more protocols were greater than those of drawing up a single protocol of amendments ...”¹⁹

The amendments agreed in the Review Session were effected through three Protocols.²⁰

(4) “amendments to the provisions of Part I or to the provisions of Article XXIX or of this Article”*(a) Unanimity requirement*

During the negotiation of the General Agreement in 1947, it was proposed that only a two-thirds majority be required for amendments to Part I since the corresponding articles in the Charter could be amended with such a majority.²¹ It was agreed, however, that the unanimity requirement for these provisions was essential for the following reasons:

¹⁹W.9/173, p. 2.

²⁰See discussion at SR.9/42, p. 4-5 (decision to draw up two protocols for amendments requiring a two-thirds majority to enter into force, and one protocol for amendments requiring unanimity, providing that amendments therein could be accepted separately). The Protocol Amending the Preamble and Parts II and III provided that it would become effective following its acceptance by two-thirds of the governments which were then contracting parties, and entered into effect generally on 7 October 1957. The Protocol Amending Part I and Articles XXIX and XXX did not enter into force due to lack of the required unanimous acceptance, and was abandoned in 1967: 15S/65. The Protocol of Organizational Amendments did not enter into force before expiry of the time-limit for signature on 7 April 1966. See *Status of Legal Instruments*.

²¹EPCT/TAC/PV/15, p. 6 et seq.

- The General Agreement is a trade agreement and the rule in ordinary trade agreements is that they “can only be modified with the unanimous consent of the parties taking part in them”. The two-thirds majority rule was exceptional and applied in the case of Part II “because there are exceptional circumstances which may justify the supersession of these provisions by the provisions of the Charter”²²; and
- “Part I ... is meant to be a provision to which are attached the Schedules embodying results of the tariff negotiations” which “have taken place specifically on the base of the provisions about the most-favoured-nation treatment and so on which will be embodied in Part I”.²³

As noted above, the only protocol of amendment to these provisions which has entered into effect is the 1948 Protocol Modifying Part I and Article XXIX of the General Agreement on Tariffs and Trade.²⁴ The 1955 Protocol Amending Part I and Articles XXIX and XXX failed to gain the requisite unanimous acceptance and was abandoned.

(b) *Modifications or rectifications of Schedules*

Paragraph 7 of Article II provides that “Schedules annexed to this Agreement are ... an integral part of Part I of this Agreement”. Hence, after 1948, various GATT Protocols of Rectification (or Rectification and Modification) amending Schedules were drawn up providing that the rectifications or modifications in the Protocol “shall become an integral part of the General Agreement on the day on which this Protocol has been signed by all the Governments which are on that day contracting parties to the General Agreement.”²⁵ Beginning in 1950, certain modifications to Schedules were circulated without inclusion in a Protocol. In 1950, the Working Party on “Modifications and Preparation of Fourth Protocol of Rectifications” examined modifications to the Schedules of Denmark and Italy. The Report of the Working Party notes in this connection:

“The working party considered that the method hitherto employed, of circulating a notification of the proposed modification with the advice that provided no objections were lodged within a specified period - usually thirty days - the modification would become effective at the close of the period, was satisfactory. The working party considered it unnecessary to incorporate modifications so agreed upon in a formal protocol in order to bring them into effect, although it would be desirable from the practical standpoint subsequently to include them in a formal document; particularly since the difficulty of obtaining signature by all the contracting parties might result in such a protocol’s not entering into effect. Consequently, these modifications have not been incorporated in a protocol. The working party suggests that the CONTRACTING PARTIES take note that no objections were lodged to the modifications mentioned above, and consequently the modifications to both schedules will become effective on the day those schedules enter into effect.”²⁶

The following year, the Working Party on “Preparation of First Protocol of Rectifications and Modifications and of First Protocol of Supplementary Concessions” examined questions relating to preparation of a protocol giving effect to various modifications and rectifications. Its Report provides:

“The working party noted that, since the third session of the CONTRACTING PARTIES, no protocol of rectifications or of modifications has come into force owing to the impossibility of obtaining the signature of all the contracting parties. Clearly, it was never the intention of Article XXX to place difficulties in the way of making rectifications of an entirely non-substantive character, or to prevent agreed modifications of the concessions contained in the schedules to the General Agreement. Since the drawing up of the First Protocol of Modifications, several modifications have in fact been made to the concessions contained in the schedules, either by decision of the CONTRACTING PARTIES or by consultations in accordance with procedures established by the CONTRACTING PARTIES and these have actually entered into force. In view of the fact that the First Protocol of Modifications had not entered into force, the CONTRACTING PARTIES were reluctant at the fourth

²²*Ibid.*, p. 10.

²³*Ibid.*, p. 7-8.

²⁴138 UNTS 334.

²⁵See, e.g., Third, Fourth and Fifth Protocols of Rectifications, and First through Ninth Protocols of Rectifications and Modifications, in each of which this phrase appears: see *Status of Legal Instruments*, section 7.

²⁶GATT/CP.4/34, adopted on 1 April 1950, II/141 and para. 4. The following year, these changes were included in the First Protocol of Rectification and Modifications, dated 26 October 1951; see II/147.

and fifth sessions to include these further modifications in a formal protocol. Nevertheless, it is clearly desirable that the text of the schedules should be formally modified in order to take account of such changes. Accordingly, the protocol, as drafted, recites that in many cases the modifications of concessions have already entered into force, in which cases the protocol provides merely for the introduction of such modification in the text of the schedules.²⁷

In the 1955 Protocol Amending Part I and Articles XXIX and XXX of the General Agreement, provision was made for a third paragraph to be added to Article XXX to read as follows:

“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.”

Since this amendment had not entered into force, the CONTRACTING PARTIES decided on 17 November 1959 (but subject to the eventual entry into force of this amendment) that a procedure for the certification of rectifications and modifications should nevertheless be adopted and the practice of preparing protocols of rectifications and modifications discontinued.²⁸ Under this procedure three certifications were issued which stated: “On the date of the entry into force of paragraph 3 of Article XXX, this Decision shall constitute a certification by the CONTRACTING PARTIES on that date pursuant to paragraph 3 of Article XXX”. These certifications were then generally treated by contracting parties as if they were in effect.²⁹

Following the abandonment in 1967 of the Protocol Amending Part I and Articles XXIX and XXX, the CONTRACTING PARTIES adopted two Decisions on 19 November 1968 and 26 March 1980 on “Procedures for Modification and Rectification of Schedules of Tariff Concessions”.³⁰ These procedures deal with the modification or rectification of Schedules to reflect changes in concessions which contracting parties are already authorized to make under Articles II, XVIII, XXIV, XXVII or XXVIII. For the text of the 1980 Decision and material on GATT practice in this area, see the discussion of Schedules under Article II.

(5) “in respect of those contracting parties which accept them”

The standard text of accession protocols provides that the provisions of the General Agreement to be applied to contracting parties by the acceding government shall, except as otherwise provided in the Protocol, be the provisions of the General Agreement as of 30 October 1947, “as rectified, amended and otherwise modified by such instruments as may have become effective on the day on which [...] becomes a contracting party.”³¹ Thus, each government acceding under Article XXXIII has, through its acceptance of its accession protocol, accepted all amendments to the General Agreement which have entered into force as of the date it became a contracting party. The rights and obligations of governments succeeding to contracting party status under Article XXVI:5(c) date from the date of independence of the newly-independent State or the date of receipt of certification of a territory’s autonomy in the conduct of its external commercial relations. Thus, such governments succeed to the status of the sponsoring government on that date with regard to acceptances of amendments.

During the Review Session in 1955, the Deputy Executive Secretary confirmed in reply to a question by Chile “that a contracting party which had not accepted an amendment requiring two-thirds (of the contracting parties) would be bound by the existing text”.³² The 1955 Protocol Amending the Preamble and Parts II and III was done on 10 March 1955. On 7 October 1957, when this Protocol had been accepted by two-thirds of the contracting parties, it entered into force for those contracting parties which had accepted it. However, the last

²⁷GATT/CP.6/40, adopted on 24 October 1951, II/146, para. 2.

²⁸8S/25.

²⁹12S/20, 22; 15S/57.

³⁰16S/16 and 27S/25, respectively.

³¹See, e.g., Protocol for the Accession of Costa Rica, L/6626, 37S/7.

³²SR.9/42, p. 4.

acceptance by a government that was a contracting party before 10 March 1955 did not take place until 7 February 1969. During this period, there were two texts of the General Agreement in force for different contracting parties.

Similarly, the Protocol Amending the General Agreement to Introduce a Part IV on Trade and Development was done in Geneva on 8 February 1965. On 27 June 1966, when this Protocol had been accepted by two-thirds of the contracting parties, it entered into force for those contracting parties which had accepted it. A government which succeeds to contracting party status under Article XXVI:5(c) with rights and obligations predating the acceptance of Part IV by its sponsoring government is not bound by Part IV unless it accepts the Part IV Protocol.³³

(6) “other amendments to this Agreement shall become effective ... upon acceptance by two-thirds of the contracting parties”

It was stated in 1948 that an instrument of acceptance to an amending protocol was a notification that as long as the respective contracting party applied the General Agreement through the Protocol of Provisional Application it would apply the amendment.³⁴

During the Second Session of the CONTRACTING PARTIES in September 1948, South Africa challenged the validity with respect to it of the Protocol Modifying Certain Provisions of the General Agreement (and in particular the provisions therein adding Article XXXV) as this Protocol had been done on 24 March 1948. South Africa, as a signatory of the Geneva Final Act of 30 October 1948, asserted a legal right to accept the Protocol of Provisional Application and apply provisionally the text of the unamended General Agreement which had been attached to the Geneva Final Act.³⁵ The Chairman ruled that “the signature of the Final Act at Geneva was not an agreement between the signatories but the authentication of a text awaiting acceptance. At any time before acceptance, the signatories could agree to vary the text. If the majority agreed to the amended text, the minority accepting the original text, but not its modifications, could be taken to have accepted the amended text with a reservation”.³⁶

(7) Reservations regarding acceptance of amendments

At the Second Session, in response to the position of South Africa noted above, the Chairman also proposed

“... that we invite the Government of South Africa to sign the Protocol Modifying Certain Provisions of the General Agreement, but with a reservation that they do not accept Article XXXV. We can agree now that, if the Government of South Africa signs the Protocol between now and our next session, we shall give sympathetic consideration to approval of the South African reservation at our next session without altering the legal situation as it now exists. This could then have the effect that the other contracting parties would continue to regard themselves as bound by and having the right to apply the provisions of Article XXXV ... while South Africa would continue to regard themselves as not being bound and would presumably apply the General Agreement to all contracting parties ...”.³⁷

The Chairman stated that the signing of the Protocol with reservations would be legally valid if it is unanimously accepted by the contracting parties, and it would not be necessary to sign another protocol.³⁸ The proposal was adopted unanimously. South Africa then signed the Protocol subject to a reservation of non-acceptance of Article XXXV, which was examined and accepted unanimously.³⁹ This reservation was withdrawn by a notification deposited with the Secretary-General of the United Nations on 5 June 1950.⁴⁰

³³See, e.g., certification by the Director-General of admission of Maldives as a contracting party with rights and obligations dating from 26 July 1965, including a notification of acceptance by the Maldives of the Part IV Protocol, L/5481, 30S/7.

³⁴GATT/1/SR.13, p. 5.

³⁵GATT/CP.2/SR.7 p. 3-6, SR.8 p. 1-3, SR.16 p. 1-8; GATT/CP.2/10, 14-17. See also GATT/1/SR. 13, p. 5, GATT/CP.2/14.

³⁶GATT/CP.2/SR.10, p. 1; see also text of Chairman’s statement in GATT/CP.2/17.

³⁷GATT/CP.2/SR.16 p. 5-6; GATT/CP/11.

³⁸GATT/CP.2/SR.16, p. 7.

³⁹Declaration of 5 May 1949 Accepting the Reservation to Article XXXV attached to the signature of the Union of South Africa to the Protocol Modifying Certain Provisions, GATT/CP.3/19; GATT/CP.3/SR.7 p. 5.

⁴⁰Status of Legal Instruments, p. 2-1.4.

At the 1955 Review Session, on 7 March 1955 the CONTRACTING PARTIES approved a Resolution expressing their unanimous agreement to the definitive acceptance of the General Agreement under Article XXVI subject to a reservation to the effect that Part II would be applied to the fullest extent not inconsistent with legislation which existed on 30 October 1947, or, in the case of a contracting party which had acceded after 30 June 1949, the date of its accession Protocol.⁴¹ Subsequent to the Review Session a number of contracting parties accepted the Protocol Amending the Preamble and Parts II and III of the General Agreement on Tariffs and Trade only subject to a reservation for their “existing legislation”.⁴² In a Declaration of 15 November 1957 on “Statements which accompanied the acceptance of the Protocol Amending the Preamble and Parts II and III”⁴³, the CONTRACTING PARTIES

“Declare that the statements which accompanied the signatures or acceptances by certain contracting parties of the Protocol Amending the Preamble and Parts II and III of the General Agreement on Tariffs and Trade are accepted on the understanding that they confirm the legal situation existing under the instrument by which each of these governments became a contracting party. Consequently, each of those contracting parties continues to apply Part II of the General Agreement on Tariffs and Trade (as revised) to the fullest extent not inconsistent with legislation which existed on the date mentioned in the instrument by which it became a contracting party; following acceptance pursuant to Article XXVI, any contracting party will have the right to apply Part II, subject to any reservation accompanying such acceptance in the terms provided for in the Resolution approved by the CONTRACTING PARTIES on 7 March 1955”.

2. Paragraph 2

During the negotiation of the General Agreement at Geneva in 1947 the formulation of the second sentence in paragraph 2 was proposed with the suggestion that it would avoid a reference to expulsion.⁴⁴ It was stated that this provision meant that a contracting party would have the choice either to withdraw from the Agreement or, if the CONTRACTING PARTIES consent, to remain party to it without applying the provisions contained in an amendment which it does not accept.⁴⁵

A Report of the Legal and Drafting Committee in the Review Session of 1954-55 on issues related to amendment of the General Agreement states the view of the Committee with regard to decisions under paragraph 2 of Article XXX, that

“... In this way it would be possible for the CONTRACTING PARTIES, acting in full conformity with their powers under the General Agreement, to ensure that the acceptance by all contracting parties of amendments requiring a two-thirds majority was not delayed indefinitely. ...

“The procedure envisaged in paragraph 2 of Article XXX can only be applied to amendments which have entered into force and would, therefore, not be applicable to amendments which have to be accepted by all contracting parties before they enter into force. An application of that procedure to those amendments would have the effect of depriving any contracting party of the rights it acquired when it became party to the General Agreement and would be inconsistent with the spirit and the letter of it”.⁴⁶

The CONTRACTING PARTIES have never taken a decision under paragraph 2.

B. RELATIONSHIP BETWEEN ARTICLE XXX AND AGREEMENTS MODIFYING OR SUPPLEMENTING RIGHTS AND OBLIGATIONS BETWEEN CERTAIN CONTRACTING PARTIES ONLY

See the Decision of 28 November 1979 on “Action by the CONTRACTING PARTIES on the Multilateral Trade Negotiations”, in which, *inter alia*:

⁴¹3S/48. See also discussion and agreed understandings regarding this reservation, at SR.9/46 p. 3-4.

⁴²*Status of Legal Instruments*, p. 2-8.2.

⁴³6S/13.

⁴⁴EPCT/TAC/PV/15, p. 30-31.

⁴⁵EPCT/245.

⁴⁶W.9/173, p. 1-2.

“1. The CONTRACTING PARTIES reaffirm their intention to ensure the unity and consistency of the GATT system, and to this end they shall oversee the operation of the system as a whole and take action as appropriate.

“2. The CONTRACTING PARTIES note that as a result of the Multilateral Trade Negotiations, a number of Agreements covering certain non-tariff measures and trade in Bovine Meat and Dairy Products have been drawn up. They further note that these Agreements will go into effect as between the parties to these Agreements as from 1 January 1980 or 1 January 1981 as may be the case and for other parties as they accede to these Agreements.

“3. The CONTRACTING PARTIES also note that existing rights and benefits under the GATT of contracting parties not being parties to these Agreements, including those derived from Article I, are not affected by these Agreements”.⁴⁷

III. PREPARATORY WORK AND SUBSEQUENT MODIFICATIONS

The corresponding Article in the Havana Charter is Article 100. Articles on amendment of the Charter appeared as Article 75 of the US Draft Charter, Article 85 of the London and New York Drafts of the Charter, and Article 95 of the Geneva Draft. The Havana Charter differentiated between amendments not involving a change in the obligations assumed by Members, and amendments which altered the obligations of Members. The Conference of the Members would determine by a two-thirds majority whether an amendment was of the former or latter type. The former would become effective upon approval by the Conference by a two-thirds majority of the Members; the latter would become effective for the Members accepting the amendment upon the ninetieth day after two-thirds of the Members had notified the Director-General of their acceptance and thereafter for each remaining Member upon acceptance by it. A Member not accepting the latter type of amendment would be free to withdraw.

In early drafts of the General Agreement the provisions on amendment were grouped with those on supersession by the Charter. Article XXIII of the New York Draft of the General Agreement provided that all amendments would enter into effect upon formal acceptance by two-thirds of the contracting parties. During discussions at Geneva Articles XXIX and XXX were separated and the present formulation of Article XXX was agreed. See the references to drafting history above.

A revised text of Article XXX was included in the 1955 Protocol Amending Part I and Articles XXIX and XXX. This text would have added provisions explicitly regulating submission of amendments to the contracting parties for acceptance (see page 1003 above); provisions implementing the second sentence of the present Article XXX:2; and provisions for amendments to schedules by certification in the case of rectifications or modifications implementing action under Articles II:6, XVIII, XXIV, XXVII or XXVIII (see page 1006 above). This Protocol did not enter into force and was abandoned.⁴⁸

IV. RELEVANT DOCUMENTS

<i>Geneva</i>	<i>CONTRACTING PARTIES</i>
Discussion: EPCT/TAC/SR/3, 8, 14, 15, 25 EPCT/TAC/PV/14, 15, 25	Reports: GATT/CP.6/40
Reports: EPCT/135, 189, 196, 209, 214/Add.1/Rev.1	<i>Review Session</i>
Other: EPCT/245 EPCT/W/272, 273, 274, 277, 278, 312, 323	Reports: W.9/198, L/327, 3S/252 Other: L/189, 273, 275, 276, 292 W.9/42, 62 Spec/52/55 + Add.1-2, 56/55, 78/55, 83/55, 117/55 + Rev.1

⁴⁷L/4905, 26S/201, paras. 1-3.

⁴⁸15S/65.