

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/304

6 January 1954

Limited Distribution

CONTRACTING PARTIES

Ninth Session

Review Working Party IV on
Organizational and Functional Questions

INTERIM REPORT ON ENTRY INTO FORCE OF AMENDMENTS TO THE GENERAL AGREEMENT

1. The Working Party has given preliminary consideration to the question of the entry into force of amendments to the General Agreement agreed upon in the course of the Review. The Working Party has based its discussion on the suggestions of the Executive Secretary contained in L/189/Add.1, pages 3 and 4. In the course of the discussion the Executive Secretary elaborated these proposals. He envisaged the process of amendment of the Agreement as follows:-

The CONTRACTING PARTIES would, at the present Session, embody in a Protocol for submission to governments for their acceptance, the amendments agreed upon in the Review. The decision whether to include any particular amendment in the Protocol would be taken by a simple majority vote consistently with the provisions of Article XXV, paragraph 4. This Protocol would be signed or initialled at the end of the Ninth Session purely for the purpose of authenticating the text, or some alternative system of authentication could be adopted. The Protocol would then be opened for acceptance by signature by contracting parties. The rights and obligations of contracting parties would not up to this time have been affected and would only be affected at the time when the amendments entered into force. The secretariat then proposed that as soon as two-thirds of the contracting parties had accepted the amendments embodied in the Protocol, the CONTRACTING PARTIES might take a decision under paragraph 2 of Article XXX specifying a date by which contracting parties which had not yet accepted the amendments should do so. In practice, if, as proposed, amendments would have to be accepted as a whole, the effect of specifying the date would be to require the contracting parties concerned to accept all the amendments. The secretariat further proposed that it should be required that acceptance of the amendments should be accompanied by acceptance of the Agreement definitively under Article XXVI. When the Agreement entered into force under Article XXVI it was suggested that the CONTRACTING PARTIES should specify a date under paragraph 2 of Article XXXII by which contracting parties which had not so accepted it, should be required to do so or cease to be a contracting party. This would be a further guarantee of the entry into force of the amendments requiring unanimity.

2. The Working Party has reached no conclusions on these proposals. However, several members of the Working Party expressed preliminary views on some of the legal and practical implications of these proposals. No firm opposition but some doubt was expressed as to the legal propriety of combining all the amendments in a single package, and a number of legal questions were raised in connection with such a procedure. There was general agreement that a date should be specified for the acceptance of these amendments, but there was some question as to whether this date should be specified in the Protocol of Amendments or later by the CONTRACTING PARTIES after the amendments requiring acceptance by two-thirds had entered into force. One representative felt that the date for acceptance of the amendments should be specified in the Protocol and that it should coincide with the date for the extension of the firm validity of the Schedules to the Agreement. There was considerable discussion as to whether it was correct to assume that proposed amendments could be incorporated in the Protocol of amendments by a simple majority, when the entry into force of these amendments depended upon their acceptance by two-thirds or, in some cases, by all the contracting parties. Some representatives, whilst not denying that this was a correct legal position, questioned whether from a practical point of view it might not be desirable to make the inclusion of amendments in the Protocol subject to, say, a two-thirds majority, since a difficult situation might be created if a number of amendments were inserted in the Protocol which it was clear from the discussion had no prospect of being accepted by the requisite number of contracting parties; this situation, if the package procedure were adopted, might frustrate the whole Review. Other representatives were not able to accept the legal position as stated. Still other representatives were prepared to accept the secretariat proposal. The Working Party still has under consideration the question of definitive application of the General Agreement.

3. The Working Party felt that it could not usefully continue the discussion of the entry into force of the amendments without expert advice on all the legal issues involved. It was therefore decided to request the CONTRACTING PARTIES to establish the Legal and Drafting Committee and to instruct this committee to give early attention to the legal questions relating to the entry into force of amendments. The Working Party hopes that the Legal and Drafting Committee could give its advice on the legal issues to the Working Party in order to enable the latter to complete its examination of the question, taking into account the broader aspects of policy involved in it.