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, therefore, confined its considerations strictly to the legal issues.

The majority view of the Committee is that from a strictly legal point of view the decision to draw up a Protocol 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 desiderata motivating the decision are clearly stated in it as being the desire of the CONTRACTING PARTIES to contribute to more effective progress towards the objectives of the Agreement. These desiderata are restated in the operative part of the decision where it is said 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 arrangements for its administration in order that the Agreement may contribute more effectively to early progress towards the attainment of its objectives".

Spec/20/55
The majority 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 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 the provisions of paragraph 4 of Article XXV. 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 the majority of the Committee to have no relevance to this question since those provisions relate exclusively to entry into force of amendments.

Such being the legal position, it is open to the CONTRACTING PARTIES to adopt such procedural arrangements as would prevent the Review being frustrated by the inclusion in a single Protocol, open only to acceptance or rejection as a whole, of amendments which have no chance of ultimate entry into force. For example there would appear to be no objection to the CONTRACTING PARTIES in fact adopting a procedure under which the incorporation of amendments in the Protocol would be subjected to a qualified majority.
Two members of the Committee dissent from the opinion of the majority. 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. 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 XX 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 decided by a two-thirds vote, and of those requiring acceptance by all contracting parties by a unanimous vote. They concur, however, with the opinion of the majority that as a practical matter the CONTRACTING PARTIES might agree upon a rule of procedure which would subject decisions on the incorporation of amendments in the Protocol to a two-thirds vote. One of the two dissenting members considers, however, that such a decision would only be valid if it was a unanimous decision of the CONTRACTING PARTIES.