

GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES
Ninth Session

Legal and Drafting Committee

REPORT OF THE LEGAL AND DRAFTING COMMITTEE ON THE PROCEDURE FOR SUBMISSION OF AMENDMENTS TO THE CONTRACTING PARTIES

1. The Committee considered the suggestion made in document L/189/Add.1 regarding the entry into force of amendments, and in particular the question whether, from a legal point of view, the amendments could be embodied in one protocol or would have to be included in two or more protocols.
2. The Committee agreed that, from 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 that 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.
3. 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.
4. Indeed it would be preferable, from the standpoint of possible action under paragraph 2 of Article XXX, to refer explicitly in the Protocol to all such modifications as constituting a single amendment, as was done in 1948 in the Protocol Modifying Part II and Article XXVI. Under paragraph 2 of Article XXX, the CONTRACTING PARTIES may decide that "any amendment made effective under ... Article XXX is of such a nature that any contracting party which has not accepted it within the 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". Under this provision the CONTRACTING PARTIES could, in effect, secure the withdrawal from the General Agreement of a contracting party which, within the specified period referred to above, failed to accept the Protocol. 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.

5. With regard to amendments requiring acceptance by all the contracting parties according to paragraph 1 of Article XXX, the position is entirely different. 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. Therefore, 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.

6. 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.

7. The Committee considered next whether, in order to safeguard the interests of the contracting parties, it was necessary, from a legal point of view, to provide for more than one protocol. It 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, one containing the amendments, the entry into force of which is dependent on acceptance by two-thirds of the contracting parties, and the other or others containing the amendments requiring acceptance by all the contracting parties.

8. 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. As this question is mainly of practical convenience, the Committee felt that it might not be necessary to take a final decision at the present time. It suggests, therefore, that this question, together with other incidental legal questions, might be reconsidered at the time when the actual text of the amendments is known.