MEMORANDUM

A - TO :
Legal Experts/Meeting in Geneva on 23 July

DE - FROM :
The secretariat

OBJET - SUBJECT :
Rectifications and Modifications

The question referred by the Director-General for discussion with the legal experts arises from the instruction given by the CONTRACTING PARTIES to the Director-General at the twenty-fourth session to propose any action that should be taken by the CONTRACTING PARTIES following upon the abandonment of the Protocol Amending Part I and Articles XXIX and XXX (see SR.24/12). The precise question now referred for discussion in this context is the procedures to be adopted for rectifications and modifications following upon the failure to amend Article XXX by the addition of a third paragraph as agreed upon in 1955.

The text of the paragraph which was to be added to Article XXX is reproduced in document L/2975. That text provided for rectifications and modifications to be recorded by means of certifications by the CONTRACTING PARTIES. A draft procedure governing such certifications was set out in the same document, but this now appears to the secretariat to be inadequate.

It will facilitate examination of this question if the problem of rectification of errors is separated from that of modification of concessions. The two problems can be discussed separately, even though, in the end, it may be found that they can be covered in the same decision of the CONTRACTING PARTIES.

Modifications

This question concerns only the schedules to the GATT. The amendment of Article XXX proposed in 1955 reads: "Any amendment to the Schedules annexed to this Agreement which records ..... 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".

Let/510
The trouble with this text is that amendments to the schedules do not become effective until they have been certified, whereas the GATT itself provides that concessions (legal obligations) are modified when the procedures laid down in the GATT have been complied with. Which is legally binding? - the concession embodied in the authentic text of the schedule or the concession as modified under the rules for renegotiation? Can there by any doubt that legal obligations are altered as a result of action taken in accordance with the provisions of the GATT? In practice, this has been acknowledged by the contracting parties. Therefore, the exact date on which the legal obligation has been changed should be established.

It appears to the secretariat that the best way in which the modifications to schedules can be kept in good order could be for the Director-General on behalf of the CONTRACTING PARTIES to issue an instrument of modification certifying that the procedures laid down in the GATT have been complied with and announcing the results effective as from a specified date. However, the detail of this procedure will require careful consideration in the light of the provisions of any article of the GATT which is relevant to the modification of schedules.

Rectifications

The amendment of Article XXX proposed in 1955 provided that: "Any amendment to the Schedules annexed to this agreement which records rectifications of a purely formal character ..... shall become effective on the thirtieth day following certification to this effect by the CONTRACTING PARTIES". This is followed by the important proviso that all contracting parties are to have thirty days in which to raise objection. The Schedules are an integral part of the GATT and therefore it could be considered whether this procedure could apply also to rectifications of other parts of the GATT.

It is suggested that the CONTRACTING PARTIES should adopt a formal decision establishing a procedure whereby the Director-General on discovering or being informed of an error in the authentic text (including the Schedules) would notify the contracting parties and, if no objection is raised, would issue an instrument certifying that the CONTRACTING PARTIES have made the correction in question.

There is, however, the question of what is meant by "rectifications of a purely formal character". In this connexion the Director-General issued document L/3021 of 11 June, listing a number of amendments to the text for consideration as falling in this category. It is recognized that some of these are not corrections of errors and the question to be considered is whether they are of so purely formal a character that they could be dealt with by the same procedure.

When the Director-General submits a proposal to the CONTRACTING PARTIES for a procedure for dealing with rectifications, he will wish to submit a draft decision establishing the procedure. The experts might consider the drafting of the text of such a decision.
Further documentation

A draft working paper has been prepared within the secretariat. This reviews the history of the treatment of rectifications and modifications and analyzes the resulting problems. This working paper is attached, to provide background information on the questions under discussion.

Useful references: GATT - in particular Articles II, XVIII, XXIV, XXVII, XXVIII - and Annexes
Analytical Index (second revision)
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Secretariat Working Paper