

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES  
Ninth Session

Review Working Party IV on  
Organizational and Functional Questions

## REPORT OF THE LEGAL AND DRAFTING COMMITTEE ON THE PROCEDURE FOR THE

### APPROVAL OF AMENDMENTS TO THE GENERAL AGREEMENT

1. The Committee was instructed by the CONTRACTING PARTIES to give a legal opinion to Working Party IV on the legal issues involved in the question of the entry into force of amendments in order to enable the Working Party to complete its examination of this question, taking into account the broader aspects of the policy involved in it. The Committee, has confined its considerations strictly to the legal issues.
2. The following paragraphs of this Report contain its views on the procedure for deciding which amendments should be submitted to governments for acceptance pursuant to the provisions of Article XXX, which is the only problem which the Committee considered so far in this connection.
3. In the view of some members of the Committee the decision to draw up a Protocol<sup>1</sup> and submit it to governments as well as the determination of the contents of such Protocol is a decision requiring only a simple majority. The Review of the Agreement is being conducted pursuant to a decision of the CONTRACTING PARTIES at their Eighth Session. The Decision states first that the Review should be conducted at a session of the CONTRACTING PARTIES, i.e. should be conducted by the CONTRACTING PARTIES acting jointly under Article XXV of the General Agreement, and secondly that the CONTRACTING PARTIES are "(a) to review the operation of the General Agreement on the basis of the experience gained since it has been in provisional operation, and (b) in the light of this Review to examine to what extent it would be desirable to amend or supplement the existing provisions of the Agreement and what modifications should be made in the arrangement for its administration in order that the Agreement may contribute more effectively to early progress towards the attainment of its objectives".
4. These members of the Committee consider, therefore, that there can be no doubt that the Review is an activity of the CONTRACTING PARTIES within the terms of Article XXV of the General Agreement which provides that the "representatives of the contracting parties shall meet from time to time for the purpose of giving effect to those provisions of this Agreement which involve joint action and

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<sup>1</sup>The reference throughout this paper to a Protocol should not be regarded as prejudging the question, which has not yet been discussed in the Committee, whether it would be appropriate to include all the proposed amendments in one Protocol.

generally with a view to facilitating the operation and furthering the objectives of this Agreement". Accordingly, the majority required for any decisions made in the Review by the CONTRACTING PARTIES is governed by paragraph 4 of Article XXV which provides that except as otherwise provided for in the General Agreement, decisions of the CONTRACTING PARTIES shall be taken by a majority of the votes cast. There is no specific provision elsewhere in the Agreement requiring a qualified majority for a decision to embody proposals for amendments to the General Agreement in a Protocol for submission to governments. Accordingly, such a decision may be taken pursuant to paragraph 4 of Article XXV by a majority of votes cast. The provisions of Article XXX which define the number of acceptances required to bring such amendments into force appears to have no relevance to this question since those provisions relate exclusively to entry into force of amendments.

5. Other members of the Committee dissent from these opinions. They consider that the Review cannot be regarded as being action by the CONTRACTING PARTIES pursuant to paragraph 1 of Article XXV. The purpose of such joint action is to give effect to the provisions of the Agreement which involve joint action and the more general words which follow this paragraph are limited in their generality by being related to the operation of the General Agreement. Moreover, the 1953 resolution by virtue of which the present Review of the General Agreement is being carried out refers expressly to Article XXIX. Now, according to paragraph 3 of that Article, if by 30 September 1949 the Havana Charter has not entered into force, "the contracting parties shall meet before 31 December 1949 to agree whether this Agreement shall be amended, supplemented or maintained". It follows from this provision that, on the one hand, the contracting parties assembled for the revision of the General Agreement are not the CONTRACTING PARTIES, a body appointed by an international community, but a simple inter-governmental conference of the classical type and, on the other hand, that the present revision, by its object, goes beyond the simple consideration of amendments to the Agreement's provisions, since it is a matter of deciding if the Agreement itself is to be maintained. Accordingly, the present Session of the CONTRACTING PARTIES 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 upon amendments must be those generally applicable to the negotiation of treaties. On the other hand they consider that 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.

6. In view of the divergence of opinions on the legal position set out above, the Committee considered whether there was any legal objection to the practical proposal put forward in the Working Party and referred to in paragraph 2 of L/304 that, as a matter of procedure and without prejudice to the legal position, the inclusion of all amendments, including those which become effective only upon acceptance by all contracting parties, in a Protocol might be made subject to a

two-thirds majority of votes cast. This would be done by a Resolution which would itself, upon a proposal to this effect being made by the Chairman and approved by the CONTRACTING PARTIES, be adopted by a two-thirds majority of the votes cast.

7. Those holding the views set out in paragraphs 3 and 4 above felt that the adoption of this proposal as a rule of procedure would involve no legal difficulties; in their view only a simple majority was needed and, accordingly, a two-thirds majority would necessarily be valid. Those holding the view set out in paragraph 5 above also considered that there would be no legal objections in the adoption of the proposed procedure on the basis that, so far as they were concerned, they would regard the CONTRACTING PARTIES not as taking decisions on the adoption of amendments but acting as an organ of selection choosing, as between the proposals put forward, those which should be submitted for the acceptance of the contracting parties.

8. Accordingly, despite the difference of views on the legal principles in question all members of the Committee agreed that there would be no legal objection to the proposal referred to in paragraph 6 above as a matter of procedure.

9. In order to illustrate this proposal the Committee has prepared a draft resolution of the CONTRACTING PARTIES:

"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."

10. The question was raised in the course of the discussion whether in view of the difficulties experienced in dealing with this question, it would not be desirable to propose that the General Agreement be amended so as to avoid such difficulties in the future. It was agreed that this matter required further study before the Committee could give any opinion or make any recommendation.