

RESTRICTED

TAR/W/14
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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Tariff Concessions

TARIFF RECLASSIFICATION

Note by the Secretariat

1. At the meeting of the Committee on Tariff Concessions on 7 July 1980 the secretariat was asked to prepare a background paper on the problem of tariff reclassification (TAR/W/13, paragraphs 6.1.1 to 6.1.7).
2. Article II:5 of the GATT deals with reclassification problems but its scope is limited to cases where concessions are infringed "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". The essence of the procedure under this Article is that the action has to be initiated by the injured contracting party and possible negotiations are held a posteriori. It should also be noted that Article II:5 does not contain any procedural rules.
3. The only example of recourse to negotiations under Article II:5 in the history of GATT is the case described in document SECRET/193 of 16 September 1969 involving Canada and the European Communities and which concerned "compensatory adjustment in connexion with the impairment of the concession on flash guns in Schedule V (Canada) resulting from the decision of the Tariff Board of 17 May 1965, on the classification of electronic flash apparatus". In this case, the secretariat was only informed of the results of bilateral negotiations undertaken under Article II:5 but had not been notified of the intention of either of the parties to enter into negotiations for compensatory adjustment.
4. Another case where the question of reclassification has been examined in GATT was in 1956 when Germany complained¹ that Greece had raised the tariff on certain gramophone records, despite the fact that "gramophone records" were bound in the Greek Schedule. Greece considered the introduction of the new long-playing records as the creation of a completely new item since they were made of a different material, but a Group of Experts that considered the complaint disagreed with Greece and came to the following conclusion: "The Group agreed that the practice generally followed...was to apply the tariff item...that specified the products by name, or, if no such item existed, to assimilate the new products to existing items in accordance with the principles established by the national tariff legislation..."² The case was ultimately settled bilaterally.

¹L/575.

²L/580.

5. In 1970, the secretariat's informal advice was requested by a delegation concerning the reclassification of photocopying machines. That particular case referred to the problem of reclassification of bound items under a new tariff item. The secretariat replied that there was no provision in the General Agreement which was directly relevant in such a case. It would seem that questions of this kind have come up from time to time in connexion with reclassification recommendations by the Customs Cooperation Council, but up to now they have presumably been settled bilaterally or did not involve changes of substance.

6. The drafting history of Article II:5 does not give any indication of the intentions of the drafters of the General Agreement in this respect. Two of the authors of standard works on GATT, John H. Jackson and Kenneth W. Dam however, deal in their books with questions of tariff reclassification.

7. According to J.H. Jackson, "A reclassification subsequent to the making of a GATT concession could, however, be a violation of the basic commitment regarding that concession. ...Paragraph 5 of Article II recognizes the possibility that reclassification of goods can violate a GATT concession and provides for consultation and renegotiation in such cases."¹

8. On his part, K.W. Dam, in his chapter dealing with Rectifications and Modifications of Schedules and particularly referring to changes of nomenclature, says that "...changes in nomenclature may be used to disguise increases in rates and a contracting party does not have carte blanche to make changes without going through GATT channels.... Most updating of tariff schedules, even if consisting mainly in changes of nomenclature, also involves changes in rates of duty. Even purely technical changes often cause certain kinds of products to fall into different classifications and consequently to become dutiable at higher or lower rates than before.... In any event, the General Agreement does not provide for such equilibrating changes without negotiations; on the contrary, Article XXVIII, ...is specifically designed to serve as a framework for those changes of rates on bound items."²

¹John H. Jackson, World Trade and the Law of the GATT (A Legal Analysis of the GATT), 1969, page 212.

²Kenneth W. Dam, The GATT Law and International Economic Organizations, 1970, pages 34-35.