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GENERAL AGREEMENT ON TARIFFS AND TRADE

REPORT OF THE WORKING PARTY ON EEC/ASSOCIATION OF AFRICAN AND MALAGASY STATES AND OF NON-EUROPEAN TERRITORIES

1. The Working Party was appointed by the Council at its meeting on 6 July 1964 and was instructed to examine, in the light of the relevant provisions of the General Agreement, the provisions of the Convention of Association[1] between the European Economic Community and the African and Malagasy States associated with the Community. The CONTRACTING PARTIES at the twenty-second session decided to enlarge the terms of reference of the Working Party to include an examination of the provisions of the Decision of 25 February 1964 of the Council of the EEC defining for a further period of five years the provisions for the Association between the EEC and certain non-European countries and territories maintaining special relations with France and the Netherlands.

2. The Working Party met on 24 March 1965 and from 17 to 21 May 1965.

I. The Convention of Association between the European Economic Community and the African and Malagasy States

A. Examination of particular aspects of the Convention

3. The Working Party examined the provisions of the Convention with particular reference to certain questions which had been put by contracting parties and the replies to which had been circulated as L/2277 and Addendum 1.

4. The Working Party noted that while the original Convention of Association had foreseen the creation of one free-trade area comprising the EEC and a number of African and Malagasy territories, the Community recalled that the Yaoundé Convention created eighteen free-trade areas, each one consisting of the Community and one African or Malagasy State. The representatives of the parties to the Association explained that the new arrangement was due to the fact that the Associated States - which had become independent in the meantime - had decided that their relations inter se should not be covered by the Convention of Association. A member of the Working Party said that the fact that the various free-trade areas were institutionally linked together and that they were controlled from outside in the sense that each of them were subject to the influence of the seventeen others gave rise to certain doubts about their legal identity which was a pre-requisite under Article XXIV of the General Agreement. Moreover, in his view, the number of free-trade areas being created was neither clear nor stable, owing to arrangements such as the Central African Economic and Customs Union which

[1] Usually referred to as the Yaoundé Convention.

resulted in the amalgamation of five free-trade areas into one. The representatives of the parties to the Convention recalled that the provision of Article XXIV did not provide anything about the institutional arrangements of free-trade areas and that the institutions of the Association took decisions by unanimity of the eighteen Associated States and the Community. The legal identity of the eighteen free-trade areas could not in their view be questioned.

5. Some members of the Working Party pointed out that the Yaoundé Convention itself did not provide for the final establishment of the free-trade areas and that it was not clear from the text if they were intended to last indefinitely. On the first point, the representative of the Community said that it was most likely that in fact the Community would have completely removed tariffs on trade within the Common Market, and therefore on imports from the Associated States, well before the expiry of the present Convention. The removal was already very advanced and it was already terminated for a number of products, listed in the Annex to the Convention, of particular importance to the export trade of the Associated States. As regards action by Associated States, representatives of these States explained that thirteen of them had already completely removed customs tariffs on their imports from the Community, and only retained fiscal duties which on a very small number of locally produced items, where the duties were not collected on local production, could have protective character. On the second point, representatives of the Community and of the Associated States recalled that Article 60 of the Yaoundé Convention provided that, one year before the expiry of the present Convention, the contracting parties to the Convention should examine the provisions which might be made for a further period and that the Association Council should if necessary take any transitional measures required until the new Convention entered into force. This provision, and the measures already taken by the Community and the Associated States under the existing Convention, should in their view remove any uncertainty about the final establishment of the free-trade areas and their permanent character. Some members of the Working Party expressed the view that, while such evidences of the intentions of the parties to the Yaoundé Convention should be taken into account, they did not constitute commitments of a character sufficient to constitute a "plan and schedule" in the sense of Article XXIV of the General Agreement.

6. A member of the Working Party expressed the view that an extensive or indefinite period of validity was an implicit requirement of a customs union, free-trade area or any form of economic integration. A commitment indefinite in time would not be prejudiced by the possibility of denunciation, as this would not necessarily result in dissolution of a multilateral arrangement. The Convention provided for one single phase of the process of formation, beginning in the first Convention and likely to continue after the expiration of the second, but without assurances or commitments on continuity. The representative of the Community pointed out that a certain degree of uncertainty regarding the permanence of regional arrangements was a common characteristic of all the arrangements presented to the CONTRACTING PARTIES under Article XXIV, with the exception of the Treaty of Rome which was concluded for an unlimited period and without the possibility of denunciation.

7. Some members of the Working Party expressed concern that the provisions of Article 3 of the Convention and of Protocol No. 1 to the effect that the Associated States might retain or introduce customs duties or similar charges which corresponded to their development needs or industrialization requirements or which were intended to contribute to their budget, would result in so many exceptions from the tariff reduction that the requirement of Article XXIV:8(b) that the duties should be eliminated on substantially all the trade between the constituent territories would not be met. The representatives of the Community and the Associated States replied that no such exceptions had been notified during the two months period specified in Article 1 of Protocol No. 1. They said that the industrialization of the Associated States which was only just beginning would not involve the imposition of protective duties except in so far as the industries which were established would be working for the local market and not for export. Moreover an increase in the volume of the trade covered by protective duties would only involve an increase in the percentage of reciprocal trade not governed by the free-trade area régime if there were not corresponding increase in the total volume of trade. There was therefore every reason to believe that the portion of trade in protected products would remain small in relation to the total volume. However, if the proportion of protected trade so increased as to risk a violation of the rule of Article XXIV:8(b) it would be up to the parties to the Association at that point and not before to take such action as they might consider necessary. One member of the Working Party expressed the view that the term "substantially all" was not to be interpreted in purely statistical terms and that the application for protective purposes of duties or other restrictions to a portion of the trade between members of a free-trade area could hardly be justified.

8. Some members of the Working Party also inquired about the use of fiscal tariffs for protective purposes in the Associated States, and whether such cases should not be reported as exceptions under the provisions of Article 3 and Protocol No. 1 of the Yaoundé Convention. The representatives of the Associated States said that the fiscal tariffs, which were applied to imports from all sources in a non-discriminatory way, were not normally used for protective purposes, except in very rare cases which were at present being studied.

9. There was a divergence of opinion in the Working Party concerning the interpretation to be given to the rights of the parties to the Convention under Article XXIV in relation to the use of quantitative restrictions on imports and in particular as to whether or not the provisions of Article XXIV allowed the parties to the Yaoundé Convention to deviate from the provisions of Article XIII of the General Agreement. Several members of the Working Party reiterated the views of their governments that the General Agreement did not permit the application of discriminatory restrictions for balance-of-payments reasons except as provided for under Article XIV. These members recognized that though Protocol No. 2 in its fifth Article under certain conditions authorized the imposition or maintenance of quantitative restrictions on imports of goods originating in member States, Article 6:3 of the Convention made such action purely optional. The parties to the Convention held the view that Article XXIV of the General Agreement imposed an obligation on the member countries of a free-trade area to eliminate duties and other restrictive regulations of commerce on substantially all the trade between them, within the limits specified in Article XXIV:8(b), and does not stipulate that the

benefits of such elimination should necessarily be extended to non-members of the area. They, therefore, considered that the stipulations of the Convention, providing for the complete elimination of quantitative restrictions on trade between the partners in the Association, were fully consistent with the General Agreement. The Yaoundé Convention did not contain provisions regarding trade with third countries and left each party free to determine its own policy with respect to trade with third countries. The Associated States intended to conduct their commercial policies for the good of their respective national interest, while observing their international obligations.

10. A member of the Working Party asked which Associated States had notified quantitative restrictions being maintained for balance-of-payments purposes and were in consequence consulting either under Article XII or XVIII of the General Agreement. He was informed that no Associated States had notified any restrictions under these Articles. Another member of the Working Party pointed out that nevertheless quantitative restrictions had traditionally been used as the major means of protection by certain Associated States. If such restrictionswere not being maintained for balance-of-payments reasons, they were illegal under the GATT. In such circumstances, the removal of these restrictions on imports from EEC member countries and their retention on imports from third countries constituted a new and unjustified trade discrimination. In his opinion quantitative restrictions of this type should be removed as quickly as possible on the trade of all contracting parties, and should only be retained if they could be justified on balance-of-payments grounds. This member also considered that the arrangements for making foreign currency available to pay for the imports of certain Associated States were obscure.

11. Some members of the Working Party raised the question whether agricultural products would be subject to the free-trade arrangements and in this connexion asked what kind of treatment the Community envisaged to apply in accordance with Article 11 of the Convention to agricultural products similar to and competitive with European products imported into the Community from the Associated States. The representative of the Community replied that the common agricultural policy had not yet been definitively established. For the products in question as for example for oilseeds, vegetable oils, fishery products and tobacco tariff treatment for the Associated States for these products was at present intra-Community treatment. The only product for which the common agricultural policy contained final provisions for the Associated States was rice for which at present intra-Community treatment was extended for quantities corresponding to traditional exports, and special preferential treatment for quantities in excess of these exports.

12. Some members of the Working Party recalled that the member countries of the Central African Economic and Customs Union (previously referred to as the Equatorial Customs Union and Cameroon), which were all Associated States, had recently adopted a common external tariff. Until the new tariff entered into force, these countries had not maintained any tariff protection but had applied only fiscal charges. It was pointed out that at the discussion in 1964 in the Working Party on the Equatorial Customs Union and Cameroon (BISD, Twelfth Supplement, page 74), it had been agreed that questions relating to the treatment which would be given by the members of the Customs Union to imports from the Community and the Associated States - including the relationship of their treatment to the protective and fiscal effects of the common external tariff of the Customs Union - should be taken up when the Yaoundé

Convention was examined by the CONTRACTING PARTIES. These members of the Working Party said that it seemed doubtful if the adoption of the common tariff could be reconciled with the requirement of Article XXIV:5(b) of the General Agreement that at the formation of a free-trade area the duties maintained in each of the constituent territories to the trade of third parties should not be higher than the corresponding duties existing prior to the formation of the free-trade area. A member of the Working Party expressed the view that the discriminatory application of the common tariff of the Central African Economic and Customs Union, since it resulted indirectly from the provisions of the Yaoundé Convention, had the effect that the Union as a whole could be considered as not in conformity with Article I. Some members of the Working Party maintained that the increased preferences in favour of the Community resulting from the entry into force of the new common tariff was a result of the inter-relationship between the Yaoundé Convention and the Central African Customs Union Treaty. Some of these members maintained that for many items the new common tariff appeared only to have been brought into force in order to create new preferences in favour of the Community and that the same appeared to be true of customs tariffs maintained by some other Associated States. The representatives of the Associated States pointed out that the setting up of a customs tariff by the parties to the Convention was neither the juridical consequence of the provisions of the Yaoundé Convention, nor bound in any other way to this Convention; the setting up of these tariffs resulted from decisions taken independently of this Convention by the Associated States. Since the creation of these zones was not, in itself, the juridical cause of any increase of national customs tariffs, these increases in tariffs were therefore consistent with paragraph 5(b) of Article XXIV. In fact the setting up of the common customs tariff of the Central African Economic and Customs Union by five Associated African States which had no tariff protection before their independence, was the result of decisions taken by these countries in 1959 and 1961, shortly after their independence and well before the expiry of the first Convention. These decisions reflected the will of these newly independent States to pursue an economic and commercial policy of their own.

13. Some members of the Working Party expressed the view that in a free-trade area consisting of industrialized and less-developed countries the industrialized countries should not require reciprocal advantages from their less-developed partners and in this connexion referred to the principles established in the new Part IV of the General Agreement, particularly since the latter could hardly be expected to accord reciprocal free entry to substantially all products of the developed countries members of such free-trade areas. In their view Article XXIV had never been meant to apply to free-trade areas between developed and less-developed countries. One member of the Working Party said that, even if a free-trade area arrangement between developed and less-developed countries met all the more specific requirements of Article XXIV, it was unlikely, given that the parties to the Arrangement tended to produce entirely different products, to satisfy the general requirement of paragraph 4 of the Article that free-trade arrangements should be designed to create new trade between the parties to the Arrangement and not to divert existing trade. Reference was also made to the non-reciprocity approach of the Community towards the Association Arrangement with Turkey.

14. In reply to the points referred to in the previous paragraph the representatives of the Community and the Associated States said that the question of reciprocity was not dealt with in Article XXIV, which only required that restrictions on substantially all the trade between the member countries of a customs union or a free-trade area should be removed. Part IV of the General Agreement which did not exist when the Convention entered into force, did not aim to modify the provisions of Article XXIV. The only test the CONTRACTING PARTIES could apply to a free-trade area was whether it satisfied the requirements of Article XXIV. With regard to the general principle in paragraph 4 of Article XXIV, they said that the precise wording of paragraph 5 which used the terms "Accordingly, the provisions of this Agreement shall not prevent .... provided that ...." made it abundantly clear that if the requirements of paragraphs 5 to 9 of Article XXIV were fulfilled the Agreement was necessarily compatible with the principle set out in paragraph 4. There was no reason to believe that the authors of Article XXIV had overlooked the possibility of free-trade areas between countries at different stages of development. The CONTRACTING PARTIES had moreover already examined free-trade areas where there had been a great difference between the stages of development of the constituent territories.

15. The Working Party further noted statements by the representatives of the Community and the Associated States that each party to the Yaoundé Convention had full freedom in regard to its commercial policy subject only to the provisions of Article 12 concerning consultations between the member countries.

16. The representatives of the parties to the Yaoundé Convention confirmed that the Associated States in accordance with Articles 8 and 9 of the Convention were free to enter into customs union of free-trade area arrangements inter se or with one or more third countries. In reply to the questions as to the meaning of Article 7 and of the qualification in Article 9 that such arrangements must neither be nor prove to be incompatible with the principles and provisions of the Convention, the representative of the Community said that the precise significance of these words had not yet been tested and that each concrete case would have to be examined on its merits.

17. A member of the Working Party expressed the view that the possibility of the Associated States entering into arrangements for completely free trade with other less-developed countries of the same region, which would be both desirable and economically practicable, would be limited by the requirements of Article 7 of the Convention.

18. Members of the Working Party asked how the Associated States, which were in the Congo Basin Treaty area, or which were formerly under United Nations trusteeship, were reconciling their obligations under the St. Germain-en-Laye Treaty or the United Nations Charter not to grant any tariff preferences with their obligations under the Yaoundé Convention. The representatives of the parties to the Convention referred to Article 61 of the Convention and explained that five of the countries concerned, Burundi, Congo (Leopoldville), Rwanda, Somalia and Togo, applied at present the same tariff rates to imports from all sources, including the Community and the other Associated States. They further wished to recall that Article 61 made explicit provision for a re-examination of the situation not later than three years after the entry into force of the

Convention. The other Associated States originally covered by the Congo Basin or United Nations trusteeship arrangements had declared that they considered themselves released from the obligations which had been imposed upon them at a time when they had not yet acquired independence.

19. One member of the Working Party pointed out that the Convention did not explicitly create formally identified free-trade areas. The expression free-trade area was not mentioned in the Convention. In his view, therefore, the provisions of Article XXIV had not been invoked. The representative of the Community said that there was no provision in Article XXIV which required that an arrangement which met the requirements of Article XXIV, should be called a free-trade area treaty or that such treaty should refer in its text to the provisions of the General Agreement. Moreover, the provisions of the Convention related to several fields - for example financial aid - which fell outside the scope of a normal free-trade area arrangement, and it had therefore not been considered appropriate to use that term.

B. General

(a) Views of members of the Working Party, other than the representatives of the EEC and the Associated States

20. One member of the Working Party expressed the view that the Convention was fully in accord with Article XXIV.

21. Other members took the view that the Convention was not consistent with these provisions. One of these members said that the legal arguments expressed in 1957 in Sub-Group D to substantiate views on the lack of conformity of the first Convention of Association with Article XXIV were in his view still applicable to the second Convention. Two members took the view that arrangements provided for in the Convention constituted essentially an increase in preferences contrary to Article I of the Agreement.

22. Some members expressed particular concern at the adverse effect on the trade of third countries of the increased discrimination they would be subject to in Community markets and in the markets of the Associated States; the latter discrimination could, in the view of some members, become more marked as the industrialization of the States concerned developed, and as they consequently introduced new measures of protection for domestic industry. The trade diverting results of such discrimination would make themselves felt in the future, since the preferential margins had only recently been put into effect.

23. Some members expressed doubts as to the consistency of the Convention with the relevant provisions of the GATT. These members felt in particular that the Convention did not in their view meet the requirements of the Article that "substantially all" the trade should be covered, that there should be a plan or schedule for the achievement of free trade within a reasonable period of time and that the tariff and other commercial restrictions of each member of a free-trade

area, on its formation or on the adoption of an interim agreement for its formation, should not be higher than the equivalent measures in force prior to the formation of the area (see paragraphs 5, 7, 11 and 12 above).

24. A member of the Working Party expressed the view that the creation at a single stroke of a large number of new bilateral preferential arrangements might be repeated and would ultimately result in the practical disappearance of general most-favoured-nation treatment, in the widespread practice of discrimination, and in a fundamental change in the structure of GATT. Such economic advantages as were provided to less-developed Associated States under the Convention in the form of preferences resulted from a process of trade diversion, the burden of which fell on other less-developed countries which were being discriminated against. In his view, the Convention was not in accordance with Article XXIV. A situation within the terms of Article XXIV had not been raised or involved in the Convention, the various free-trade arrangements created had no legal identity, the requirements of a plan and schedule had not been complied with, as the Convention contained only part of a plan and its total period of validity of five years did not constitute a reasonable schedule in the sense of Article XXIV. The whole long-term plan and schedule should be submitted for examination of the CONTRACTING PARTIES.

25. Some members of the Working Party took the view that the question of the Convention's consistency with Article XXIV was scarcely relevant since the Article had, in their view, never been meant to apply to free trade or customs union arrangements between developed and less-developed countries. In their view, among other things, it was inconsistent with the development of thinking on the question of reciprocity that less-developed countries should have to give preferential access to their markets in return for securing preferences in the markets of developed countries. One member of the Working Party, while not disassociating himself from this view, said his delegation assumed that the Associated States had considered this aspect of the matter and that it was after all up to them to decide what was in their interests. Other members considered that in following their national interest, they should do so in accordance with the rules of the General Agreement.

26. A member, while recognizing the difficulties of establishing free-trade areas between countries at different stages of development, noted that the Yaoundé Convention enabled the Associated States to formulate their commercial policies in relation to third countries in accordance with their development needs. Some members doubted whether any free trade or customs union arrangement between highly-developed countries, on the one hand and countries at a very low level of development on the other were likely to bring benefits to the parties concerned which could offset the disadvantages in terms of trade diversion of such arrangements, however consistent in form they might be with the provisions of Article XXIV (see paragraphs 13 and 14 above). The view was also expressed by some members, that perhaps the provisions of Article XXIV should be reviewed to take account of changed conditions.

27. Several members who expressed the doubts and misgivings described above expressed their gratification at certain aspects of the Convention and of action taken by the contracting parties to it; these included the fact that the Associated States retained complete freedom in their commercial policy vis-à-vis third countries; and the evidence of the attention paid to the interests of third countries not parties to the Convention in, for example, the suspension by the Community of the common external tariff on certain tropical products. In this connexion they noted that the current round of tariff negotiations and the implementation of Part IV of the General Agreement would afford further opportunities for joint action by parties to the Yaoundé Convention and other GATT contracting parties.

28. Some members took the view that there was insufficient information yet available on tariffs and other regulations of trade and payments applied by parties to the Convention and on how the Convention would work in practice to enable any firm conclusions to be drawn on its compatibility with the relevant provisions of the GATT.

29. Some members of the Working Party pointed to the problems faced by third country suppliers as a result of the special treatment accorded reciprocally between member States and Associated States partners to the Yaoundé Convention. They referred to the problems this treatment raised for third country suppliers of certain products to the EEC. They called attention to the solutions arrived at in the past and urged that attempts should be made to find mutually acceptable solutions for other products of interest to less-developed countries.

(b) Views of representatives of the EEC and the Associated States

30. These members of the Working Party took the view that the Convention fully met the provisions of Article XXIV and was therefore entirely consistent with the obligations of the EEC and the Associated States under the GATT. These members of the Working Party stated that the Convention met the conditions laid down by Article XXIV with respect to free-trade areas for the following reasons:

- the Convention contained a "plan and Schedule" for the formation of free-trade areas within a reasonable length of time in accordance with paragraph 5(c) of Article XXIV (see paragraphs 5, 6 and 11 above);

- this "plan and Schedule" whose implementation was already far advanced involved the elimination pursuant to paragraph 8(b) of Article XXIV of duties and other restrictive regulations of commerce on substantially all the trade in products originating in the customs territories concerned, subject to the exceptions provided for in that same paragraph (see paragraphs 5, 7, 9 and 11 above);

- the Convention did not stipulate, and was in no way related to, any provisions or arrangements to increase the general incidence of duties and regulations with respect to third countries (see paragraph 12 above).

Therefore the parties to the Convention considered that they were entitled under Article XXIV:5 to deviate from the provisions of the General Agreement to the extent necessary to establish these eighteen free-trade areas each of which had a well-defined legal identity. Further, there was not, in their view, any distinction to be drawn, so far as Article XXIV was concerned, between, on the one hand, customs union or free-trade arrangements between countries in the same stage of development, and on the other, such arrangements between developed and less-developed countries; in either case all that was relevant for the CONTRACTING PARTIES was whether the arrangement in question met the requirements of the Article. The representatives of the parties to the Convention were not able to accept the view that Article XXIV was not designed for the creation of free-trade areas between countries having a very different degree of industrialization. If the authors of Article XXIV had intended to oppose the creation of such free-trade areas, they would have introduced provisions to that effect in the text which they drafted. It was not possible to read in the General Agreement restrictive provisions, which were not there, nor to limit the rights of contracting parties on points which they had not explicitly accepted.

31. The members concerned expressed regret that so many of the objections that had been raised to the original Treaty of Rome provisions on the association of overseas countries and territories, as they were then described, should have been repeated on this occasion. Since 1957 many things had happened which should normally have changed the judgments cited above. The most important was certainly the fact that eighteen less-developed countries should, in the light of all the circumstances, have taken the view that it was to their advantage to confirm in the Convention which was being examined by the Working Party, the pattern defined in 1957 by the authors of the Rome Treaty. By signing the Convention these countries had shown that they considered it a positive instrument of co-operation between developed and less-developed countries. The second point concerned the development of the trade of the European Economic Community with third countries. In fact, however anxious the Community had been to settle amicably the question of her relations with countries with which certain member States had up to then had very close relations, the Community had never neglected the problem of her relations with third countries. The development of the trade of the Community with these countries, particularly with less-developed third countries, was a good illustration of this point.

32. As for the information concerning the implementation of the Convention, the signatories intended to comply with their obligations under paragraph 7 of Article XXIV.

(c) Conclusions

33. Given the differences of view recorded in the previous sections of this report, the Working Party could only confine itself to recording the information which was submitted, and the views which were expressed. The Working Party accordingly recommends that the CONTRACTING PARTIES should examine the Convention in the light of this report.

II. Association between the EEC and Certain Non-European Countries and Territories Maintaining Special Relations with France and the Netherlands

34. The Working Party examined the association between the EEC and certain countries and territories maintaining special relations with France and the Netherlands. The rules governing this association were analogous to those of the Yaoundé Convention with respect to the free-trade area arrangements. The major points of difference were the following:

(i) duties and other regulations of commerce are to be eliminated by the associated countries and territories not only between them and the Community but also between the Associated Countries and Territories themselves. It followed that the arrangements under consideration did not contain a provision such as that of Article 8 of the Yaoundé Convention which authorizes the African and Malagasy Associated States to establish or maintain customs unions or free-trade areas among themselves. Unlike the Yaoundé Convention, the arrangements were designed to create a single free-trade area.

(ii) Since the Countries and Territories continued to be associated with the Community in accordance with Chapter IV of the Rome Treaty, the arrangements did not make any institutional provisions as was the case with the Yaoundé Convention. For the same reasons no arrangements are made for their denunciation by the overseas Countries and Territories.

(iii) There was no provision similar to that of Article 61 of the Yaoundé Convention since none of the overseas Countries and Territories had international obligations of the kind referred to in that Article.

35. Some members of the Working Party felt that Article XXIV of the General Agreement was not meant to provide for free-trade areas between dependent and independent entities; one of these members added that some of the customs territories involved had no autonomy, consituting in his view only legal fictions. The representative of the Community recalled that Article XXIV:8 defines a free-trade area as a group of two or more "customs territories" and that the latter are defined in paragraph 2 of Article XXIV as "any customs territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territorites". He said this was the case with respect to the associated Countries and Territories.

36. The objection was raised that resort to Article XXIV was merely a device to cover the situation arising out of the extension of preferences. Reference was made to the Note to paragraph 9 of Article XXIV; this records an understanding that the provisions of Article I would require that, when a product which has been imported into the territory of a member of a free-trade area at a preferential rate of duty is re-exported to the territory of another member of such 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. The representative of the Community said that the Community was well aware of this rule and applied it under the Rome Treaty in respect of imports from third parties benefiting from preferences in the territory of one of the members of the Community. The rule did not however apply to the present case since the countries or territories which originally benefited from preferences were not members of the free-trade area and there was no longer any question of preferences in the sense of Article I. As far as Annexes B and C to the GATT were concerned, they related to the faculty which was granted to France and the Netherlands and certain other territories to maintain certain preferences; nothing in the GATT prevented the countries concerned from waiving their preferences in order to enter into a free-trade area.

37. A member of the Working Party asked what relationship the Association Arrangements or the Yaoundé Convention created between the Associated Countries and Territories and the Associated African and Malagasy States. The reply was that no relationship was created by the two instruments.

38. With respect to quantitative restrictions, the representative of the Community was asked the following question with respect to Article 5(3) of the Association Decision which allows the countries and territories to impose import restrictions to meet balance-of-payments difficulties. Did the EEC consider that the countries and territories could have balance-of-payments difficulties of their own independently of the member States maintaining special relations? If so, in view of the fact that these restrictions would be applicable to third (non-EEC) countries, would the responsible member State arrange in such a case for the balance-of-payments situation of the country or territory concerned to be submitted to examination under Article XII to XV? The representative of the Community replied that the overseas countries and territories in the French franc area could not, given their membership of the area, have balance-of-payments difficulties which were theirs alone. Article 5, paragraph 3, which referred to exceptional measures in the event of balance-of-payments difficulties, was therefore not relevant for these countries and territories. On the other hand, Surinam and the Netherlands Antilles might encounter balance-of-payments difficulties of their own because these two countries were autonomous with respect to currency and import systems. The Kingdom of the Netherlands intended to continue to comply with the obligations deriving from the General Agreement.

39. Another question on quantitative restrictions related to the action of one associated territory which has been maintaining import restrictions and intensifying discrimination in favour of EEC member States to the detriment of established trade with a nearby contracting party. Under what provision of the Association Decision did the discrimination arise and how were the restrictions and discrimination justified under GATT? The products concerned were generally speaking not produced in that associated territory or not produced in sufficient quantities to meet requirements. The representative of the Community replied that the Association of the Overseas Countries and Territories governed only relations between the Community and the associated countries and territories and not the

relations between the latter and third countries and considered that this question was therefore outside the terms of reference of the Working Party. Pursuant to the Decision of Association, the associated territory in question must progressively eliminate quantitative restrictions on imports from the EEC. This measure was moreover, consistent with the obligations deriving from Article XXIV of the General Agreement in regard to the establishment of free-trade areas.

40. In reply to a question regarding the Protocol Concerning Imports into the European Economic Community of Petroleum Products referred in the Netherlands Antilles the representatives of the Community said that if imports into the Community of petroleum products under the provisions of this Protocol were causing real difficulties on the market of one or more member States, there was no obligation to take remedial action by any member State had the faculty to present its case to the Commission which would decide whether and what action should be taken. To another question on this Protocol the representative of the Community replied that the quota established by the Protocol was a provisional one and that, until general rules of origin were adopted by the Community, it applied to petroleum products whatever the origin of the crude oil.

41. The Working Party noted that, in addition to the particular points referred to in paragraphs 31 to 37 above, many of the general considerations referred to in Section I of this report applied also to the Association Arrangements considered in this Section of the report.

42. In conclusion, the Working Party decided, in respect of the Association Arrangements considered in this section as in the case of those considered in Section I, that it could only confine itself to recording the information which was submitted, and the views which were expressed. The Working Party accordingly recommends that the CONTRACTING PARTIES should examine the association between the EEC and certain non-European countries maintaining special relations with France and the Netherlands in the light of this report.