

# WORLD TRADE ORGANIZATION

## Council for Trade in Goods

### RECTIFICATIONS AND MODIFICATIONS TO SCHEDULES OF TARIFF CONCESSIONS AND THEIR CERTIFICATION

#### Note by the Secretariat

#### Introduction

1. Since tariff schedules embody formal commitments the importance of keeping them on a current legal basis has been recognized under the GATT and the WTO. The protocols of various rounds have provided the main opportunity for amending schedules but a mechanism has had to be developed to handle changes in the interim. The frequency of these interim changes has increased significantly in recent years with the establishment of the loose-leaf system and the introduction of the Harmonized System. GATT Contracting Parties and WTO Members have used a number of legal mechanisms to incorporate these changes in their schedules.

2. Section I of this paper outlines the currently applicable legal procedures that have been established under the GATT and WTO for the purpose of rectifying or modifying schedules (including an annex giving the historical background). There are currently three Decisions, dating from 1980, 1983, and 1991 respectively, that provide for the legal implementation of changes to schedules. These three Decisions are similar in that they provide for the legal changes to schedules to be accomplished through certifications if there are no objections, but they differ in their applicability. Section II of this paper provides an overview of how the existing Decisions have worked in practice.

#### I. PRESENT LEGAL BASIS FOR RECTIFICATIONS AND MODIFICATIONS

##### Decision of 26 March 1980 by the CONTRACTING PARTIES related to Procedures for Modification and Rectification of Schedules of Tariff Concessions (BISD 27S/25)

3. This Decision provides that the legal mechanism of Certification shall be used for modifications resulting under Article II, Article XVIII, Article XXIV, Article XXVII, or Article XXVIII; and for rectifications of a purely formal character to tariff schedules. As compared with the two subsequent decisions, this Decision is broad in scope as it allows for rectifications and modifications arising from a variety of circumstances; it is not limited to implementation of the Harmonized System or subsequent amendments thereto.

4. The Decision recalls the procedure established on 19 November 1968 for the certification of changes to Schedules annexed to the General Agreement (see Annex) and adds a requirement for contracting parties to submit for certification all changes in their customs tariff that affect concessions, including amendments of a purely formal character to the tariff nomenclature. The Decision provides that changes will be certified in a Certification provided that no objection has been raised by a

Contracting Party. The time-limit to raise objections is **three months** (compared to sixty days under the 1968 procedures).

Decision of 12 July 1983 by the GATT Council related to the Introduction of the Harmonized Commodity Description and Coding System (Harmonized System) (BISD 30S/17)

5. This Decision adopts procedures for the rectification and renegotiation of GATT schedules which become necessary in connection with the introduction of the Harmonized Commodity Description and Coding System (Harmonized System) elaborated by the Customs Co-operation Council. This Decision, therefore, has specific provisions with respect to principles, procedures, and documentation, as it deals solely with the implementation of the Harmonized System for those countries that decide to adopt it.

6. The Decision foresees that the changes to schedules resulting from the implementation of the Harmonized System may result either in rectifications or in renegotiations of schedules, and it therefore establishes two different procedures, both of which eventually culminate with a Certification through the 1980 Decision. If an existing concession is not impaired through the introduction of the Harmonized System, the Decision refers to and confirms the rectification procedure set forth in the 1980 Decision. However when renegotiation of schedules is required as a result of the introduction of the Harmonized System, paragraph 3.2 of this Decision states that the 1980 guidelines relating to the procedures for negotiations under Article XXVIII (BISD 27S/26), are the procedures to be followed.<sup>1</sup>

7. Compared to the 1980 Decision, the 1983 Decision includes more detailed procedures that must be followed. It establishes the basic principle that bindings should remain unchanged, and requires that specific documentation should be notified, as follows:

- existing schedule;
- proposed schedule;
- concordance table of existing to proposed schedule;
- concordance table of proposed to existing schedule;

In addition, it provides that both concordance tables should contain the following information:

- item number with abbreviated description;
- corresponding item number;
- existing and proposed rates of duty;
- status of initial negotiating rights (INRs);
- trade statistics, including percentages and allocations among proposed items.

The last item, trade statistics, is not compulsory if there is no change in the rate or INR status.

Decision of 8 October 1991 by the GATT Council related to the Procedures to Implement Changes in the Harmonized System (BISD 39S/300)

8. In May 1991, members of the Committee on Tariff Concessions, who considered the procedures established in 1983 too complicated, requested the Secretariat to draw up simplified procedures with a view to incorporating in the GATT schedules not only the changes to the Harmonized System which came into force on 1 January 1992 but "any changes which may be introduced in the future", having

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<sup>1</sup>The guidelines state that the changes to Schedules resulting from such negotiations will be made through Certifications in accordance with the 1980 Decision.

in mind the more important changes to the Harmonized System which were due to be implemented on 1 January 1996.

9. Under these procedures, countries are expected to submit 230 copies of the following documentation:

- "(a) Items in relation to which the proposed changes do not, in the view of the contracting party in question, alter the scope of a concession (e.g. changes or other rectifications of a purely formal character), should be indicated by underlining or shading the item;
- (b) Items in relation to which the proposed changes will, in the view of the contracting party in question, alter the scope of a concession (e.g. through an increase in the bound rate of duty or a change in the product description of the item), should be indicated by an asterisk. For such items, the following information shall also be submitted (in separate annexes):
  - (i) a concordance table between the existing and the proposed schedule;
  - (ii) a concordance table between the proposed and the existing schedules;
  - (iii) an indication of contracting party or parties with which the existing concession was initially negotiated;
  - (iv) import statistics by country of origin, for the most recent three-year period for which statistics are available (import figures for each separate year and average figures for the three-year period). If specific or mixed duties are affected, both values and volumes should be indicated, if possible."

10. Regarding certification, the Decision provides that changes that do not alter the scope of concession (as notified under (a) above), will be certified provided **no objection has been raised within 90 days**. Furthermore, if an objection is raised on the ground that the rectification is not purely formal in character, the full documentation (e.g., concordances, INRs, and import statistics under (b) above) should then be notified. Additionally, changes notified as altering the scope of a concession (under (b) above) shall be certified provided **no requests for negotiations under Article XXVIII have been made within 90 days** following the circulation of the documentation outlined in paragraph (b). If there is an objection raised or where requests for negotiations have been made, the Decision provides that the 1980 guidelines relating to the procedures for negotiations under Article XXVIII will then be followed. After the completion of these procedures, a comprehensive list of all changes and the corresponding amended pages of the schedule shall be sent to the Secretariat for certification.

## II. PRACTICAL IMPLEMENTATION OF THE LEGALLY ESTABLISHED PROCEDURES

11. At present, the procedures adopted in the Decisions of 1980, 1983, and 1991 are in force and are utilized for the purposes outlined above. However, the legal procedures set forth therein have not always been followed in practice. This section outlines the common practices that have evolved under the various Decisions.

### Decision of 26 March 1980 by the CONTRACTING PARTIES related to Procedures for Modification and Rectification of Schedules of Tariff Concessions (BISD 27S/25)

12. This Decision has been utilized in many venues in recent years as it provides the main vehicle to amend schedules in between rounds of negotiations. For example, the procedures have not only been used for rectifications of Uruguay Round schedules, modifications arising from a number of GATT Articles (e.g. XXIV and XXVIII) and implementation of the Harmonized System, but also for cases that were not envisaged originally, like further binding market access liberalization initiatives

(e.g. additional concessions related to information technology products, pharmaceuticals, autonomous liberalization measures). While the procedures seemed to have worked well in some cases, there have been many instances whereby proposed rectifications or modifications have been blocked for long periods of time because objections have been raised, thereby preventing the certification.

Decision of 12 July 1983 by the GATT Council related to the Introduction of the Harmonized Commodity Description and Coding System (Harmonized System) (BISD 30S/17)

13. The Harmonized System entered into force on 1 January 1988 for many countries. The procedures contained in the Decision of 12 July 1983 provided that contracting parties would submit among others two lists, one of items proposed for certification (items which were not affected by the transposition) and one of items for renegotiation (items subject to Article XXVIII negotiations). Several countries followed these procedures and carried out the necessary Article XXVIII negotiations in the course of 1986 and 1987 before the formal entry into force of the Harmonized System. In deviation from the procedures set forth in the Decision, their schedules were certified by means of HS Protocols, rather than by means of Certifications. Certain countries submitted their HS schedules at a later date, sometimes after having been granted waivers for the transposition of their schedules. These schedules were also certified through Protocols.

Decision of 8 October 1991 by the Council related to the Procedures to Implement Changes in the Harmonized System (BISD 39S/300)

14. This Decision simplified the procedures compared to the previous Decision of 1983, especially with respect to submission of documentation. In this Decision, the submission of concordance tables, INRs, and import statistics is required only for those items where the change would result in the altering of a concession. In practice, however, most Members' submissions do not indicate that a concession has been altered. Some submissions contain concordance tables regardless of this fact, but rarely contain information with respect to INRs or import statistics. The issue of lack of concordance tables for all submissions has been raised on numerous occasions in the Market Access Committee and the Committee on Trade in Goods as being an impediment to the operation of this Decision. As there is no technical requirement to supply concordance tables under these procedures for those items not undergoing a change in concession, some Members have not supplied concordance tables with their notifications. Also it should be noted, that the provision for providing 230 copies of the documentation to the Secretariat has rarely been followed.

15. Under the present circumstances, several WTO Members are faced with the problem that their schedules, or changes to their schedules, have not been legally certified. Out of the 37 Members which are under waivers, 34 of them have submitted the documentation concerning the introduction of HS96 changes into their schedules, sometimes more than a year ago. Some Members have submitted a consolidated schedule including HS96 changes in loose-leaf format. Only two schedules have so far been approved as far as the HS96 changes are concerned (but not the whole schedule) and have been issued as *ad hoc* certifications in "WT/Let" documents. Because of the reservations - and in particular general reservations - made by other Members, the documentation of most submissions has not been certified under the provisions of this Decision. This is not a new problem which arose in the context of HS 1996 changes but dates back to the establishment of loose-leaf schedules and the transposition of schedules into the Harmonized System. In the case of general reservations Members reserve their position on the acceptance of the proposed changes without giving detailed specific reasons for maintaining such an objection and preventing thus their certification. Furthermore, the Decision calls for the application of the 1980 guidelines on procedures for negotiation under Article XXVIII when objections are raised, but this is where the process has stalled as there have not been any notifications under Article XXVIII for the renegotiation of HS96 items.

## ANNEX

### Historical Background

1. In the early days of the GATT (from 1948 to 1959), changes to schedules of tariff concessions were incorporated in Protocols of Rectifications and Modifications which had to be accepted by **all** contracting parties. This requirement caused long delays to obtain a legal status to the rectifications and modifications of schedules and some protocols never came into force. The Protocol amending Part I and Articles XXIX and XXX of the General Agreement dated 10 March 1955 would have permitted rectifications and modifications of schedules resulting from action taken under Articles II:6, XVIII, XXIV, XXVII, or XXVIII to come into effect through certification if no objection had been received in the 30 days following notification of the changes. This protocol never came into force since the required unanimous acceptance was not obtained. Nonetheless, it was agreed that procedural rules relating to the rectifications and modification of schedules should be put into force and this was done through a Decision by the CONTRACTING PARTIES on 17 April 1959 (BISD 8S/25), although the ultimate effectiveness of the procedures was made conditional upon the ratification of the amendment, which never occurred. Nonetheless, between 1960 and 1967, schedules were certified through Certifications Relating to Rectifications and Modifications.

2. On 19 November 1968, the CONTRACTING PARTIES adopted a Decision related to Procedures for Modifying Schedules of Tariff Concessions (BISD 16S/16). The Decision stipulated in its paragraph 3 that "A draft of each Certification containing changes ... shall become a Certification provided that no objection has been raised by contracting party within sixty days ...". The Certifications, which constituted legal instruments related to schedules, contained also new schedules established under Article XXVI:5(c) and consolidated schedules. After having been approved in accordance with the then established procedures (BISD, 16S/16), the Certifications were certified by the CONTRACTING PARTIES and deposited with the Director-General of the GATT, who furnished a certified true copy thereof to each contracting party. There were six Certifications of changes to Schedules between 1969 and 1983.

3. During the consultations that preceded the adoption of the Proposal by the Director-General related to the establishment of a loose-leaf schedules, the question of certification of those schedules was considered and it was agreed that the procedures described in the Director General's proposal should be formalized by a new decision on the procedures for the modification and rectification of schedules (BISD 27S/22). The 1980 Decision was intended to accomplish this. In this context, it was agreed that "If there were no objections within the ninety days' period, the Secretariat would issue the certification in the form of dated and certified loose-leaf pages on an *ad hoc* basis with an explanatory note". Between 1980 and 1989, about 30 out of 62 schedules were submitted in loose-leaf format under these procedures; very few of them were certified because of objections raised by other delegations.