

GENERAL AGREEMENT ON TARIFFS AND TRADE

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TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY

Report Submitted by the Committee on the Rome Treaty
to the CONTRACTING PARTIES on 29 November 1957

The following report was presented orally by the Chairman of the Committee on the Rome Treaty at the Twentieth Meeting of the Twelfth Session:

"I have the honour to submit to you an oral report on the work of the Committee on the Treaty of Rome as required by Section C of the terms of reference of the Committee.

"The Committee on the Rome Treaty held seven meetings during the period from 4 to 7 November. At these meetings there took place a very full discussion of various aspects of the Treaty of Rome, considered in the light of the provisions of the General Agreement on Tariffs and Trade. The aspects which the Committee discussed in turn were tariffs, use of quantitative restrictions, trade in agricultural products, plan and schedule and the association of overseas countries and territories with the European Common Market. As a result of these discussions the Committee decided to set up four sub-groups to consider (A) Tariffs and Plan and Schedule; (B) Quantitative Restrictions; (C) Trade in Agricultural Products; and (D) Association of Overseas Territories.

"The four sub-groups held meetings during the period from 11 to 27 November to consider, in greater detail than had been possible in the Committee, the aspects of the Rome Treaty that had been referred to them. The reports of the sub-groups were presented to the Committee at a meeting which took place on 28 November. The Committee found that the reports contained no definite conclusions, because either the time at the disposal of the sub-groups or the information now available did not permit such conclusions to be drawn. Accordingly, while the reports will contribute significantly to the future consideration of these problems, they were largely of an interim character. For this reason the Committee simply took note of the reports and decided to bring them to the attention of the CONTRACTING PARTIES for their information. I have, therefore, the honour to table the four reports herewith which should be regarded as annexes to this oral report.

"The Committee decided that it was premature to deal with Section B of its terms of reference but directed its attention at the meeting on 28 November to that part of Section C of its terms of reference which requires the Committee to 'make such recommendations as may be appropriate with respect to the continuation of the work of the Committee'. After discussion the Committee on the Rome Treaty decided to recommend to the CONTRACTING PARTIES that (1) after the end of the Twelfth Session further considerations of questions relating to the Rome Treaty should be carried on by the Intersessional Committee; (2) that, in view of the great importance to all contracting parties of these questions, the Intersessional Committee established for the period between the Twelfth and Thirteenth Sessions should be constituted of representatives of all contracting parties; and (3) that, in its work on the Rome Treaty, the Intersessional Committee should have the same terms of reference as those of the Committee on the Rome Treaty, except that after the Rome Treaty comes into force the reference to the Interim Committee should be replaced by a reference to the appropriate institutions of the European Economic Community.

"Mr. Chairman, I have the honour to submit these recommendations to the CONTRACTING PARTIES, who, I hope, will see fit to act upon them.

"Before I conclude, I should also report that the Committee on the Rome Treaty considered the Treaty establishing the European Atomic Energy Community which the CONTRACTING PARTIES referred to it at the meeting held on the 6 November. After the legal position had been examined by a group of four experts, the Committee at its meeting on 28 November considered a note (which should also be regarded as an annex to this report) prepared by the Chairman on the basis of the advice he had received from the four experts. The Committee agreed with the conclusions set forth in paragraph 10 of that note and decided to recommend that the Intersessional Committee should take into consideration the provisions of the Treaty establishing the European Atomic Energy Community along with the Treaty establishing the European Economic Community. I trust that this recommendation will also commend itself to the CONTRACTING PARTIES."

ANNEX I

TARIFFS AND PLAN AND SCHEDULE

Report by Sub-Group A

I. INTRODUCTION

1. The Sub-Group examined the provisions of the Rome Treaty relating to the establishment of a common tariff and the elimination of import and export duties among the members. It examined also the arrangements which would be necessary for the application of the provisions of paragraph 6 of Article XXIV concerning the modification of bound items as a result of the introduction of the Common Tariff and whether the Rome Treaty contained a Plan and Schedule for the complete establishment of a customs union in the sense of Article XXIV.
2. There was extensive discussion in the Sub-Group as to the significance to be placed upon paragraph 4 in the examination of the tariff provisions of the Rome Treaty. The representatives of the governments of the Member States of the European Economic Community stated:

The terms of paragraph 4 on the one hand, and paragraphs 5 to 9 on the other hand must be interpreted interdependently. Paragraph 5 of Article XXIV starts with the word "accordingly" which indicates beyond doubt the relationship which exists between these two sets of provisions. The conditions laid down in paragraphs 5 to 9 have the purpose of ensuring that Customs Unions or the Free Trade Areas are in conformity with the general principle laid down in the second sentence of paragraph 4. In other words, a customs union or a free trade area which fulfil the requirements of the provisions of paragraphs 5 to 9 of Article XXIV would automatically and necessarily satisfy the requirements of paragraph 4 since paragraphs 5 to 9 merely spell out the implications of paragraph 4. This interpretation is confirmed by the records of the preparatory work related to the adoption of the text of the present Article XXIV (cf. document W.12/18).

The view expressed by certain contracting parties that the terms of paragraph 4 of Article XXIV require the Six to take into consideration the situation of each contracting party is furthermore in contradiction with the provisions of paragraph 5 et seq., particularly with those of paragraphs 5(a) and (b) which deal with the general incidence of tariff rates and commercial regulations.

The objective of paragraph 6 is furthermore the maintenance of the rights of the contracting parties acquired by concessions granted to them, a fact which should take care to a large extent of the problem of the countries the trade of which depends on one or on a few products.

3. Most members of the Sub-Group were not prepared to accept this interpretation. They believed that paragraph 4 establishes the basic principles which a customs union should apply to be consistent with the objectives of GATT. Where questions arise as to the application of the provisions of paragraphs 5 to 9 in particular cases, such questions should be resolved in a manner consistent with the principles embodied in paragraph 4. Some members of the Sub-Group felt, furthermore, that the CONTRACTING PARTIES would have to verify whether the application of paragraphs 5 to 9 is consistent with the aims of a customs union as defined in paragraph 4. One member of the Sub-Group pointed out that this problem might prove in actual practice, so far as the Rome Treaty was concerned, to be minimal in view of paragraph 6 of Article XXIV.

II. COMMON TARIFF

4. The Sub-Group considered whether, on the basis of the Rome Treaty and the additional material submitted to the CONTRACTING PARTIES by the Interim Committee, the future Common Tariff of the European Community could be considered at this time as being likely to conform with the provisions of paragraph 8(a)(ii) of Article XXIV. It noted that under the Rome Treaty Member States would not be authorized to depart from the Common Tariff but would have to apply substantially the same duties to other countries once the Customs Union is fully established.

5. The Sub-Group examined the provisions of the Rome Treaty dealing with the Common Tariff in the light of the terms of paragraph 5(a) of Article XXIV. Since the rates of duty are not yet known for a large part of the Common Tariff, the Sub-Group came to the conclusion that it was not possible at this time to determine whether the Common Tariff would be consistent with the provisions of paragraph 5(a) of Article XXIV.

6. In considering the basis on which the CONTRACTING PARTIES could best make a judgment with regard to the Common Tariff in the light of provisions of paragraph 5(a) of Article XXIV, most of the members of the Sub-Group felt that an automatic application of a formula, whether arithmetic average or otherwise, could not be accepted, and agreed that the matter should be approached by examining individual commodities on a country by country basis. Attention was also drawn to the drafting history of paragraph 5(a) of Article XXIV, according to which the term "general incidence of the duties" was used with the intention "that this phrase should not require a mathematical average of customs duties but should permit greater flexibility so that the volume of trade may be taken into account" (W.12/18).

7. The representatives of the Member States drew attention to the fact that the provisions of Article XXIV do not exclude any method of calculation for the preparation of a common tariff, provided however that the duty rates applied as a result of the establishment of a customs union are not on the whole higher than the general incidence of the duties which they replace.

The Member States base their calculation on the arithmetical average method which is strictly in conformity with the provisions of paragraph 5 of Article XXIV. For arriving at a still lower tariff level the Member States furthermore in their calculation use the rates actually applied on 1 January 1957, subject to the exceptions as provided for in Article 19 of the Treaty, and not the legal and contractual rates which the Member States, in their view, would have the right to apply under the provisions of paragraph 5 of Article XXIV. To the same effect the Member States provided ceiling rates for a great number of products which have to be applied even in instances where the arithmetical average would lead to higher rates.

The Member States therefore consider that they have gone further than requested by the obligations since the application of their rules will lead to a common tariff, the level of which will be lower than that authorized under the provisions of paragraph 5 of Article XXIV. Further, the Member States do not see the advantage of a product-by-product study which could lead to nothing but the confirmation that the duties of the common tariff are, as shown by the study submitted to the CONTRACTING PARTIES, on the whole, of a general incidence which is not higher than the incidence of the rates which they replace. Finally, the Member States are not in a position to accept a country-by-country study for the reasons stated above (paragraph 2) given in connexion with the interpretation of paragraph 4 of Article XXIV.

8. Most members of the Sub-Group believed that the CONTRACTING PARTIES should have an opportunity to make a thorough and detailed analysis of the proposed Common Tariff on the basis described in paragraph 6 above, at the earliest practicable date. It was envisaged that, in the first instance, this examination would be carried out by each contracting party. Following the completion of this step the CONTRACTING PARTIES should have an opportunity to examine jointly the Common Tariff. Such joint consideration should take account of the trading interests of contracting parties, including those whose exports to the Community are made up of a small number of products.

9. Members of the Sub-Group stressed the importance of fixing low rates of duty for the items in List G. They noted that the items in this list account for approximately 20 per cent of the imports of the Members of the Community and an equal or larger percentage of the exports of some contracting parties to the Community. They also noted that the list includes several raw and industrial materials which normally bear low rates of duty. The representatives of the Member States pointed out that List G contains inter alia industrial products which in most countries normally do not bear low rates.

10. ~~The representatives of the Member States~~ explained that the rates laid down in Lists B, C, D and E are ceiling rates in the sense that, if the calculation of the arithmetic average between the rates of the Member States would lead to a lower figure, the lower figure would be inserted in the Common Tariff, and that the adoption of the rates of the items listed in List G would be consistent with the obligation to maintain the general tariff incidence within the limits fixed by paragraph 5(a) of Article XXIV.

11. The representatives of the Members of the Community stated that they would do everything in their power to communicate as soon as practicable the rates of the Common Tariff including those of List G, as well as any other information which the Six believe would expedite the examination of the Common Tariff by the CONTRACTING PARTIES. To this end the Member States will, as far as practicable, transmit to the contracting parties as soon as possible a table comparing the four national tariffs and the Common Tariff and a "Key" showing how the duties bound under Schedules II, XI, XXVII and XXXIII were incorporated into the Common Tariff. In view of the time-consuming work involved in the actual preparation of the Common Tariff and the Key, it would not be possible to accept a definite time-table at this time. One Member suggested that, if possible, sections of the Common Tariff should be transmitted as they are completed. The representatives of the Six pointed out that this suggestion could not be accepted since the Common Tariff has to be judged as an entirety but they undertook to transmit this suggestion to the Commission of the European Economic Community.

III. ARRANGEMENTS FOR THE APPLICATION OF PARAGRAPH 6 OF ARTICLE XXIV

12. The Sub-Group confirmed unanimously that paragraph 6 provides that if the Common Tariff would involve in its implementation the raising of any duty rate above that specified in the schedules, negotiations should take place under the procedure provided for in Article XXVIII. The Sub-Group agreed that the provisions of paragraphs 1, 2 and 3 of Article XXVIII apply; any modification of the procedures that might be required will be made by the CONTRACTING PARTIES when they make arrangements for the negotiations. However, the representative of the Six declared that they could not commit themselves to such negotiations without prior consultations as to the methods of the application of paragraph 6 of Article XXIV.

The Sub-Group noted that the Treaty provided the possibility for the institutions of the Community to enter into tariff negotiations on the duties of the external tariff including those which would be fixed for the products enumerated in List G and those presently not bound under the General Agreement.

13. The Sub-Group, subject to a reservation by the representative of the Six that they are not in a position to commit the institutions of the Community, recognized that the negotiations required under paragraph 6 should be completed before Members of the Community took the first step toward achieving a common tariff at the beginning of 1962. It also agreed that any suggestion made on the precise timing of these negotiations should be reviewed by the appropriate intersessional machinery or at the Thirteenth Session, in the light of progress

made by Members of the Community during the next few months towards completing their Common Tariff. It was suggested that the Members of the Community be requested to submit their Common Tariff rate to the CONTRACTING PARTIES not later than 1 July 1959. It was envisaged that the CONTRACTING PARTIES would then require from twelve to eighteen months to examine the tariff and prepare for the negotiations. A tariff negotiating conference might be convened during the latter part of 1960 or early in 1961. Some members of the Sub-Group believed that it might be convenient for the joint examination of the Common Tariff envisaged in paragraph 8 above, to take place at the same time as the negotiations required under paragraph 6 of Article XXIV. The representatives of the Member States declared that they could not undertake a firm commitment concerning the suggested time-table but would endeavour to submit the Common Tariff to the CONTRACTING PARTIES with the shortest possible delay. At the same time they indicated that the examination of the incidence of the Common Tariff should precede the negotiations envisaged in paragraph 6 of Article XXIV.

14. The question was raised whether the negotiations under paragraph 6 of Article XXIV would be conducted by the individual Member States or by the Community as a whole. The representatives of the Member States quoted the provisions of the Rome Treaty which state that the Commission, duly authorized by the Council, would be responsible for conducting tariff negotiations with third countries concerning the Common Tariff.

15. The Sub-Group took note of a statement made by the Japanese Member of the Sub-Group and the reply received from the representative of the Six reproduced in document W.12/58/Rev.1 and Add.1.

IV. ELIMINATION OF THE IMPORT AND EXPORT DUTIES AMONG THE MEMBERS

16. The Sub-Group noted the provisions of Articles 12 to 17 of the Rome Treaty which provide for the elimination of customs duties between Member States. In this connexion it noted in particular that according to Article 110 the aim of the commercial policy of the Community is, inter alia, to contribute to the lowering of customs barriers and to take into account the favourable incidence which the abolition of customs duties as between Member States may have on the increase of the competitive strength of the enterprises in those States.

V. PLAN AND SCHEDULE FOR THE COMPLETE FORMATION OF A CUSTOMS UNION

17. Most Members of the Sub-Group felt that the Rome Treaty contained a fairly detailed Plan and Schedule for the elimination of tariff barriers among the Member States. The Sub-Group did not examine the Plan and Schedule from the viewpoint of the elimination of non-tariff barriers in respect to trade among the Member States since these matters had been considered by other Sub-Groups. In regard to the tariff barriers, however, some delegations felt that no such detailed plan was yet forthcoming for the last stage of the operation. The representatives of the Member States agreed that the Plan and Schedule were not as detailed for the latter part of the operation as for the first two stages but pointed out that the Member States were committed to complete the Customs Union within a period which would in no case exceed fifteen years.

Attention was also called to the provisions in the Treaty of Rome which allowed for a delay in the transition from the first to the second stage, and it was suggested that the CONTRACTING PARTIES should recommend under paragraph 7(b) of Article XXIV that the Community should inform them in the event of recourse to those provisions. The representatives of the Six, however, indicated that they were not in a position to accept this recommendation. The possible prolongation of the first stage cannot be considered to be a modification of the Plan and Schedule since the Plan itself provides for this prolongation; paragraph 7 of Article XXIV cannot therefore be invoked.

18. The Sub-Group noted that, under paragraph 7(c) of Article XXIV, any substantial change in the Plan or Schedule should be communicated to the CONTRACTING PARTIES which would be free to ask the Six to consult with them if the change appeared likely to jeopardize or delay unduly the formation of the Customs Union.

VI. FINAL REMARKS

19. The Sub-Group draws the attention of the Committee to the fact that it has not reached conclusions on some points which should be resolved before the CONTRACTING PARTIES examine the Common Tariff to determine if it is consistent with the provisions of paragraph 5(a) or enter into tariff negotiations envisaged under paragraph 6 of Article XXIV. For example, paragraph 12 of this Report suggests that the proposed time-table for the negotiations of bound rates should be reviewed in the light of the progress the Community Members make in preparing the Common Tariff. Furthermore, it will be necessary to prepare negotiating rules and procedures before the opening of such negotiations. It might also be desirable to consult with the Commission of the European Economic Community about the explanatory material which the Member States might provide for the CONTRACTING PARTIES. The Sub-Group, therefore, suggests that these matters be referred to an appropriate intersessional machinery for further consideration.

ANNEX II

QUANTITATIVE RESTRICTIONS

Report by Sub-Group B

1. The Sub-Group considered in the light of the discussions in the Committee those provisions of the Rome Treaty relating to the use of quantitative restrictions, particularly those used for balance-of-payments purposes, in the light of Articles 30 to 37, 108, 109, 110, 111 and 113, both as regards their application in the transitional period and thereafter.
2. Members of the Sub-Group expressed concern that under the Rome Treaty provisions a Member State would be permitted to use quantitative restrictions not justified by its own balance-of-payments position. They recognized that this cause for concern would be removed if at some future stage the integration of the economies of the Six proceeded to the point where in effect they held their foreign exchange reserves in common.
3. The Six considered that the opening phrase of paragraph 5 of Article XXIV provided a general exception under which they were entitled to deviate from the other provisions of the General Agreement, including Articles XI to XIV, insofar as the application of these provisions would constitute obstacles to the formation of the Customs Union and to the achievement of its objectives. In their opinion, Article XXIV imposed an obligation on the Member countries of a customs union to eliminate insofar as possible - but only to that extent - quantitative restrictions existing between them, without necessarily extending such elimination to countries which are not members of the Union, which as a corollary, implied that the Member States may maintain or impose restrictions applying to non-Member countries only. With respect to the relationship of countries within the Union to third countries, the Six consider that the provisions of Article XXIV:8(a)(ii) required the States forming a customs union to apply "substantially the same duties and other regulations of commerce". The Six recall in this respect that the phrase "other regulations of commerce" appearing in paragraph 8(a)(ii) should be interpreted in the light of the provisions of paragraph 5(a) which represent, as will be shown, a supplement to the rules set forth in paragraph 8(a)(ii) and which therefore has the same object. In their view paragraph 5(a) of Article XXIV refers expressly to restrictive regulations of commerce. It is therefore clear that the words "other regulations of commerce" appearing in paragraph 8(a)(ii) refers in particular to restrictive regulations of commerce. It was pursuant to paragraph 8(a)(ii) that the Six had

adopted provisions relating to the establishment of a common external tariff and common regulations of commerce which may be applied notably in the field of quantitative import restrictions. In their opinion, paragraph 5(a) of Article XXIV defines the scope of these common regulations of commerce: they must not on the whole be more restrictive than those applicable in the constituent territories prior to the formation of the Union, all things being otherwise equal. By implication this rule gives the countries which are members of a customs union the right to apply restrictive measures other than those which they would have been able to apply if the Union had not been established. Otherwise, the overall incidence of the quantitative restrictions applied by the Member States of the Union would be nothing more than the sum of the restrictions applied by each of these countries and there would be no object in stipulating in Article XXIV that this overall incidence should not be more restrictive than those restrictive regulations applied before the formation of the Union. Now, the General Agreement has been reviewed only two years ago, and the Six are of the opinion that all the sentences included in Article XXIV are meaningful. Accordingly, the Six are of the opinion that the restrictive measures which should be taken in the conditions referred to above by one or more members of the Community, irrespective of the level of their balance of payments, do not constitute a measure of additional protection for the Community as a whole. These additional measures may, moreover, affect commodities which are not produced in the country or countries which take these measures, in which case they cannot be considered as "protective" measures taken by that country or those countries.

4. Most members of the Sub-Group had a different interpretation of Article XXIV. In their view countries entering a customs union would continue to be governed by the provisions of Article XI prohibiting the use of quantitative restrictions as well as by the other provisions of the Agreement which provided certain exceptions permitting the use of quantitative restrictions where necessary to deal with balance-of-payments difficulties. Further, adherence to these provisions would in no case prevent the establishment of a customs union. Since paragraph 8(a)(i) permitted where necessary the use of quantitative restrictions for balance-of-payments reasons, it followed that the use of quantitative restrictions by individual countries within the Union for these reasons could not be regarded as preventing the formation of a customs union as defined in Article XXIV.

5. Most members of the Sub-Group could not accept the interpretation of the Six of paragraph 5(a). In their view the use of the term "regulations" in this paragraph and in paragraph 8(a)(ii) does not include quantitative restrictions imposed for balance-of-payments reasons. An examination of the provisions of the Agreement indicates that the term "regulation" is consistently used to describe such matters as customs procedures, grading and marketing requirements, and similar routine controls in international trade. This interpretation is reinforced by the fact that in 8(a)(i) the term "regulation" is qualified by the word "restrictive" in the one instance where Article XXIV specifically

refers to the balance-of-payment Articles. Moreover, the term "regulation" does not appear in the balance-of-payment Articles of the General Agreement. The General Agreement prohibits the use of quantitative restrictions for protective purposes and permits their use only in exceptional circumstances and mainly to deal with balance-of-payments difficulties. Accordingly the notion that paragraph 5(a) would require that temporary quantitative restrictions should be treated in the same way as normal protective measures such as tariffs in determining the trade relations between countries in a customs union and third countries would be contrary to the basic provisions of the Agreement which preclude the use of quantitative restrictions as an acceptable protective instrument.

6. These members for the reasons mentioned above, could not accept the term "other regulation of commerce" in 8(a)(ii) included quantitative restriction. Moreover they pointed out that if paragraph 8(a)(ii) were interpreted to require a common level of quantitative restrictions against third countries, this would be incompatible with the explicit permission in paragraph 8(a)(i) for the use of quantitative restrictions within the system for balance-of-payments reasons since it would appear not to be practicable to have a common level of quantitative restrictions against third countries in a situation where countries within the Customs Union made use of their right to impose such restrictions against their partners. Moreover, the effect of such an arrangement would be that some country or countries in the Union would be imposing quantitative restrictions not required by their own individual balance-of-payments position and would, therefore, be raising barriers to trade with other contracting parties.

7. Most members of the Sub-Group believed that the imposition of common quotas by the Six, quite apart from being contrary to Article XII of the GATT, would be contrary to fundamental economic reasoning unless they held their reserves in common. Common quotas could mean that a member of the Customs Union in balance-of-payments difficulties would be unable to apply restrictions appropriate to its particular difficulties while other members would be applying restrictions not required or justified by their payments position. Under such a system, unless restrictions were also imposed between the Six, imports would tend to flow to the country not in a position to finance them at the expense of the other members who had no difficulty in financing them.

8. Most members of the Sub-Group emphasized that if the Six were individually no longer to be bound by the balance-of-payments provisions of the Agreement permitting the use of quantitative restrictions only in carefully defined circumstances, then the balance of rights and obligations under the Agreement would be impaired.

9. The Sub-Group next considered how the Customs Union was likely to develop insofar as the use of quantitative restrictions for balance-of-payments reasons was concerned. Some members suggested that the Six countries during the transitional period would be relaxing the restrictions between themselves. At the same time, as their payments position permitted, their restrictions against other countries would also be reduced. The representative of the Six compared this outlook with what had taken place under the OEEC programme of liberalization of trade which had never been the subject of a complaint under the Agreement. Other members of the Sub-Group pointed out that the fact that they had not yet formally raised the question of the compatibility of the OEEC liberalization programme should not be considered as meaning that they had by implication accepted that it was in full compliance with the General Agreement. Their silence on this point was to be attributed to their feeling that as a practical matter this programme was, on the whole, moving in the right direction.

10. Following an exchange of views on the provisions of the Rome Treaty in the field of quantitative restrictions, the Sub-Group noted that these provisions were not mandatory and imposed on the members of the Community no obligation to take action which would be inconsistent with the General Agreement. On the other hand because of the very general scope and competence conferred on the Institutions of the Community, it could be within their powers to take measures which could be inconsistent with the GATT whatever the interpretation given to the provisions of Article XXIV. The Six pointed out that many contracting parties had permissive domestic legislation of a general character which, if implemented in full, would enable them to impose restrictions in a manner contrary to Article XI. These countries were not, however, required to consult with the CONTRACTING PARTIES about their possible intentions as regards the implementation of such legislation. The Six could not accept that any contracting party by virtue of its adherence to the Rome Treaty should be subjected to additional requirements or obligations as to the consultations about the use of quantitative restrictions. This applied particularly to prior consultation regarding the relevant provisions of the Rome Treaty.

11. The Sub-Group took the view that Member States of the Six as regards their individual use of quantitative restrictions should be subject to the consultation procedures applicable to other contracting parties in like circumstances, and agreed that it would not be proper to envisage any special consultation procedures. If in the application of the provisions of the Treaty any Member country found it necessary to take action which would bring into play the consultation provisions of the General Agreement, then the country concerned would fulfil its obligations under GATT.

12. The Sub-Group noted that Article XXIV, paragraph 7 lays down certain responsibilities for the CONTRACTING PARTIES in relation to proposals for a customs union. In view of the uncertainties about the way in which the provisions of the Rome Treaty would be implemented the members of the Sub-Group other than the Six considered that at this stage it was not possible to make a judgment that the application of the provisions of the Rome Treaty concerning the use of quantitative restrictions would or would not be compatible with the relevant provisions of the General Agreement. In these circumstances the

Sub-Group concluded that at the present time it was not possible to decide what recommendations it might deem appropriate under Article XXIV but this should not be construed to mean that the CONTRACTING PARTIES might not wish to take action at a later stage.

13. Accordingly the Sub-Group considered that there was no need for the CONTRACTING PARTIES to take a formal decision to set up special machinery to deal with the use of quantitative restrictions by members of the Six. However, the closest possible co-operation should be arranged with the Community in order that they might work together with the CONTRACTING PARTIES for the harmonious attainment of the objectives of the Common Market and the General Agreement. Because of the importance to international trade of action which might be taken by the Six and of the desirability of a clear understanding shared between the Six and the other contracting parties, it was agreed that discussion of the problem which might arise in the field of quantitative restrictions should be provided for in whatever arrangements are made for continued liaison with the Six and the Institutions of the Community. Any particular problems that might arise in the actual application of import restrictions by the individual members of the Community would be examined in the consultations under the provisions of the General Agreement. Furthermore, it was pointed out in the Sub-Group that it was desirable to keep a close collaboration with the International Monetary Fund - as is already provided for in paragraph 1 of Article XV - in relation to the problems which might arise as a consequence of action taken by the Six in matters of quantitative restrictions for balance-of-payments reasons.

ANNEX III

TRADE IN AGRICULTURAL PRODUCTS

Report by Sub-Group C

I. INTRODUCTION

1. The Sub-Group considered the agricultural provisions of the Rome Treaty in relation to the General Agreement. The discussion covered the arrangements to be applied during the transitional period and the development during that period of the common agricultural policy to be applied not later than at the end of that period. The Sub-Group considered also the probable effects of the common organization and its agricultural policy on the interests of third countries, with special reference to those countries whose economies depend mainly on the production and exports of a few agricultural commodities.

2. The Sub-Group heard a statement of the representative of the Six in which he stressed that the General Agreement does not forbid conferring powers from national authorities on common institutions. Contracting parties could, in his opinion, only intervene if the Community executed these powers in a way contrary to the obligations under the General Agreement. Here, contracting parties had all guarantees they needed as, in the Rome Treaty, it was stipulated that the Six countries would abide by the obligations they undertook in the GATT; it followed, therefore, that the provisions of the Rome Treaty concerning agriculture are in complete accordance with Article XXIV of the GATT. In the course of the discussion, the observer for the Interim Committee stressed that, the fact that the Six consider that the Rome Treaty is consistent with Article XXIV, did not imply that the institutions of the Community would be free to shape their policy irrespective of the international commitments of the Member States. As was pointed out already in the general discussion, the Community was bound by the provisions of Article 234 and therefore, in shaping the commercial policy of the Community, it had to take into account the international commitments of the Member States. This did not mean that the institutions would be debarred from considering measures which were not consistent with the provisions of the General Agreement, but, as any individual contracting party, they would have to reconcile their action with the provisions of the General Agreement by appropriate methods. The other members of the Sub-Group duly noted these statements which helped to clarify to a certain extent the relations between the Community and the General Agreement, but felt that this still left many important questions unresolved.

II. MEASURES TO BE APPLIED DURING THE TRANSITIONAL PERIOD

(1) Minimum prices

3. The representative of the Six in reply to questions explained the intentions underlying the system of minimum prices. Minimum prices can be applied by each of the Six countries under the conditions laid down in Article 44, paragraph 1. On the other hand, the provisions of the Rome Treaty leave Member countries free to apply minimum prices to third countries as well. Its aim is to facilitate the abolition of internal trade barriers and thus to comply fully with the provisions of Article XXIV by means which take into account the special conditions prevailing in the agricultural field, and thus to facilitate the process of adaptation to a common price level and of equalization of the conditions of agricultural producers. They were not in a position to give more definite indications as to the scope of the minimum prices, as the objective criteria would be determined only later. While the system of minimum prices is applicable to all products enumerated in Annex II which contains a certain number of tropical products, the Six stated that minimum prices would be used only for a limited number of products, and only in cases where the progressive abolition of customs duties and quantitative restrictions between Member States may result in prices likely to jeopardize the achievement of the objectives set out in Article 39 of the Rome Treaty. Members of the Sub-Group observed that since the products listed in Annex II were subject to the provisions of Articles 36 to 46 of the Treaty, minimum price arrangements could be applied to products of which there was no production at all or only minimal production in the countries of the Six, provided the conditions in Article 44, paragraph 1 were satisfied.

4. As regards the probable effects on imports from third countries of the minimum price system, the Sub-Group was informed that the reference in Article 44, paragraph 1 "in a non-discriminatory manner" was understood to relate only to trade among the Six and did not imply a commitment to apply the same treatment to the imports from third countries. In the opinion of the Six, however, this operation of minimum prices to the intra-Community trade would not necessarily lead to a reduction in such imports and paragraph 2 of Article 44 was intended to take into account the interests of third countries because of its influence on the price levels. Serious doubts were expressed on this point by members of the Sub-Group who thought that, contrary to the view held by the Six, paragraph 2 of Article 44 did not seem to offer any guarantee in this respect. In the view of some members the imposition of minimum prices appeared to require barriers to trade between the Six themselves as well as between the Six and third countries. In addition, in their opinion, the provisions in paragraphs 1 and 2 of Article 44, taken together, seem to lend themselves to the interpretation that the application of minimum prices could result in a displacement of the trade with outside countries. In other words, if there is an increase in demand, there is no assurance that outside suppliers will share in that increase, and, if there is no increase in demand, it is quite possible that imports from outside would decline. They feel also that if minimum prices are applied to trade among the Six, it could become necessary, depending on the level of prices established, to apply to imports from outside quotas, which would not be consistent with the GATT provisions, or, if imports would be subject to minimum prices plus an external tariff, this could in effect seriously restrict and perhaps even prevent imports. These fears persisted even though the representative of the Six stated once again that, in stressing them, the members of the Sub-Group did not take into account that the Community would abide by the provisions of the General Agreement.

(11) Long-term contracts

5. Members of the Sub-Group, while recognizing that the General Agreement did not forbid the use of long-term contracts as such, felt that the proposed form of the contracts could hardly be reconciled with the provisions of Article XXIV. Further, their use was likely to lead to additional import barriers and restraints of multilateral trade contrary to the provisions of the General Agreement. Many members thought that since these contracts would be based on the average volume of exchanges between Member States during a fixed period preceding the entry into force of the Treaty, the increase in this volume, which is provided for in Article 45, paragraph 2, could take place only at the expense of supplies from other countries. In such cases conflict with the provisions of the GATT would appear to be inevitable. The provision in that paragraph that due account should be taken of traditional trade currents did not, in the opinion of several members, seem to offer adequate guarantees against such a development. The fears expressed by many members persisted even though the representative of the Six pointed out that the main aim of the long-term contracts was to make possible a development towards freeing trade in certain products for which the provisions in the Rome Treaty relating to the abolition of quantitative restrictions and import duties are not adequate because of the existence of certain national regulations.

6. Particular concern was expressed with respect to the provisions of Article 45, paragraph 3. This paragraph, while indicating certain circumstances in which imports from third countries could be permitted, also gave the institutions the power to prevent even such limited imports. The representative of the Six explained that, under this paragraph, it was intended to permit individual countries among the Six to preserve their traditional trading interests with outside countries, and that the decision to deviate from that principle would require a unanimous vote, as stated in the last sentence of the paragraph. These explanations were not considered as convincing by many members of the Sub-Group who maintained that these provisions were likely to produce harmful effects for outside countries.

7. The representatives of the Six, while assuring members that due consideration would be given to traditional trade currents, recognized that the carrying out of long-term contracts might, in some cases, lead to a reduction in imports from outside the Common Market. They thought that the Six as a whole should have the same possibilities in the field of agricultural policy, as has each of the contracting parties. A fall in imports could well be envisaged in any country whose agricultural production expanded. This view was not found acceptable to several members who emphasized that, the mere fact that certain restrictive measures as at present applied by some of the Six had not been formally challenged as being in conflict with specific provisions of the General Agreement did not justify their perpetuation. Moreover, action of the Six taken in the field of agricultural policy would have to be consistent with Article XXIV of the General Agreement. The representative of the Six gave assurances that the long-term contracts would only be applied to a limited number of products and only until the national organizations are replaced by one of the forms of common organization provided for in the Treaty.

III. ESTABLISHMENT OF A COMMON ORGANIZATION

8. As regards the setting up of the common organization and the elaboration of the common agricultural policy to be pursued, some members of the Sub-Group were of the opinion that the plans outlined in the Treaty are too vague to enable it to come to any definite conclusion. It was, however, observed by these members that the measures listed in Article 40, paragraph 3 included some, the implementation of which might be in conflict with Article XXIV or with other provisions of the General Agreement which are not affected by that Article; in this respect, concern was particularly expressed regarding the common machinery for stabilizing exports and imports. Attention was also drawn to the mandatory requirement in Article 46 in respect of the application of a countervailing charge. The representative of the Six pointed out that the countervailing charges mentioned in Article 46 were of a temporary nature concerning only relations between the Member States of the Community. Their aim is to restore the balance in competitive conditions when, as a result of the existence in one Member State of a national marketing organization, a product benefits from an abnormally favourable competitive position compared with that of the same product in one or more of the other Member States of the Community. Several members expressed the opinion that as it was difficult to have a clear idea about what the policy after the transitional period will be and as, moreover, the setting up of a common organization would proceed by stages during the transitional period, adequate means should be established in order to enable the CONTRACTING PARTIES to follow the plans of the Common Market institutions as they unfold.

9. With respect to the measures contemplated to replace national market organizations by a common organization, members of the Sub-Group asked for clarification of the provisions of Article 43, paragraph 3(a) in order to have a clear idea of what would be the scope of the guarantee regarding the standard of living of producers. The representative of the Six stated that the measures envisaged should not necessarily be taken to mean that a certain price would be guaranteed to producers, but that the aim was to offer guarantees of a wider scope, and to take also social factors into account. These guarantees would avoid too sudden and abrupt changes in the living standard of producers in individual Member States. Fears were expressed in the Sub-Group that if such guarantees were aimed at maintaining prices high enough to support the highest-cost producer, this would lead to an expansion in production which would not be justified for purely economic reasons and that the sum total of the value of the guarantees granted would exceed what is provided for under the present individual systems. The representative of the Six wished to dispel these fears and stated that if marginal producers were protected in the way indicated, the Community would never reach the objectives set out in the Treaty. As regards specifically the wording in the English version of Article 43, paragraph 3(a) "due account being taken of the time-factor in respect of possible adjustments and of necessary specializations", it was explained by the representative of the Six that it has to be considered as the counterpart of the requirement with regard to the guarantees mentioned previously in this paragraph and requires that the possible adjustments and necessary adaptations in the Community as a whole would have to be taken into account in determining the equivalent guarantees.

IV. EFFECTS ON COUNTRIES WHOSE ECONOMIES DEPEND ON ONE OR A FEW PRODUCTS

10. In the course of the discussion great importance was by some members attached to the effects which the Treaty may have on countries whose economies depend mainly on the exports of one or a few agricultural commodities. By way of illustration it was pointed out that there were, for a commodity like sugar, provisions laid down in the Treaty, the effects of which could be regarded as very dangerous for these countries. In addition to the extremely high rate in the proposed Common Tariff which was arrived at by agreement and not by averaging the existing duties, the system of minimum prices could lead to the exclusion of this product from the market of the Six. Furthermore, the tariff quotas for coffee, cocoa, and bananas, together with tariffs to be negotiated among the Six could produce harmful effects on suppliers other than the associated territories. The uncertainty about the rates to be applied for several agricultural commodities was a matter which added to the feeling of concern. In this connexion, the points were made that the application of minimum prices could lead to disruption of established trade channels and an increase in State trading in commodities not produced in the metropolitan territories of the Six, and also that there were no transitional problems justifying the application of minimum prices or State trading measures.

11. The representative of the Six gave the assurance that the Treaty would not be used in such a way as to exclude imports; he stated in particular that the tariff quotas or suspensions provided for by Article 25 would have effects which are in line with the interests of third countries as they would permit the imports of certain quantities at a reduced duty or duty-free. As regards minimum prices for tropical products, the inclusion of the latter in Annex II does not necessarily mean that minimum prices would apply to those products. As regards the Common Tariff for sugar, it was stressed that it was lower than the arithmetic average of the legal rates.

12. The Sub-Group noted the expressions of concern by the representatives of countries whose economies depend on a few products, and most of the members came to the conclusion that the CONTRACTING PARTIES, when they consider necessary arrangements with the Six along the lines suggested in Section V below, should pay particular attention to the effects of the agricultural policy of the Community on the trade of those countries.

V. CONSISTENCY WITH THE GENERAL AGREEMENT AND LIAISON WITH THE CONTRACTING PARTIES

13. Members of the Sub-Group commented on the agricultural provisions in the light of Article XXIV of the GATT. They believed that paragraph 4 of Article XXIV establishes the basic principles which should be applied in the formation of a customs union in order that it may be consistent with the objectives of the GATT. Where questions arise as to the application of the provisions of paragraphs 5 to 9 in particular cases, such questions should be resolved in a manner consistent with the principles embodied in paragraph 4. Some members said they could very well envisage that the result of the common agricultural policy would be the exclusion of all, or a large part of, the trade with third countries. The representative of the Six, while understanding the motives for concern which had been expressed, stressed that there was no provision of the GATT that compelled the Six to have a common agricultural policy. If they planned to have it, it was because their

final objective was the establishing of an Economic Union, the Customs Union being only one aspect of it. He saw nothing in the agricultural provisions of the Rome Treaty which would run counter to Article XXIV; if, later on, the institutions were faced with situations where measures inconsistent with their international commitments were found necessary in order to carry out their agricultural policy, the Community would ask for a waiver under the General Agreement. In fact it was his opinion that the common agricultural policy of the Community was only subject to discussion within the CONTRACTING PARTIES, when there was the question of concrete action which would be contrary to the obligations under the General Agreement.

14. The members of the Sub-Group other than the representatives of the Six noted the large area of discretion left to the institutions of the Six and the lack of a sufficiently precise plan as to how the agricultural provisions of the Rome Treaty would be applied both in regard to trade of third countries with Members of the Community, and in regard to the removal of barriers to trade between the Member States. The majority of members of the Sub-Group considered moreover that the particular measures envisaged under the Treaty carried a strong presumption of increased external barriers and a substitution of new internal barriers in place of existing tariffs and other measures. For these reasons the members of the Sub-Group, excluding the representatives of the Six, decided that it was not able to determine at this time either that the agricultural provisions of the Rome Treaty or their implementation would be consistent with the provisions of the General Agreement.

15. The Sub-Group noted that Article XXIV, paragraph 7, lays down certain responsibilities for the contracting parties in relation to proposals for a Customs Union. Although it is not proposed that recommendations under paragraph 7 should be made at the present time, this should not be construed to mean that the CONTRACTING PARTIES may not wish to take action under this paragraph at a later stage.

16. All the members of the Sub-Group except the representatives of the Six stated that, for various reasons, it would be necessary to provide for some regular and appropriate machinery so that the CONTRACTING PARTIES could follow and consider together with the Six the measures to be taken in the course of establishing the common agricultural policy and organization and the relationship of these measures with the provisions of the General Agreement.

17. The representative of the Six thought that Article 229 and the General Agreement provided adequately for any liaison that might be found necessary. He further stated that an obligation for the Six to supply information on their measures was not warranted so long as other individual contracting parties were not under any obligation to communicate the measures they take in the field of agricultural policy. He also stated that he did not see how the fact that certain national powers were taken over by the common institutions could be interpreted as being in conflict with Article XXIV. He suggested that this question should be referred to the CONTRACTING PARTIES. But he stated that in no case could he agree that special liaison machinery, whatever might be its objects or scope, should be established as Article XXII provided the possibilities for consultation which the contracting parties may desire.

Other members of the Sub-Group stressed that the aim of a liaison machinery was not to exercise control over the carrying out of the agricultural provisions, nor was it suggested that each measure taken would necessarily require consultations with the CONTRACTING PARTIES.

18. The representatives of the Six felt that the question as to whether or not machinery should be set up should be left to the Committee, whereas the other members of the Sub-Group, having considered paragraphs 16 and 17 above, recommend to the Committee that suitable machinery be set up.

ANNEX IV

ASSOCIATION OF OVERSEAS TERRITORIES

Report by Sub-Group D

1. The Sub-Group examined, in the light of the provisions of the General Agreement on Tariffs and Trade, and of the discussion in the Committee on the Rome Treaty, the provisions of the Treaty relating to the association with the Common Market of the overseas territories.

A. Simultaneous establishment and co-existence of customs unions and free-trade areas

2. Some members stated that under the terms of the General Agreement, it was not contemplated that the same group of countries should belong at the same time to a customs union and a free-trade area. This argument was developed in a note submitted by the delegation of Ceylon, which is reproduced in Appendix A.

3. One member of the Sub-Group stated that under paragraph 5 of Article XXIV, in the case of a customs union, the custom duties in the external tariff might differ under certain conditions from the duties previously applied in the constituent territories provided they were not on the whole higher or more restrictive than the general incidence of the duties in force before the establishment of the union; but when a free-trade area was formed under paragraph 5(b), it was necessary to maintain, in respect of third countries, duties not greater than those which were previously in force. As the Customs Union of the Six involved certain increases in those duties, the free-trade area could not be constituted without infringing the provisions of paragraph 5(b).

4. This inconsistency between the provisions relating to the establishment of a customs union and the formation of a free-trade area is a fact which gives rise to a legal position. The fact that the obstacle thus created can be easily circumvented does not prove anything against this legal situation. On the other hand, the existence of this inconsistency and the very fact that it can be circumvented show that the authors of Article XXIV did not contemplate the creation at the same time of a customs union and of a free-trade area. Moreover, it is not so obvious that the Six might have overcome the difficulty as easily as they seem to believe.

5. The representative of the Six and some other members could not accept this view. The representative of the Six pointed out that the provisions of the General Agreement relating to customs unions and free-trade areas should be considered together. If the authors of the Havana Charter had intended to oppose the simultaneous establishment and the co-existence of the two systems, they would have included appropriate provisions in the text which they had drafted. One could not introduce into the Agreement restrictive provisions which it did not contain, and limit the rights of sovereign States on points which they had not accepted. It seemed to him that the theory of the incompatibility of co-existence was even less justified than that of the incompatibility of simultaneous establishment, and therefore the representative of the Six wished to reply to the latter principally. There was an additional objection to it: if the text of Article XXIV only prevented the simultaneous formation of the customs union and the free-trade area, that obstacle could be very easily and automatically overcome by staggering the establishment of the two systems over a period of time. However short the intervening period (whether a month or a day), the establishment of the two systems would no longer be simultaneous. The representative of the Six considered that it could not be maintained that the authors of the General Agreement, if they had intended to avoid the simultaneous establishment of a customs union and a free-trade area: (a) would have omitted provisions referring to such an important inconsistency, or (b) would have included provisions which could so easily be circumvented.

6. With regard to the argument based on tariff changes that might possibly result, the representative of the Six pointed out that the tariff increases which might result from the Treaty of Rome for certain countries in the free-trade area were not the legal consequence of the provisions establishing that area, but of those which established the customs union. Therefore, since the formation of the free-trade area was not in itself the legal cause of any increase in a national tariff, but that increase resulted only from the customs union, the free-trade area was consistent with the provisions of the relevant paragraph of Article XXIV.

7. The representative of a country which in 1947 was already a party to a customs union stated that at that time his country's representatives had sought an assurance that the article which had later become Article XXIV of the General Agreement really permitted the association of a customs union and a free-trade area, and the reply had been in the affirmative. Another member of the Sub-Group pointed out that France, which had strongly proposed the inclusion of provisions relating to free-trade areas, had a customs union arrangement with the Principality of Monaco and would certainly not have accepted a text which would have prevented it from joining such an area.

8. The Sub-Group felt that the question of the co-existence of a customs union and a free-trade area was an important question which the CONTRACTING PARTIES would have to study further with a view to reaching a decision on this point.

B. Consistency or otherwise of the provisions of the Treaty of Rome regarding the association with the rules of GATT

9. Most members of the Sub-Group considered that for the reasons set forth below the provisions of the Rome Treaty relating to the Association of the Overseas Territories (Part Four and Implementing Convention) are incompatible with Article XXIV of the General Agreement and that such Association extended the preferences authorized under paragraph 2 of Article I of the General Agreement to territories which were not entitled, under the Agreement, to deviate from the most-favoured-nation provisions of GATT.

10. Some members considered that the concept of a free-trade area did not allow of the conciliation of the divergent interests of industrialized countries with the interests of territories which exported only raw materials, and which had scarcely yet embarked on the subsequent stages of economic development. They contended that the preparatory work showed that those who drafted the Havana Charter did not have that idea in mind when they inserted in the Charter the provisions at present embodied in Article XXIV of the General Agreement. One member pointed out that the Havana Conference had not envisaged an exception to Article I of the General Agreement which would cover nearly a quarter of world trade; according to this member the Havana Conference had only envisaged a possible customs union between France and Italy, and one between Argentina and Chile. For those reasons, those members thought that there was a fundamental incompatibility between the principles of Article XXIV of the General Agreement and the proposed association provided for in the Rome Treaty which, in any case, nowhere indicated that such an association would constitute a free trade area, and whose language structure references and technique are those of an extension of preferences.

11. A member of the Sub-Group observed that in his opinion the Rome Treaty gave rise to the following misgivings. The attempt to give Europe in association with the overseas territories a large degree of self-sufficiency would have restrictive effects on world trade as a whole. It would also be prejudicial to Europe itself, considering that Europe has to obtain its raw materials at reasonable prices in order to maintain a flow of exports of manufactured goods to other parts of the world, and the common tariff would allow a high preference to be granted to the associated territories. Finally, the diversions of trade resulting from the implementing of the Rome Treaty might outweigh its beneficial effects if the Common Market were not to follow a competitive policy allowing of a reduction in the export prices in the Member countries.

12. A member of the Sub-Group also stressed the danger, from the point of view of the application of the fundamental principles of the General Agreement as laid down in Article I, that could result from the extension of preferential systems under cover of the Rome Treaty, whether the provisions of that Treaty were in conformity with the rules of the General Agreement or not. When the under-developed countries which had not belonged to any preferential system had become parties to the General Agreement, they had obviously understood as other

contracting parties had that the existing systems which the Agreement as an exception authorized to be maintained would not be further extended. They now found that the facts were contrary to what they had hoped. The new preferences would lead to substantial damage insofar as their trade and the rhythm of economic development are concerned. The Association of the Overseas Territories therefore constituted a new fact and gave rise to the question whether the time had not come to envisage a revision of the General Agreement, under the provisions of Article XXX.

13. It was pointed out that measures intended to promote the economic expansion of the under-developed territories certainly deserved the greatest sympathy, but the steps taken to implement such measures should not become detrimental to other under-developed territories. It was common knowledge that one of the causes of the inadequate economic development of certain countries was the limitation of the world demand for certain primary commodities. In that respect, the associated territories would be favoured, since their exports would be admitted free of duty to the vast importing market constituted by the Six. The demand for the products of those territories would therefore increase and production in their territories be artificially stimulated to the detriment of producers as a whole. On the other hand, entry into the market of the Six would remain subject, for exports of the same products when originating in the other under-developed countries, to the payment of customs duties. The system which benefited some would therefore be prejudicial to others; it was therefore fundamentally contrary to the rules of the General Agreement.

14. Other arguments of a legal nature were also advanced by one or more members. Paragraph 4 of Article XXIV provided that the purpose of a customs union or free-trade area should be to facilitate trade between the constituent territories. The Rome Treaty nevertheless recognized that certain aspects of the Association of the Overseas Territories might have a contrary effect, in view of the fact that Article 134 authorized the Six to prevent, by means of appropriate measures, diversions of trade which might be caused to their detriment by the duties on imports applied by a Member territory of the free-trade area to goods coming from a third country.

15. Under paragraph 8(b) of Article XXIV, it was necessary for the formation of the free-trade area to be accompanied by the elimination of the duties and restrictive regulations of commerce on "substantially all the trade" of the constituent territories. Paragraph 8(b), however, authorized, where necessary, the maintenance of the restrictions permitted under Articles XI, XII, XIII, XIV, XV and XX of the General Agreement. The Rome Treaty deviated from that rule, as it did not provide that the associated territories should eliminate their export duties, which were considerable, on exports to the territory of the Six. Further, the associated territories would be empowered under Article 133, paragraph 3, to levy import duties on products originating in the territory of the Six when such duties correspond to their fiscal requirements or to the needs of their economic development. Some representatives noted that for certain territories the Six were debarred permanently by prior international obligations from reducing duties discriminatorily in respect of trade

between these territories and the Customs Union of the Six, which meant that to that extent a free trade area could not be fully established. Moreover, there is no clear provision in the Treaty for the complete and permanent elimination of quantitative restrictions against imports from the Six into the overseas territories.

16. In that connexion, it should be recalled that paragraph 8(b) mentioned above was based on the principle of elimination of duties which contemplated an elimination of existing duties. This elimination should apply to substantially all trade. Now, Article 133, paragraph 3, of the Treaty ran counter to those principles since it did not provide for elimination of existing duties and further it permitted the associated territories to levy new duties unrestrictedly over the whole tariff field, depending upon the need to protect their industry or to contribute to their budgets and to maintain such duties in force without any time limit. As already mentioned, paragraph 8(b), in derogation of the rule regarding the elimination of internal obstacles, made provision for certain restrictive trade regulations authorized under certain Articles of the General Agreement; the list of these did not, however, include Article XVIII, concerning governmental assistance to economic development. The application of the customs duties and of the restrictions instituted under Article XVIII did not therefore benefit from the exception for which provision was made in Article XXIV. The latter did not make provision for allowing one constituent territory of a free-trade area, in order to protect its industry, to levy import duties on imports from another constituent territory.

17. One member of the Sub-Group asked the Six to indicate what proportion of trade (a) between each overseas territory and the metropolitan territory and (b) between the overseas territories as a whole and the metropolitan territory as a whole would be subject to protective or fiscal tariffs. It was suggested that this proportion would be much greater than a proportion based on a total volume of trade which includes the intra-European trade of the Six.¹

18. It was to be expected that the provisions of Article 133, paragraph 3 of the Rome Treaty would make it possible to increase import duties in the associated territories to such an extent that it would be impossible to claim that substantially all the trade of the area was not subject to any customs levy. The Association of the Overseas Territories, which opened up vast prospects for them both in the field of investment and as regards outlets for their exports, would give a strong impetus to the industrialization of those territories. It was natural that such development should require increasing customs protection, particularly in view of the difference between the productivity of the Six and that of the territories in question. Moreover, the increased autonomy which these territories must be presumed to be likely to attain will prevent the metropolitan government from exercising control over the degree of protection introduced by these territories.

¹ The representative of the Six indicated that this latter proportion would amount to 1.4 per cent (see paragraph 30.)

19. Paragraph 9 of Article XXIV stipulated that the formation of a customs union or of a free-trade area should not affect the preferences authorized in paragraph 2 of Article I of the General Agreement: those preferences might, however, be eliminated or adjusted by means of negotiations, in particular the preferences of which the elimination was required to conform with the provisions of paragraph 8(a)(i), and paragraph 8(b). The Association of the Overseas Territories provided for in the Rome Treaty ran counter to this rule since it strengthened the preferences referred to in paragraph 9 and established new preferences in favour of imports originating in the associated territories. The interpretative note of this paragraph moreover states that it is understood the provisions of Article II require that "when a product which has been imported into the territory of a member of a customs union or free-trade area at a preferential rate of duty is re-exported to the territory of another member of such union or area, the latter member should collect a duty equal to the difference between the duty already paid and any higher duty that would be payable if the product were being imported directly into its territory". Certain members pointed out that this note indicated the course which should have been followed in order to link the preferential systems existing between Belgium, France and the Netherlands on the one hand, and the overseas territories, on the other, with the Customs Union provided for in the Treaty.

20. Most of the representatives were of the opinion that the proposed arrangements were an extension of the preferential systems already existing between some of the metropolitan countries of the Six and their associated overseas territories and were, therefore, contrary to Article I (2). They pointed out that when the General Agreement had been concluded the system then existing between France and the French overseas territories has been deemed to be a preferential system, and it seemed strange to argue that that system constituted a free-trade area, at a time when the overseas territories were being granted a higher degree of protection against imports from the metropolitan territories of the Common Market. In 1955, moreover, the CONTRACTING PARTIES had considered that the compensation tax levied in France introduced an increase in the margin of preferences in excess of the maximum margins permissible under Article I of the General Agreement.

21. To sum up, most of the representatives thought that substantial barriers to the free movement of goods between the various constituent units would remain after the full implementation of the overseas territories provisions of the Treaty of Rome (e.g. on export duties) and that barriers to trade would increase progressively in view of the need to protect the industrial development of the overseas territories. For this and the other reasons set out in the other paragraphs of this Section of the report, and taking into account the whole of the discussion of the Sub-Group, they remained of the view that the proposals did not conform to Article XXIV, but constituted an extension of existing preferential systems contrary to Article I:2 of the General Agreement.

22. On the other hand, the representatives of the Six considered that the rules of the Rome Treaty concerning the Association of the Overseas Territories (Part Four) were in conformity with the provisions of the General Agreement concerning free-trade areas. The arguments put forward in support of this view-point can be summarized as follows:

23. At the time when the Havana Charter was drawn up, the concept of an integrated Europe was already familiar. The Charter could not have placed any limitation on the realization of such aspirations. None of the provisions of the Charter limited the creation of customs unions or free-trade areas to cases where such institutions would relate to only a very small proportion of international trade, or to the case of a free-trade area established between countries at a comparable stage of industrialization.

24. The fact that the Treaty did not call the Association a "free-trade area" in no way altered the nature or legal structure of the Association. While the provisions of the Treaty related to various questions connected with trade, they also concerned other matters (such as investments) which did not fall within the normal framework of a free-trade area; the latter term had therefore not been used because it did not provide a legal short-cut covering all aspects of the Association of the Overseas Territories.

25. The Rome Treaty fulfilled the conditions laid down in Article XXIV of the General Agreement for free-trade areas, in that:

substantially all trade was liberalized;

the duties and restrictive regulations maintained by each constituent territory - in the case of a free-trade area including also a customs union - would not, on the whole, be higher or more restrictive than were the general incidence of the duties and regulations in force before the formation of the area; and there was a plan and schedule for the formation of the area within a reasonable length of time.

26. There was no reference to Article XVIII either in the Treaty of Rome or in the official memoranda which the Interim Committee had addressed to the CONTRACTING PARTIES. It had merely been stated, during the general discussion, that paragraph 3 of Article 133 corresponded to the same concern for the under-developed countries that had led to the inclusion in the General Agreement of Article XVIII. But the Treaty of Rome did not make any legal use of Article XVIII. Furthermore, the argument which had been drawn a contrario from the fact that Article XVIII was not one of those referred to in Article XXIV:8(b) did not take into account the fact that Article XXI was not mentioned either. It would be difficult, however, to dispute the right of contracting parties to avail themselves of that provision which related, inter alia, to traffic in arms, fissionable materials, etc., and it must therefore be concluded that the list was not exhaustive. In any case, the only question at issue was whether the protective duties that were authorized applied to a proportion of the trade of the area consistent with the requirement that duties should be eliminated on substantially all the trade.

27. Among the import duties authorized by Article 133 were fiscal duties. They were non-discriminatory, however, and were compensated by internal levies when there was local production. They should therefore not be taken into consideration.

28. The principle of the progressive elimination of customs duties was clearly stated in Article 133, paragraph 2. It was therefore appropriate to examine only those duties that should be considered, i.e. protective duties. With regard to them, the representative of the Six pointed out that the elimination of duties within the area - as required by paragraph 8(b) - could not be interpreted as meaning that a duty could not be reimposed or introduced. In the absence of any precise provision to that effect, such a restrictive interpretation could not be accepted. The General Agreement merely provided that the duties in force at a given moment should not affect more than a fraction of the trade, so as not to jeopardize the requirement that substantially all the trade should be liberalized.

29. The General Agreement did not specify what that fraction must be and it now had to be determined. Some delegations had requested proof of the existence of a free-trade area, but the representative of the Six was justified in asking first for a precise definition of the constituent features of such an area and in particular of the fraction which constituted "substantially all" the trade. The representative of the Six stated that, for his part, he could provide:

- a definition of the liberalization of substantially all trade as referred to in Article XXIV;
- information regarding the minimum percentage of liberalization which would exist at the moment when the Treaty entered into force;
- the reasons why the present percentage should not increase unduly;
- an undertaking in case the percentage in question should fall short of "substantially all" the trade as he had defined it.

30. The representative of the Six said that the annual volume of trade between the territories constituting the free-trade area (including the trade between the individual members of the Customs Union) was approximately \$ 7,868 million, and the fraction which might be subjected to the protective duties provided for in Article 133, paragraph 3 of the Treaty amounted to barely \$ 108 million, namely 1.4 per cent of the trade between the European and overseas territories constituting the free-trade area. (The products which might be affected by these duties are listed in Appendix B to this report.) The representative of the Six considered that this liberalization of 98.6 per cent certainly fulfilled the requirements of the Article in question, and even went beyond those requirements. He was surprised to hear it contended that the liberalization did not apply to "substantially all" the trade while at the same time no definition of the term "substantially all" was forthcoming. For their part, the Six had proposed the following definition: a free-trade area should be considered as having been achieved for substantially

all the trade when the volume of liberalized trade reached 80 per cent of total trade. As long as no counter definition was brought forward, it seemed to them logically and legally unacceptable that they should be charged with infringing a rule, the exact contents of which the competent body refused to define.

31. In reply to the criticism that he was fitting the legal structure of the Association of Overseas Territories into the concept of Article XXIV, ex post facto, the representative of the Six said that for his part he was afraid that the counter definition of "substantially all the trade" which would be brought forward might be adapted retrospectively to the percentage of liberalization which they had quoted. Therefore, taking into account the figures which he had already supplied, he would refrain from providing figures concerning the percentage of trade liberalization in regard to trade between the European territories of the Community, on the one hand, and the associated overseas territories, on the other. The representative of the Six added that if his answer seemed incomplete, he would point out that, for his part, he had not obtained any answer at all to his request concerning a definition of "substantially all" the trade.

32. Regarding the way in which that percentage might change in the future, the representative of the Six pointed out that the industrialization of the overseas territories should normally only result in the levy of protective duties to the extent that the newly-established industries produced for the domestic market and not for export. Furthermore, any increase in the volume of trade subject to protective duties (constituting the numerator of the fraction) would only result in an increase in the percentage if it was not cancelled out by a corresponding increase in total trade (constituting the denominator). There were therefore reasons for thinking that the amount of trade affected would continue to be only a small proportion of the total trade. Lastly, if that was not the case at a given moment in the evolution of the free-trade area, and more precisely if the percentage subject to protective duties reached 20 per cent, the institutions of the European Economic Community would then, but only then, be entitled, using their prerogatives and in virtue of Article 234 of the Treaty, to apply for such waivers as they deemed necessary. Consequently, not only were third countries assured that the free-trade area had already been achieved in respect of substantially all the trade, but also they were safeguarded against any subsequent development which might impair that "achievement in respect of substantially all the trade".

33. The Sub-Group considered whether or not the CONTRACTING PARTIES should specify the proportion of trade on which duties could be maintained within a free-trade area. The representatives of the Six proposed that the percentage of trade on which duties should be eliminated be fixed at 80 per cent.

34. Many members of the Sub-Group said that each case of a proposed customs union or free-trade area had to be considered on its merits and that it was, therefore, inappropriate to fix a general figure of the percentage of trade which could be subjected to internal barriers without running counter to the definition in paragraph 8(b) of Article XXIV. A matter to be considered was

whether the provisions of a free-trade area pointed towards a gradual increase of barriers affecting the trade between the constituent parties or a gradual reduction of such barriers. Moreover, any calculation of the percentage of trade not freed from barriers would need to take account of the fact that this trade would be, or would have been, larger if the trade has been allowed to flow freely. Some members of the Sub-Group thought that it would be unrealistic to apply the same criterion to a free-trade area such as that existing between Nicaragua and El Salvador and to a free-trade area the members of which were highly industrialized countries accounting for a large percentage of world trade.

35. It was pointed out by some members of the Sub-Group that the question which the CONTRACTING PARTIES had to consider was whether the Association of the Overseas Territories with the Customs Union of the Six constituted a free-trade area. It was therefore necessary to determine whether the restrictions applied in the overseas territories on trade with the Six were compatible with the existence of a free-trade area, in the sense of Article XXIV. These members noted that the representatives of the Six had supplied no information to show what proportion of the trade between the Six and the overseas territories would continue to be restricted by duties or quotas. Any calculations of the percentage of trade affected should, however, in the view of these members be based solely on the trade between the Six as a whole and the associated overseas territories.

36. The representative of the Six replied that in any case, irrespective of the method by which it was computed, a percentage was only useful and meaningful if it could be compared with a definition of "substantially all the trade" in Article XXIV. From that point of view it seemed to him logically and legally unacceptable that the CONTRACTING PARTIES should pass judgment on the legality of a juridical structure within the terms of a rule while at the same time refusing to define the terms of that rule. More precisely, it was not acceptable to judge whether the volume of trade on which protective duties were levied jeopardized conformity with "substantially all" as required by Article XXIV, when no definition of "substantially all" had been accepted beforehand.

37. A member of the Sub-Group also stressed that not only the statistical aspect but also the economic aspects of the question must be considered. The extent of the distortion of trade which might result from the establishment of the free-trade area must be weighed against the positive effects which the institution of that area might have on international trade as a whole. To view the problem from this angle was quite in keeping with Article XXIV, which authorized such structures only to the extent that they contributed to an expansion of world trade.

38. The representative of the Six asked the Sub-Group to note in its report that owing to lack of time he had been unable to reply to some of the criticisms which members of the Sub-Group had made. Other members also felt that they had not had sufficient time to develop all their arguments.

C. The problems which Association of the Overseas Territories raises for the trade of other contracting parties to the General Agreement

39. A member of the Sub-Group referred to the statement made to the Committee by a representative of the Six, to the effect that the Six were prepared to consider as and when it occurred any prejudice which the Association of the Overseas Territories might cause to the trade of third countries.

40. The representative of the Six pointed out that it was necessary to determine whether any prejudice which might be caused was to be attributed to any inconsistency as between the Treaty and the rules of the General Agreement; or whether it was merely inherent in a situation resulting from a group arrangement that was consistent with the provisions of the General Agreement.

41. A number of delegations wanted special consideration to be given to the practical problems that the Association of the Overseas Territories with the Common Market would cause for third countries, and wished such problems to be examined on a product-by-product basis. In view of the short time available, however, and without prejudice to studies that might be made by the inter-sessional machinery established by the CONTRACTING PARTIES, however, the delegations agreed to the following proposals:

- (a) The delegations of countries outside the Association should be free to transmit to the secretariat memoranda summarizing their problems.
- (b) The delegations would also transmit to the secretariat a list of the products of interest to each country whose trade would be affected by the Association of the Overseas Territories. This list would not be exhaustive since the common tariff of the Six is not completely known.

42. The Sub-Group was of the opinion that the CONTRACTING PARTIES should give consideration, inter alia, to the effects of the Association of the Overseas Territories on the trade of third countries, and that in view of the possible effects of the Treaty of Rome, such examination should commence in January and deal first with products as the following: cocoa, coffee, bananas, oilseeds and vegetable oils, wood and timber, tobacco, hard fibres, cotton, sugar and tea. A further examination should relate to the possible effects of the provisions regarding the overseas territories in respect of:

- (i) products exported to the Six from the overseas territories;
- (ii) products imported into the overseas territories from the Six;
- (iii) products involved in trade between the overseas territories.

Particular consideration should be given, due account being taken of the production programmes of individual countries and of foreseeable trends in world consumption, to the effects upon the trade of countries having a similar trade and similar development problems. It would be appropriate, in this connexion, to examine the non-tariff preferences which the Six are empowered by the Treaty to accord, both during and after the transitional period, to the products of the associated overseas territories as well as the tariff preferences accruing from the level of the Common Tariff; it would also be necessary to take into account the provisions of the Treaty of Rome concerning such matters as the organization of the agricultural market. The representative of the Six said that the fact that the Six had agreed to the study could not impose on them obligations additional to those under the General Agreement.

43. As no definite conclusions were arrived at concerning the Association of the Overseas Territories, and as it did not seem possible either at the present juncture to commence tariff negotiations with the Six, several members of the Sub-Group asked the Six to agree to refrain until the end of 1958, by which time they felt that final decisions would have been taken by the CONTRACTING PARTIES on this question, from applying, as authorized under Article 133, paragraph 1 of the Treaty of Rome, any tariff reductions in respect of products originating in the overseas territories. The representative of the Six said that the difficulty concerning negotiations only arose in regard to the Common Tariff, but that he could not give an answer to the above request without first consulting the Interim Committee for the Common Market.

D. Procedures which might be established for further discussion of these problems with the signatories of the Rome Treaty and eventually the institutions of the Common Market

44. The Sub-Group supported the Chairman's proposals regarding the procedure which should be adopted for further discussion of any questions relating to the Treaty of Rome which it might not be possible to settle by the end of the Twelfth Session. When the Committee was established, it was clear that the work relating to the Treaty of Rome would have to continue after the end of the current Session, and the Committee had been instructed to report on that matter. Moreover, it was apparent that the body that would take action during the intersessional period would have to take up all the questions which the Sub-Groups had not been able to settle, and it was preferable that the Committee should be in a position to recommend the establishment of a body which would deal with all outstanding questions listed by the various Sub-Groups.

45. Some members of the Sub-Group pointed out that the Committee should be informed that a majority had advanced the view that the Association of the Overseas Territories under the Treaty was not consistent with the provisions of Article XXIV of the General Agreement, and that such intersessional machinery as might be established should include in its consideration the above question. The representative of the Six stated that in his opinion, in accordance with

the terms of reference of the Committee, the Treaty could only be examined (or reported upon) as a whole by whatever body was instructed to carry out that examination.

46. The Sub-Group considered that all the points referred to it deserved further study. But it was principally on the points covered in Section C above that the discussion in the Sub-Group had been incomplete. The Sub-Group therefore suggested that in considering the question of establishing an inter-sessional machinery and fixing its programme of work, the Committee should give priority to questions connected with Section C of this report.

APPENDIX A

THE ROME TREATY AND THE OVERSEAS TERRITORIES

ASSOCIATED WITH IT

Note submitted by the Delegation of Ceylon

This paper has been prepared at the request of Sub-Group D appointed by the Committee of the Whole to consider and report on the proposals in the Rome Treaty for the association with it of Overseas Territories. This question has an economic as well as a legal aspect and it has been discussed from both these points of view by the Working Group. This paper, however, confines itself as far as possible to an examination of the legal position arising from the proposal to associate the Overseas Territories.

It may be noted that nowhere in the Treaty is there any mention of the intention to create or of the actual creation of a Free Trade Area between the Customs Union countries and the Overseas Territories. It is, however, now claimed that the association creates a Free Trade Area. The question, has, therefore, to be examined on that basis.

Article I of the General Agreement embodies and enshrines the fundamental principle of the GATT and forms its very foundation. Article XXIV of the General Agreement is a departure from this principle and was intended to provide an exception. It is, therefore, essential that any proposal to establish a Customs Union or a Free Trade Area should be carefully examined in order to see whether it is strictly in compliance with Article XXIV.

In the same way the Article itself should be interpreted strictly and construed according to its wording to obtain its clear intent and purpose. The fact that such a strict legal interpretation of the Article is necessary cannot be challenged especially as we find that the delegate of France has relied on occasion on highly legalistic interpretation of the GATT text, for example when he asked for a precise definition of "substantially all the trade" in paragraph 8(a)(1) of clause XXIV.

It is therefore the intention of the Ceylon delegation to view the Article in a strictly legal way with a view to extracting its clear meaning and intent, and this paper is devoted to the examination of that question alone. The views of the Ceylon delegation on the economic aspects of the association in relation to Article XXIV have been placed before Working Group D and its elaboration is not proposed in this paper.

In the interpretation of the document clarification can be found not only by a reference to its actual provisions but also to the history and philosophy underlying the agreement. It would, therefore, be useful to begin this examination with a reference to the earliest discussions which led finally to the incorporation of Article XXIV in its present form in the General Agreement.

Shortly stated, the original proposal was made in November 1945 by the United States allowing member countries to join a Customs Union subject to agreed criteria. This proposal underwent changes from time to time during its examination in London, New York and Geneva. But right up to the end of the Geneva meeting of 1947, the provisions referred only to a Customs Union. It was only at the Havana Conference, between November 1947 and March 1948 that the suggestion was first made to include references to the establishment of Free Trade Areas.

I have had recourse to this piece of history only to support my argument that the wording of paragraph 5 of Article XXIV of the General Agreement, providing an exception from the provisions of the General Agreement, is for the creation of either a Customs Union or a Free Trade Area. If the intention of the framers of Article XXIV had been otherwise, there would have been a reference to a Customs Union or a Free Trade Area or a combination of both. The very fact that the Havana proposal was only to add authority for the creation of a Free Trade Area in addition to a Customs Union, which had already been provided for, adds force to this argument. In the result, the argument of the Ceylon delegation is that in Article XXIV itself when considered in the light of its history, it is clear that the intention is to provide an exception when a Customs Union or a Free Trade Area is created.

It is evident moreover that at the time of Havana no one visualized a Customs Union-cum-Free Trade Area, and certainly not one of the multitude and complexity of the type created by the Rome Treaty. What was in mind was rather simpler associations, such as those between Nicaragua and El Salvador or between the Benelux countries.

The ideas of many years thinking are now incorporated, so far as the minds of men working in common have been able to attain it, in the provisions of GATT. It will be generally agreed that the General Agreement is not a perfect instrument, but for all that it represents the law designed for the greater liberty of the CONTRACTING PARTIES. When the language of a section is clear and is capable of only one meaning, there is no alternative but to follow this obvious meaning.

But as the very discussions on Article XXIV have revealed, there are lacunae in the text insofar as it does not always deal precisely with all possible situations. In such cases the CONTRACTING PARTIES have to resort to

the provisions of Article I of Revised GATT which lays down the objectives of the Agreement itself. The importance of this Article is evident. It expresses in clear and concentrated form the philosophy of GATT, and helps to find solutions for problems not dealt with elsewhere in the Agreement. But in this paper I confine myself to an examination of Article XXIV alone.

The view of the Ceylon delegation is that the association of the Overseas Territories with the Customs Union in Europe as contemplated in the Rome Treaty is incompatible with the provisions of Article XXIV.

We propose to support this position by the following arguments.

- (1) The provisions of paragraph 3 of Article 133 of the Rome Treaty read thus:-

"The countries and territories may, however, levy customs duties which correspond to the needs of their development and to the requirements of their industrialization or which, being of a fiscal nature, have the object of contributing to their budgets."

From this it is clear -

- (a) that the Associated Territories constitute much more than follows from the definition of a Free Trade Area as laid down in paragraph 8(b), which reads:-

"A free trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except where necessary those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated in substantially all the trade between the constituent territories in products originating in such territories."

- (b) that it is not merely a question of preserving the status quo up to a point and eliminating duties gradually. The Article gives full power to the Member States to add new duties. This is contrary to the definition of a Free Trade Area already quoted.
- (c) that the definition of the Free Trade Area which requires the elimination of even restrictions imposed under Article XVIII has been ignored. The definition presupposes that Article XVIII will not be applied to territories in a Free Trade Area, i.e. that Article XXIV is inappropriate to underdeveloped countries.

- (d) that there is in the Treaty of Rome itself no limit to the application of these tariffs. Assurances have been given that the "tariffs will be eliminated in respect to substantially all the trade", and that tariffs under Article 133 will be small. But this ignores many imponderables, the shape the future will take, the future political relations between the Six Member States and the Overseas Territories and the pressure which may be brought to bear by inhabitants of all overseas territories in years to come.

The first argument leads to the conclusion that the Rome Treaty now under discussion creates the formation not of a Free Trade Area as contemplated in Article XXIV but of a preferential area. Therefore, the Rome Treaty is not in conformity with Article XXIV.

- (2) Paragraph 5 of Article XXIV begins as follows:-

"5. Accordingly the principles of this Agreement shall not prevent, as between the territories of contracting parties the formation of a Customs Union or of a Free Trade Area or the adoption of an interim agreement necessary for the formation of a Customs Union of a Free Trade Area: Provided that"

The wording of the second part of the Agreement indicates that Customs Unions and Free Trade Areas are alternative propositions for the territories of contracting parties as mentioned earlier. In other words, for the same territory, they are mutually exclusive.

The second argument leads to the conclusion that a Customs Union cannot exist within a Free Trade Area.

- (3) Paragraph 8(a)(ii) of Article XXIV reads as follows:-

"(ii) subject to the provisions of paragraph 9 substantially the same duties and other regulations of commerce are applied by each of the members of the Union to the trade of territories not included in the Union."

This paragraph is perhaps more easily understood if substitutions are made to bring it into the present context. So amended it reads:-

"(ii) subject to the provisions of paragraph 9 substantially the same duties and other regulations of commerce are applied by Belgium, France, Germany, Italy, Luxemburg, Netherlands to the trade of all territories outside Belgium, France, Germany, Italy, Luxemburg, Netherlands."

Now some of the Overseas Territories are outside Belgium, France, Germany, Italy, Luxemburg and the Netherlands. So are the territories of other contracting parties. It follows that the tariffs on imports to the European Customs Union from the Overseas Territories and from the territories of all other contracting parties should be substantially the same.

But the level of duties on imports from the Overseas Territories are going to be zero. Therefore, the level of duties of imports from the territories of other contracting parties must also become zero.

This argument is not vitiated by the definition of a Free Trade Area. In fact, it depends on and is sustained by the definition of a Free Trade Area. But it proves that if definitions are strictly adhered to, a Customs Union which is part of a Free Trade Area has to extend to all contracting parties the benefits of free trade in respect of its imports.

The third argument, therefore, leads to the conclusion that a Customs Union within a Free Trade Area has to extend the benefit of free trade to imports from all countries.

Summarizing the three arguments the following conclusions are reached:-

- (i) The Associated Territories will not constitute a Free Trade Area in conformity with Article XXIV (First Argument).
- (ii) Even if they do, a Customs Union cannot exist within a Free Trade Area (Second Argument).
- (iii) Even if it can, the Customs Union must extend the benefit of free trade to the imports from territories of all countries (Third Argument).

APPENDIX B¹

Products of the overseas countries and territories on which,
in the present situation, protective duties might be levied as
provided in Article 133, paragraph 3 of the Treaty

Fish, salted, dried or smoked
ex fresh fish, filleted fish
Cereal flour, wheat
Cereal meal, maize
Crude vegetable oils:

groundnut oil
palm oil
palm kernel oil
karite oil
copra oil (copra)
tung oil
coconut oil

Refined or purified oils:

groundnut oil
palm oil
karite oil

Preserved meat
Preserved fish
Preserved crustaceans
Sugar
Sugar confectionery, not containing cocoa
Cocoa butter
Chocolate
Tapioca
Jams
Preserved fruit
Fruit juices
Aerated spa waters
Lemonade
Beer
Rum
Ex fish meal
Tobacco and cigarettes
Salt
Cement
Oxygen
Acetylene
Quinine and its salts, ethers, esters and other derivatives
Medicines with a quinine base
Fertilizers
Prepared colours and paints, and varnishes

¹All the industries mentioned in this appendix do not necessarily exist in each of the associated countries and territories.

Soap
Candles
Matches
Articles of plastic materials
Saddlery and harness, travel goods, handbags and the like, of leather
Plywood, blockboard, laminboard, battenboard and veneered panels
Reconstituted wood
Wood packing cases, boxes and crates
Builders' carpentry and joinery
Boxes and bags of paper or paperboard
Cotton yarn, not put up for retail sale
Woven fabrics of cotton
Twine, cordage, ropes and cables
Outer garments and other articles, knitted or crocheted, not elastic
Men's and boy's outer garments
Women's and girl's outer garments
Under garments
Travelling rugs and blankets
Tarpaulins
Jute sacks and bags
Footwear with soles of fabric or leather or rubber substitutes; footwear
with soles of rubber and uppers of canvas
Articles of cement
Articles of cellulose fibre-cement
Bottles of dark glass
Tubes and pipes of iron or steel
Tube and pipe fittings of iron
Doors, window-frames, etc., of iron
Casks, drums, cans, boxes and similar containers, of sheet or plate,
iron or steel
Nails and tacks of iron or steel
Bolts and nuts of iron or steel
Galvanized pails
Suitcases, trunks and chests of iron or steel
Copper wire
Articles of aluminium
Crown corks
Cycles and parts thereof
Ships, boats and other vessels for inland navigation
Gramophone records, recorded (other than for language courses)
Chairs and other seats
Furniture and parts thereof
Mattress supports, inner-spring mattresses, mattresses of foam rubber

ANNEX V

TREATY ESTABLISHING THE ATOMIC ENERGY COMMUNITY

Note by the Chairman of the Committee on the Treaty of Rome

1. At the last meeting of the Committee on 7 November, I mentioned that the CONTRACTING PARTIES had referred to the Committee the text of the Euratom Treaty with a request that the Committee examine those parts of the Treaty which relate to the Common Market for nuclear products. I indicated that I would consult with Mr. Hoogwater, representing the Six Member States, Mr. Mégret of the Secretariat of the Interim Committee of the Common Market and Euratom, Mr. Hollis of the United States delegation and Mr. Jardine of the United Kingdom delegation, and that I would report to the Committee at its next meeting.
2. The following notes set out the points which appear to be relevant to the consideration by the CONTRACTING PARTIES of the provisions of the Euratom Treaty relating to the common market for nuclear products.

Creation of the Common Market for Nuclear Products

3. Except to the extent the Euratom Treaty provides for a different plan and schedule for the formation of a common nuclear market as provided for in Chapter IX, trade in the products covered by the common market for nuclear products enumerated in the three lists in Annex IV of the Euratom Treaty, is subject to the provisions of the Economic Community Treaty. Articles 92 to 95 of the Euratom Treaty, however, provide for an acceleration of steps toward formation of the Customs Union provided for in the Economic Community Treaty in the case of the products covered by the nuclear common market. The lists of products subject to the provisions of these Articles may be modified by the Euratom Council.
4. Freedom of trade in these products among the Member States is provided for in Article 93 at the end of one year after the entry into force of the Treaty, except that freedom of trade for products in List B (products having both nuclear and non-nuclear uses) will be introduced when common tariff rates are established for them and provided they are covered by a certificate that they are intended for nuclear purposes.
5. The earlier application of a common tariff for nuclear products is provided for in Articles 94 and 95. For the products in List A¹ (basic nuclear raw materials) and List A² (other nuclear products) the common tariff will be applied at the end of one year after the entry into force of the Treaty. For the products

in List A¹ the level of the common tariff will be that of the lowest tariff² applied on 1 January 1957 in any Member State. For the products in List A² the rates of the common tariff will be fixed by negotiation or, failing that, by the Euratom Council. The CONTRACTING PARTIES will be informed as soon as possible of the rates applied to the products in List A¹ and of the rates fixed for the products in List A². For the products in List B the rates of the common tariff will be determined under the rules of the Economic Community Treaty and will enter into force in accordance with the provisions of that Treaty unless the Euratom Council should decide upon an earlier application. The acceleration of the entry into force of these rates may raise special questions as to the application, where appropriate, of the procedures of paragraph 6 of Article XXIV. Presumably the question whether, as a result of such rates, the common tariff complies with paragraph 5(a) of that Article could most appropriately be deferred until this problem is considered under the Economic Community Treaty.

Territorial Application

6. Article 198 of the Euratom Treaty stipulates that the provisions of the Treaty will apply to:

- (a) the European territories of Member States;
- (b) the non-European territories subject to the jurisdiction of Member States; and
- (c) the European territories for the conduct of whose foreign relations a Member State is responsible.

7. The rules governing the field of application of the Economic Community Treaty lead to the same results: the list of territories covered by these two texts is the same; the same reservation applies to two of them - Surinam and the Netherlands Antilles - namely that the Kingdom of the Netherlands is entitled to ratify the Treaties either on behalf of the Kingdom as a whole (that is, including Surinam and the Netherlands Antilles) or only on behalf of the Kingdom in Europe and Netherlands New Guinea.¹ In the event that the Euratom Treaty should be applied to these territories or any of them without the Economic Community Treaty being applied in the same conditions, special consideration by the CONTRACTING PARTIES would be necessary.

8. It is understood that the common tariff rates fixed for nuclear products will be applied also to imports from third countries into the non-European territories included in the nuclear common market.

9. Article 93 provides that non-European territories under the jurisdiction of a Member State may continue to levy import and export duties or charges "of a purely fiscal nature". (An exception for fiscal charges levied by the associated countries and territories is contained also in Article 133:3 of the Economic Community Treaty.)

¹ Cf. Article 227 of the Economic Community Treaty and the Protocol relating to the Application of the Treaty to the non-European parts of the Kingdom of the Netherlands,

Conclusions

10. It appears from the foregoing that:

- (a) The arrangements for the introduction of freedom of trade among Member States and for the establishment of common rates for nuclear products should be taken into account by the CONTRACTING PARTIES in their study of the customs union arrangements of the European Community Treaty and in their consideration of the question of a plan and schedule for the customs union as required by Article XXIV of GATT.
- (b) The CONTRACTING PARTIES will not be able to reach final conclusions at this stage regarding the nuclear common market provided for in Chapter IX of the Euratom Treaty, due to the fact that the rates of the common tariff for the products enumerated in Lists A² and B are not yet known.
- (c) If the Euratom Treaty should be applied to a non-European territory while the Economic Community Treaty is not applied to that territory, the situation arising would require consideration by the CONTRACTING PARTIES.
- (d) The Committee on the Treaty of Rome, in making recommendations to the CONTRACTING PARTIES for the continuation of the studies commenced at the Twelfth Session, should recommend that the provisions of the Euratom Treaty referred to in this Note be considered along with the Economic Community Treaty.
- (e) Any action that may eventually be taken by the CONTRACTING PARTIES relating to the Economic Community Treaty should take into account the relevant provisions of the Euratom Treaty.