GENERAL AGREEMENT ON TARIFFS AND TRADE

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Report of the Working Party on the European Free Trade Association

1. The Working Party was set up by the CONTRACTING PARTIES at the beginning of the sixteenth session with the following terms of reference: "To examine, in the light of the relevant provisions of the General Agreement on Tariffs and Trade, the provisions of the Stockholm Convention and to report to the CONTRACTING PARTIES.

2. The Working Party had at its disposal the replies[1] provided by the Member States to questions submitted by contracting parties in accordance with the procedures agreed upon at the fifteenth session for the examination of the Stockholm Convention, together with further information[2] provided by Member States during a meeting of the Intersessional Committee on 9, 10 and 11 May 1960, and these were taken into consideration by the Working Party.

3. The Working Party first considered, in the light of the General Agreement, the relevant provisions of the Stockholm Convention and the problems likely to arise in their practical application. Secondly, the Working Party considered, with particular reference to Article XXIV of the General Agreement, the provisions of the Agreement under which the Free-Trade Association arrangements should be considered by the CONTRACTING PARTIES.

I. THE PROVISIONS OF THE STOCKHOLM CONVENTION AND THEIR EFFECTS ON TRADE

A. Trade in Industrial Products

1. Area Tariff Treatment

4. The Member States said that the origin rules, which prescribed the criteria for identifying the goods to benefit from free-trade area treatment, were liberal in character and could not result in less favourable tariff treatment for goods imported from outside the Area than such goods had enjoyed hitherto. From the trade point of view, these rules would enable many imported products to be used in the manufacture of goods which would pass duty-free into other Member States and this would benefit third countries.

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[1] L/1167 and Add.2

[2] L/1167/Add.1 and Add. 3

5. The Member States explained that a product from a third country which, before the establishment of the Association, had been liable to duty on entry into a Member State would continue to pay duty. If it were processed and exported from that Member State to another Member State it would not be liable to duty there if it satisfied the origin rules. If it were processed but did not satisfy the origin rules, duty would be payable when it entered another Member State; as the product did not qualify for area tariff treatment, however, it could continue to benefit from drawback if the exporting Member State so decided. In both cases, therefore, the position of third countries would not be less favourable from the tariff point of view.

6. It was suggested that highly technical process criteria and the requirements of the origin rules could give rise to practical difficulties which could adversely affect the trade of third countries. Further, the possible need for manufacturers to keep two inventories, one for materials qualifying for area treatment and the other for materials which did not qualify, might induce them, for reasons of convenience, storage space and so on, to dispense with the second category of materials. This could affect purchases of materials from third countries, not only for the production of goods to be exported to other Member States but also of those to be exported to the outside world.

7. The Member States considered that this kind of difficulty was not likely to arise very often in practice. It would certainly not arise with regard to raw materials on the Basic Materials List, as any product made of these materials would enjoy area treatment regardless of their origin. Admittedly border-line cases could arise, mainly in the chemical industry, where a manufacturer, in order to avoid possible difficulties in establishing a claim to area treatment under the 50 per cent rule, would use a component from within the Area rather than from outside. The Member States have been aware of this, however, and the origin rules in the chemical sector have been drawn up so as to avoid as much as possible the problems which would arise for manufacturers if they had to segregate their raw materials according to their origin. In general, as a large number of products would easily qualify for area treatment under the processing criteria, the source of the materials would make no difference. Moreover, many raw materials were not produced within the Area or only in insufficient quantities.

8. The Working Party then discussed the effects of the origin rules on the interests of those countries which were in the process of industrial development. It was pointed out that the effects of the origin rules as laid down in Schedule III (Basic Materials List) and Schedules I and II (list of qualifying processes) would be that area treatment would, in many cases, be given to a product which had only undergone a small degree of processing within a Member State. Raw jute, for example, could be imported by a Member State, processed and exported to another Member State free of duty. If the country producing the raw jute processed it, the processed product would be liable to duty on importation into a Member State. The tendency would therefore be for the processing to be done within the free-trade area and for processing within the country producing the raw material to be discouraged. It was essential,

particularly from the point of view of the less-developed countries, that the origin rules should not be operated in a way which only encouraged the export of raw materials from third countries and did not offer the same opportunities to their exports of finished and semi-manufactured goods. The less-developed countries hoped that nothing would be done under the Stockholm Convention which would have the practical effect of nullifying or reducing the results of efforts being made in the course of the work of Committee III or otherwise to increase the export earnings of the less-developed countries through the expansion of their trade.

9. The Member States explained that paragraph 2 of Article 4 of the Convention provided that materials contained in the Basic Materials List in Schedule III "which have been used in the state described in that List in a process of production within the Area of the Association shall be deemed to contain no element from outside the Area". This did not mean that all goods had to be processed within the Area from the raw materials stage before qualifying for area treatment. Many of the processes in Schedules I and II started with semi-manufactures. Further, it was possible for a product to be used in semi-manufactured state and to qualify for area treatment under the 50 per cent rule. The Member States agreed that the establishment of a free-trade area could have an impact on industries in certain third countries; this was unavoidable. Regional economic groupings were permitted by the GATT, however, and, in the case of the Association, every effort had been made to formulate rules of origin which were liberal in character and which would contribute to the Association's aim of facilitating an expansion of world trade.

10. It was generally felt that the rules of origin laid down by the Convention were, on balance, reasonable. But the highly technical process criteria made it difficult to see clearly in advance what the effects on the trade of third countries would be and the question of the administration of the rules would be of great importance. For this reason, the Member States' assurance that they had evolved the rules on as liberal a basis as possible and that it was their intention to administer and interpret them in the same spirit, was particularly welcomed.

2. Effects of the Provisions of the Stockholm Convention relating to area tariff treatment on the preferential systems to which Member States are parties

11. The discussion centred mainly on whether the combined effects of the Stockholm Convention and the regimes applicable to trade between the United Kingdom and the countries and territories to which it gives preferences, and between the European territory of Portugal and its overseas territories would be to enlarge the area in which preferences would be effective.

12. A question was asked as to whether the words "any goods" in paragraph 3 of Article 4 of the Convention could include imported goods not of area origin if imported from another Member State. If this was so, it would appear possible for a conflict to arise between the provisions of this paragraph and the

for a conflict to arise between the provisions of this paragraph and the requirements of the interpretative note to paragraph 9 of Article XXIV of the GATT.

13. The Member States stated that if a theoretical case of this sort did arise, the Member State concerned would, in accordance with Article 37 of the Convention, be bound by the interpretative note to paragraph 9 of Article XXIV and the duty would be applied in accordance with that paragraph. A Member State which had a protective duty on a product would moreover be reluctant to grant area tariff treatment to that product coming from another Member State if it had not undergone the degree of processing provided for in the origin rules. The intention of paragraph 3 of Article 4 was to enable the Member States to follow more liberal policies; it was certainly not the intention of the paragraph to permit a product imported under a preferential tariff into a Member State to be re-exported without processing to another Member State.

14. Other questions were raised with the object of ascertaining the facts and attention was paid primarily to the practical consequences which could arise rather than to the legal aspects that might be involved.

15. It was argued in the Working Party that the withdrawal of drawback as a consequence of Article 7 of the Stockholm Convention could work to the advantage of the trade of those countries to whom certain Member States granted preferences and to the disadvantage of the trade of other third countries. At present dutiable materials imported into the United Kingdom and used by a manufacturer for the export trade were, in many cases, eligible for drawback. The fact that some of these materials could be obtained from territories enjoying tariff preferences had, therefore, not affected the choice of the manufacturer as to the sources of supply. With the withdrawal of drawback, however, he would now have a definite incentive to purchase his materials from sources enjoying preferential treatment. Further, it was important to note that both the Basic Materials List in Schedule III and the list of qualifying processes in Schedules I and II meant that area tariff treatment would in many cases be given to a product which had only undergone a small degree of processing within the United Kingdom. Thus goods benefiting from area tariff treatment exported by the United Kingdom to other Member States would be manufactured to an increasing extent from materials imported from preferential sources, thus giving increased advantages and bigger markets for these materials. While no information on this question was available in respect of Portugal, it was likely that the same conditions would obtain there. It could therefore be contended that an indirect result of the Stockholm Convention was that trade advantages accruing to countries benefiting from preferences would be increased and that the area in which the preferences were effective would be enlarged. It was suggested that, as the elimination of drawback was not mandatory under the Convention, the situation could be remedied if the Member States concerned would continue to grant drawback to the extent necessary to offset the advantages which certain exporters would derive from preferences, without the other Member States having recourse to the provisions of paragraph 1 of Article 7 of the Convention.

16. The Member States pointed out that, under Article 7 of the Convention, a Member State was permitted to refuse free-trade area treatment to goods which had benefited from drawback. If duties collected on raw materials were refunded when manufactures were exported and free-trade area treatment were given to these manufactures, there would be an artificial incentive for each Member State to manufacture for the others and to import from others the manufactures it needed for its own use. It was, however, important to keep the problem in perspective. First, there was no obligation on any country under the GATT to allow drawbacks and it was entirely within the discretion of any country granting drawbacks to withdraw them, whether or not this might be necessary through the creation of a free-trade area or customs union. Secondly, Member States imported a large range of raw materials free of duty and there could only be a very few materials which were dutiable in all the Member States; it followed that any tendency to divert trade to preferential sources of supply was liable to be offset by competition from Member States who could import the same materials free of duty from foreign sources and supply the manufactured goods free of duty throughout the area of the Association. The question of the indirect extension of preferences was not a problem peculiar to the Association but must arise inevitably in any free-trade area or customs union which included a country granting preferences to territories outside the free-trade area or the customs union.

17. The Working Party noted that in some cases the establishment of the Association might have the reverse effect of reducing the value of preferences which some contracting parties were now enjoying on the United Kingdom market and causing damage to their trade. Further discussion on this aspect was reserved in view of the assurance given by the United Kingdom delegate that this matter would be the subject of bilateral consultations between the Governments of the United Kingdom and the affected Commonwealth countries in so far as such consultations had not been already completed.

18. The Member States said that, if requested, they would supply information about the duties and drawbacks applicable to particular products. The Working Party felt that this would be useful to clarify the issues raised in the course of the discussion on this matter.

3. Quantitative Import Restrictions

19. There was some difference of opinion in the Working Party concerning the interpretation to be given to the rights of members of a free-trade area under Article XXIV in relation to the use of import restrictions. The Member States held the view that, insofar as any restrictions they maintained were consistent with the GATT, Article XXIV would permit them to remove restrictions among themselves at a faster rate than against third countries and, although it was certainly their intention to follow liberal trade policies, they were not prepared to forego whatever rights they had under Article XXIV. The other view put forward in the Working Party was that the provisions of Article XXIV did not affect in any way the obligations of contracting parties entering a free-trade area to apply quantitative restrictions in a non-discriminatory manner.

20. As regards the relaxation of balance-of-payments restrictions during the transitional period it was held that such restrictions were justified only to the extent necessary to meet balance-of-payments difficulties and should be relaxed as the balance-of-payments position of individual countries permitted, and the Member States agreed with this view. Moreover, it was stated by some members that ArticlesXII and XIII in any case did not permit the discriminatory application of such restrictions except as provided for under Article XIV of the General Agreement. Furthermore, restrictions applied only to third countries would not deal effectively with balance-of-payments difficulties and, in any case, in the present circumstances of external convertibility of currencies, such discrimination would make even less sense. The Member States recognized the force of the economic argument that had been put forward but there might be circumstances in which these arguments did not apply (notably if a Member State which still had balance-of-payments difficulties judged that it could not afford the cost of relaxing restrictions on imports from non-members as fast as it was required to relax them on imports from other Member States) and in which the Member States would feel that Article XXIV would justify them in relaxing restrictions against imports from one another more rapidly than against imports from other sources. It was, however, certainly their hope to be able to relax restrictions on a non-discriminatory basis.

21. The Member States agreed that, if the balance-of-payments position of an individual Member State improved to the extent where it could remove quantitative restrictions more rapidly than was provided for in Article 10 of the Convention, it should speed up the removal of such restrictions in accordance with its obligations under Article XII of the GATT. There was nothing in Article 10 to prevent this; indeed, paragraph 2 of the Article called for the elimination of quantitative restrictions "as soon as possible". The aim was that the reduction in customs duties between Member States should not be frustrated by the maintenance of quantitative restrictions and, in particular, that there should not remain a hard core of quantitative restrictions after customs duties between Member States had been eliminated. In this connexion paragraph 3 of Article 10 and the reference in that paragraph to the need to avoid burdensome problems in the years immediately preceding 1 January 1970 were relevant. The percentage increases provided for in paragraphs 5 and 7 of Article 10 were only minimum requirements and would not prevent Member States from relaxing their restrictions as quickly as their obligations under the GATT required.

22. As for the introduction of balance-of-payments restrictions the Member States agreed that such action should be taken only in the light of the balance-of-payments position of the Member State itself and that such restrictions should not be introduced by a Member State on the grounds that another Member State or Member States were experiencing balance-of-payments difficulties. There was, however, some difference of view as to whether Article XXIV of the GATT could be construed so as to allow a Member State to introduce restrictions on imports from non-members without extending them to imports from other Member States. It was the view of some members of the Working Party that balance-of-payments restrictions should be applied in accordance with the

external financial situation of the Member State concerned. For example, in circumstances of external currency convertibility there would be no justification for imposing restrictions on imports from third countries while not restricting imports from Member States. For this reason Article XXIV allowed the application of restrictions for balance-of-payments reasons within a free-trade area. The opinion of the Member States, on the other hand, was that this could only be determined in the circumstances of a particular case; if, for instance, a Member State could protect its balance-of-payments position by introducing restrictions against imports from non-members only, this would accord with the requirements of Article XXIV, which allowed restrictions to be applied within a free-trade area only "where necessary". But they agreed that, if restrictions had to be introduced against imports from other Member States also, the restrictions should conform with Articles XII to XV.

23. As regards the administration of the remaining quotas, the Member States explained that, in accordance with the definition contained in paragraph 11(c) of Article 10 of the Convention, "global quotas" would be open to all Member States and might, at the discretion of the importing Member State, also be open to non-member countries. Consequently, all bilateral quotas between Member States would be "globalized" as defined above. The Member States hoped to be able to avoid discrimination against third countries. This could be achieved in one of two ways. Either the quotas for third countries would be increased in order to achieve non-discrimination, or the global quotas for Member States would also be open to third countries and the amount of such quotas would be increased correspondingly. With reference to the calculations provided for in the second sentence of paragraph 5 of Article 10 of the Convention it was urged that, when actual import figures for 1959 were lower than the bilateral quotas, the higher figure should be used. The Member States explained that the Convention did not require the Member States to take as a basis for the calculations other than the actual import figures.

24. The statement of the Member States that they hoped to relax restrictions against third countries at the same rate as such restrictions would be related between Member States under Article 10 of the Convention was welcomed in the Working Party. It was pointed out in the Working Party, however, that although the Member States generally had a liberal record insofar as their trade with third countries was concerned, in some cases import restrictions were being maintained against third countries on other than balance-of-payments grounds. It was, therefore, of major importance to third countries that the hopes expressed by the Member States would be realized.

25. Quite apart from the differences of opinion concerning the interpretation to be given to the rights of members of a free-trade area under Article XXIV, the view was expressed that no difficulties need arise if firm assurances could be obtained regarding the non-discriminatory use of quantitative restrictions by the Member States.

4. Quantitative Export Restrictions

26. The question arose in the Working Party as to whether Member States, in a condition of short supply, would be acting consistently with their obligations under the GATT if, under the provisions of Article 11 of the Convention, they eliminated restrictions among themselves without eliminating restrictions against third countries. There was a difference of opinion in the Working Party concerning the rights and obligations of a member of a free-trade area under Article XXIV in this respect.

27. One view put forward in the Working Party was that Article XXIV did not justify the discriminatory application of quantitative export restrictions to meet a short supply situation. In such a case sub-paragraph (j) of Article XX would be relevant. This sub-paragraph, while permitting the use of measures to meet a short supply situation, required that other contracting parties should be assured of "an equitable share of the international supply" of the products concerned. The discriminatory removal of export restrictions under Article 11 might not permit this requirement of sub-paragraph (j) of Article XX to be met.

28. As the Member States interpreted Article XXIV:8(b), members of a free-trade area were entitled to remove restrictions on exports to each other without extending the same treatment to third countries. This view corresponded to the one they had taken in the case of quantitative import restrictions. Although they interpreted their rights under Article XXIV in this way, it did not follow that the Member States would pursue discriminatory policies.

5. Difficulties in Particular Sectors

29. Confirmation was sought from the Member States that, as the difficulties envisaged in Article 20 of the Convention were likely to arise as a result of the operation of the Convention, the restrictions provided for would apply only to the exports of Member States and that, if a Member State felt the need to take such action in respect of imports from non-member countries, it would act in accordance with Article XIX of the GATT. The Member States gave this confirmation.

30. Concern was expressed at the possibility of the provisions of Article 20 of the Convention continuing to apply beyond the end of the transitional period, thus prejudicing the full establishment of the free-trade area. There was already considerable doubt, because of the exclusion of agriculture from the Convention, whether the Association really constituted a free-trade area in the sense of Article XXIV and any possibility of provisions such as those in Article 20 of the Convention being retained beyond the end of the transitional period would only increase that doubt.

31. The Member States repeated that it was their firm intention to establish a free-trade area within the time-limits prescribed in the Convention, and they asked contracting parties to accept their assurances on this point.

B. Agriculture and Fisheries

1. Agricultural Policies and Objectives

32. The Member States pointed out that the objective of the Association in the agricultural sector was set out in paragraph 2 of Article 22 of the Convention; this was "to facilitate an expansion of trade which will provide reasonable reciprocity to Member States whose economies depend to a great extent on exports of agricultural goods". The measures taken in the agricultural sector were limited to what was considered practicable in the circumstances prevailing, but the Member States had, nevertheless, gone a considerable distance in this sector and the arrangements made under the Convention, including the bilateral agreements between Member States, would lead to the removal of barriers from a considerable part of the trade in foodstuffs. The provisions of the Convention aiming at facilitating an expansion of trade in agricultural products between Member States included the last sentence of paragraph 1 of Article 23 and, in particular, Article 25. It was not, of course, possible to say in advance to what extent changing circumstances would enable the Member States to go further than they had gone so far in the agricultural sector.

33. The view was expressed in the Working Party that the policy set out in paragraph 1(a) of Article 22 of the Convention would be more likely to see concrete results if the concessions granted by the Member States to one another were extended on a multilateral basis to all contracting parties to the GATT. Bilateral agreements of a selective and discriminatory character should be avoided.

34. Disappointment was expressed in the Working Party that no reference had been made in Article 22 to any intention of the Member States to achieve free trade in agricultural products. The absence of any such reference gave further weight to the contention that the arrangements proposed in the agricultural sector should be considered as being excluded from the Member States' arrangements for a free-trade area within the terms of Article XXIV. There was the further consideration that, as the duration of the bilateral agreements was to be the same as that of the Convention itself, it would appear that the Member States had already decided that the agricultural problem would be dealt with through the medium of bilateral agreements. The Member States said that bilateral agreements were not the only method envisaged in the Convention for dealing with the agricultural problem; for example, action might be taken under Article 25 or by amending the provisions of Article 21 and Annex D.

35. The Working Party noted the assurance given by the Member States that, in their agricultural policies, they would take into consideration the traditional channels of trade with third countries.

2. Bilateral Agreements on Agricultural Products

36. The Member States have undertaken to submit to the CONTRACTING PARTIES, pursuant to Article XXIV:7(a), any bilateral agreements which are concluded between Member States under Article 23 of the Stockholm Convention. Certain agreements have already been concluded, i.e. those between Switzerland and Denmark, Sweden and Denmark, Austria and Denmark and the United Kingdom and Denmark, and the text of those have been submitted by the Member States to the CONTRACTING PARTIES.

37. It was pointed out in the Working Party that only in the case of very few products was there provision for the removal of tariffs in the bilateral agreements and that, in each case, the removal was only to be effected by one Member State. The view was expressed that such an arrangement did not conform with the requirements of Article XXIV, and that the only way it could be made to conform would either be for the concessions concerned to be extended to all contracting parties to the GATT or for all the Member States to remove tariffs on the same products, thus including them in the free-trade area. As far as tariff reductions were concerned, these could only be made consistent with the GATT by extending them on a most-favoured-nation basis to all contracting parties to the GATT.

38. The Member States stated that they considered the bilateral agreements as forming an integral part of the free-trade area arrangements and that they were justified in including, when estimating the total amount of trade freed from barriers within the area, the amount of trade from which barriers had been removed as a result of the bilateral agreements. The discussion on this subject is reported more fully in Section II of this report. The Member States added that, in any case, the agreements were governed by Article 37 of the Convention.

39. The representative of Switzerland confirmed that the reduction of the duty on killed rabbits provided for in paragraph 8 of the Agreement between Switzerland and Denmark would be extended to all contracting parties on a most-favoured-nation basis. The representative of Austria said that his Government hoped to be able to extend to all contracting parties the possible reductions of duty envisaged in the Agreement between Austria and Denmark.

40. There was considerable discussion concerning the non-tariff provisions of the bilateral agreements and serious doubts were expressed in the Working Party as to whether the agreements met the requirements of Article XIII. In this respect, attention was drawn, for example, to certain features of the Agreement between Switzerland and Denmark. In the first place, and bearing in mind paragraph 2 of Article XIII, it would be more normal to fix the total amount of permitted imports and then to distribute that amount by quotas in accordance with Article XIII. How was it possible to increase quotas in absolute terms, as was contemplated in paragraphs 5, 6 and 7 of the Agreement, without there being discrimination against third countries? Further it was not possible, in terms of Article XIII, to allocate a quota to one country without likewise allocating individual quotas to other interested contracting parties. The Agreement between Switzerland and Denmark provided for efforts to be made with a view to doubling Swiss imports of fresh or chilled beef from Denmark; other contracting parties could claim that Denmark's share of the Swiss market might thus exceed its traditional share and could seek a proportionate increase in their own shares; in this connexion the second sentence of paragraph 2(d) of Article XIII was relevant.

41. The representative of Switzerland maintained that the arrangements provided for in the Agreement between Switzerland and Denmark could be considered as falling under Article XIII, in particular the first sentence of paragraph 2(d) of that Article. Switzerland was fully prepared, when allocating quotas, to consult

with other contracting parties claiming an interest in supplying the product concerned. It was, however, natural that Switzerland, as a partner of Denmark in the Association, should wish to treat that country as favourably as possible without violating her obligations under the GATT, including Article XIII. Furthermore, it would be seen from the Agreement that some of the items in question were of minor importance and the volume of trade involved would be small. Finally, it should be remembered that the Swiss market in most products concerned was expanding.

42. The Working Party took note of the assurance given by Switzerland that, when allocating quotas, it would proceed in accordance with Article XIII, in particular with paragraph 2(d) of that Article. Apart from the considerations already put forward in paragraph 40 above, there were two further points to bear in mind. First, the volume of trade involved was not the only factor to be considered; what was important was the principle involved. Secondly, it was open to question whether the effect of the measures taken in favour of Denmark would be offset by an expanding Swiss market and, in any case, other exporting countries also had the right to share in whatever expansion took place.

43. There was some discussion on the provisions of paragraph 2 of the Agreement between Switzerland and Denmark which have the aim of enabling "Denmark to regain a share of at least 40 per cent of Swiss imports of butter at world market prices". It was pointed out that the operations of the Swiss Central Office of Butter Supplies would, from the GATT point of view, be covered by Article XVII. It was difficult to see how arrangements could be made compatible with the GATT which would enable Denmark to regain a share of at least 40 per cent of Swiss butter imports, bearing in mind that other countries could also supply butter which was not subsidized in the sense of Article VI of the General Agreement. How was it thought the "commercial considerations" referred to in paragraph 1(b) of Article XVII would change so as to result in this increase in Swiss imports of Danish butter?

44. The representative of Switzerland pointed out that, in accordance with paragraph 1(b) of Article XVII, butter purchases would be made "in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale". Switzerland had always taken these considerations into account in its import policies. In this connexion, the question of public taste was important. Denmark already supplied a considerable proportion of Switzerland's butter imports and there was no reason why this proportion should not be increased to a certain extent "in accordance with commercial considerations".

45. A question was asked about the purpose for which the annual payment of Sw.Kr.10 million provided for in paragraph 4 of the Agreement between Sweden and Denmark would be used. The representative of Denmark said that, as the first payment would not be made until the end of June 1961, no decision had been made as to how the money would be used. He was authorized to say, however, that the money would not be used in such a way as to subsidize Danish exports to Sweden.

46. In reply to questions concerning provisions in the Agreement between the United Kingdom and Denmark and in that between Austria and Denmark regarding the use of anti-dumping measures, both the representative of the United Kingdom and of Austria confirmed that any such measures taken by their Governments would be in accordance with Article VI of the GATT.

II. THE QUESTION OF THE CONSISTENCY OF THE STOCKHOLM CONVENTION WITH ARTICLE XXIV OF THE GATT

47. The Working Party considered the question of the consistency of the Stockholm Convention with Article XXIV of the GATT. The Member States took the view that the Convention was consistent with Article XXIV, including paragraph 8(b) of that Article. Other members of the Working Party considered that the Member States had not been able, so far, to substantiate this contention. The main points covered in the discussion were (1) whether the Convention met the requirement of Article XXIV:8(b) that a free-trade area should cover "substantially all the trade"; (2) whether the agricultural arrangements, including the bilateral agricultural agreements, were consistent with the GATT; and (3) whether the interpretation given by the Member States to the provisions of Article XXIV relating to the use of quantitative restrictions was the correct one.

48. The Working Party considered first whether the requirement relating to "substantially all the trade" in Article XXIV:8(b) was met in the case of the Stockholm Convention. The view was put forward that, as the provisions of, inter alia, Articles 3 and 10 of the Convention relating to the elimination of barriers to trade in the free-trade area did not apply to trade in agricultural products, it could not be maintained that duties and other restrictive regulations of commerce were being eliminated on "substantially all the trade". It was also contended that the phrase "substantially all the trade" had a qualitative as well as quantitative aspect and that it should not be taken as allowing the exclusion of a major sector of economic activity. For this reason, the percentage of trade covered, even if it were established to be 90 per cent, was not considered to be the only factor to be taken into account.

49. The Member States agreed that the quantitative aspect, in other words the percentage of trade freed, was not the only consideration to be taken into account. Insofar as it was relevant to consider the qualitative as well as the quantitative aspect, it would be appropriate to look at the consistency of the Convention with Article XXIV:8(b) from a broader point of view and to take account of the fact that the agricultural agreements did facilitate the expansion of trade in agricultural products even though some of the provisions did not require the elimination of the barriers to trade. Moreover, insofar as both qualitative and quantitative aspects were concerned it was incorrect to say that the agricultural sector was excluded from the free-trade area; in fact barriers would be removed on one third of total trade in agricultural products between Member States. The figure of 90 per cent for the percentage of total trade between the Member States to be freed from barriers was made up of 85 per cent in respect of trade on which barriers to imports into all Member States were to be removed and 5 per cent in respect of which barriers to imports into certain Member States were to be completely removed. There was a further area, in which the Member States did not claim they were achieving free trade, but which was covered by the margin permitted by the phrase "substantially all the trade".

50. The Working Party then considered what part of the trade between the Member States would be covered by the free-trade area arrangements. The view was put forward that, as Article XXIV:8(b) provided for the elimination of duties and other restrictive regulations of commerce on substantially all the trade "between the constituent territories", trade covered by the bilateral agricultural agreements could only be included if the elimination of duties and other restrictive regulations of commerce was generalized to the trade of all the Member States. As the bilateral agreements in each case only provided for the removal of barriers by one Member State, the inclusion of that trade in the free-trade area as such was not justified. The question was also raised whether the assessment of the trade which would be covered by the free-trade area arrangements should be made in the light of the trade of the Member States with the world at large and not only in the light of the trade among the Member States themselves.

51. The Member States, on the other hand, contended that the bilateral agricultural agreements were an integral part of the free-trade area arrangements and that, insofar as they provided for the complete elimination of barriers for certain channels of trade, that trade should be included when estimating the total amount of trade freed from barriers. The Member States did not accept the contention that they should not take credit for the removal of barriers to trade on a product unless such barriers were removed by all the Member States. In this connexion the drafting history of Article XXIV was important. The Article had been drafted against the background of the possibility of a free-trade area being established in Europe in which the United Kingdom, in particular, might wish to retain some barriers against certain imports from its partners mainly as a result of its preferential arrangements. It was envisaged, therefore, that an individual member of a free-trade area should have a certain latitude in respect of some products; this latitude would be permitted by the phrase "substantially all the trade". In view of the preferential arrangements of the United Kingdom, there was an inference that this latitude would be used particularly with respect to agricultural products. It was important to note that the phrase used in Article XXIV was "substantially all the trade" and not "trade in substantially all products". Some members might wish to avail themselves of this latitude in respect of different products. The Member States did not claim that free trade would be achieved in the case of all agricultural products, but they did consider themselves entitled to take into account the trade affected by the complete removal of barriers under the agricultural agreements for certain products when assessing the total amount of trade freed under the free-trade area arrangements. They could not agree that, because the exception to complete free trade was made primarily in the agricultural sector, their arrangements for a free-trade area were any less satisfactory in terms of Article XXIV than an arrangement in which other products, such as industrial products, might be excepted. As for the suggestion that it might be desirable to look at the percentage of the total trade freed in relation to the trade of the Member States with the

world at large, it could be said that the trade between the Member States generally was in fact representative of such trade. Moreover, the criterion in Article XXIV related to trade between the constituent territories.

52. On the other hand, it was felt in the Working Party that, while countries in a free-trade area might exclude from the free-trade area arrangements different items in a few cases, the phrase "substantially all the trade" could not be construed so as to exclude from free-trade area treatment certain items in the agricultural sector when the entire sector was not subject to the general rules for the elimination of trade barriers. This, in effect, would be using that exception twice - once to cover the exclusion of the bulk of agricultural trade and the second time to permit the Member States to remove barriers on different agricultural products.

53. The Member States denied that they were using the exception twice and referred to the arguments set out in paragraphs 49 and 51.

54. There was, therefore, a divergence of view regarding the justification for including, in estimating the amount of trade within the free-trade area to be freed from barriers in terms of Article XXIV, the trade in agricultural products where imports were freed in the case of one Member State only. In the time at its disposal, the Working Party was unable to reach agreement concerning the interpretation which should be given to the relevant provisions of Article XXIV.

55. During the discussion on the bilateral agricultural agreements, the view was expressed in the Working Party that, generally speaking, these agreements were of a preferential character and that some of their provisions were contrary to the General Agreement. It was contended that Article XXIV did not allow the Member States to make preferential arrangements in respect of the trade not covered by that Article and that the arrangements which had been made could not be approved by the CONTRACTING PARTIES unless all the Member States removed trade barriers on the same products or unless the benefits granted by the agreements were extended to all the contracting parties to the GATT on a most-favoured-nation basis.

56. The Member States said that the provisions of the bilateral agricultural agreements would be applied consistently with the GATT and referred to the explanations given in paragraphs 38 to 46.

57. The Working Party discussed the question of the rights of members of a free-trade area under Article XXIV insofar as the use of quantitative restrictions was concerned and, on this question likewise, no agreement was reached in the Working Party. The discussion on this question is reported in paragraphs 19 to 28 above.

58. In view of the divergent opinions which were expressed on the legal issues involved, the Working Party could not reach agreed conclusions concerning the provisions of the GATT under which the CONTRACTING PARTIES should consider

the Stockholm Convention. The Member States considered that as, in their view, the provisions of the Stockholm Convention met all the requirements of paragraphs 5 to 9 of Article XXIV, they were entitled, under paragraph 5 of Article XXIV, to deviate from the provisions of the GATT to the extent necessary to permit the establishment of the free-trade area contemplated in that Convention. On the other hand, and without prejudice to the final conclusions on the substance of the matter which might be reached at the seventeenth session, the following views were expressed on the legal aspects of the problem. It was stated by certain members of the Working Party that they had, so far, the greatest difficulty in accepting the contention of the Member States and that, even if Article XXIV were applicable, they could not see how the CONTRACTING PARTIES could consider the Convention under any provisions other than paragraph 10 of that Article, if only because all parties to the Convention were not contracting parties to the GATT as defined in Article XXXII. Some members of the Working Party took the view that the provisions of Article XXIV were not applicable in the case of the Convention and that the Member States should have recourse to a "waiver" under Article XXV.

III. CONCLUSIONS

59. The members of the Working Party agreed that the discussion which had taken place, and the information which had been provided by the Member States either before or during the meetings of the Working Party, gave a comprehensive picture of the various considerations and issues which, in the light of the GATT, arose in connexion with the Stockholm Convention. In view of the shortness of the time at its disposal, however, and because of the importance of certain issues about which there were differences of opinion in the Working Party, it was considered that it would be more appropriate for the Working Party to confine its report to a description of the arguments which had been put forward and the clarifications given, without recommending to the CONTRACTING PARTIES that they should consider the Convention at this session under any specific provisions of the GATT.

60. In these circumstances, the Working Party recommends to the CONTRACTING PARTIES that they should postpone any action in regard to the Convention and that the question should be included on the agenda of the seventeenth session of the CONTRACTING PARTIES. This would give contracting parties time to reflect on the various points of view expressed in the course of the Working Party's discussions so that they would be in a better position, at the seventeenth session, to reach a conclusion on the issues involved.