GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES
Twelfth Session

Committee on the Treaty Establishing the European Economic Community

SUMMARY RECORD OF THE MEETINGS

held at the Palais des Nations, Geneva,
on Monday, 4 November 1957, at 10 a.m. and 3 p.m.

Chairman: Mr. L. Dana Wilgress (Canada)

Subjects discussed:
1. Procedures
2. The Provisions of the Treaty relating to Tariffs:
   - Elimination of Customs Duties between Member States
   - Transition from one stage of Tariff Reduction to another
   - Common Tariff
   - Negotiations on GATT Concessions

1. Procedures

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The CHAIRMAN referred to the terms of reference of the Committee (W.12/16) and suggested that the Committee first confine its task to point A thereof and study in turn each of the various aspects of the Treaty as set out therein. Referring to the wording "inter alia" in the terms of reference, the Chairman considered that one such additional matter to be considered would be that pertaining to a plan and schedule as provided for in Article XXIV. Accordingly the Chairman proposed that the Committee examine the arrangements provided for in the Treaty with respect to these items in the following order:

1. Tariffs
2. Quantitative Restrictions
3. Trade in Agricultural Products
4. Plan and Schedule pursuant to the Provisions of Article XXIV:5(c)
5. Association of Overseas Countries and Territories

In reply to a question by Mr. VALLADAO (Brazil) concerning the possibility of establishing several technical sub-groups to expedite the work of the Committee the Chairman expressed the view that the establishment of such groups would in fact be necessary. However, as it was as yet too early to foresee their specific tasks, he suggested that the Committee first proceed as he had proposed. When the appropriate stage had been reached for a more detailed examination of the various problems raised, consideration could be given to the establishment of the particular sub-groups or working parties.

The Committee approved the procedures as outlined by the Chairman.

The DEPUTY EXECUTIVE SECRETARY informed the Committee of more recent documentation that had become available. Replies to supplementary questions submitted by contracting parties to the Interim Committee for the Common Market had been received and distributed (L/732). The Interim Committee has also transmitted a study showing the results of calculations made on the basis of the arithmetical average method for the items in List F; duties for which in the common tariff have been fixed by mutual agreement among Member States. Only one copy was available so far and this could be consulted by interested contracting parties. The document would be distributed as soon as possible.

2. The Provisions of the Treaty relating to Tariffs

The CHAIRMAN, inviting a general discussion on the tariff provisions of the Rome Treaty, said the Committee would now have to consider these provisions in the light of those of the General Agreement. While other Articles might be relevant, such as Articles I, II and XXVIII, the Committee should confine its attention at this stage to the tariff provisions of paragraphs 5(a) and 6 of Article XXIV and the definition of a customs union as prescribed in paragraph 8 of that Article.

Mr. CORSE (United States) said that any opinions he held at this stage and any conclusions he might have arrived at should be regarded as tentative and his delegation looked forward to having a futher discussion on various aspects of this whole subject. Mr. Corse thought that it might be desirable in the first instance to refer to the common tariff since, to some extent, the related provisions in the General Agreement were the clearest. Paragraph 4 of Article XXIV seemed to have some applicability, and in this connexion he also agreed with the statement in the Intersessional Committee's Report (L/696) that this paragraph appeared to be a general statement relevant to the whole examination of the Treaty by the CONTRACTING PARTIES. His delegation had given extensive consideration to the question as to whether the common tariff met the conditions prescribed in paragraph 5(a) of Article XXIV and had found it difficult to arrive at any simple or direct conclusions. The method of calculating the level of the duties in the tariff on the basis of an arithmetical average,

however, did not appear to satisfy the conditions of paragraph 5(a) since it was implicit in that paragraph that a "weighting" element should be introduced. Although the calculation of a weighted average presented many practical difficulties it would furthermore introduce more important complications. He cited an example of two countries entering into a customs union with rates of import duty for a given product of 5 per cent and 25 per cent ad valorem. Each rate might be either protective or non-protective affecting entirely different volumes of trade. The calculation of common duties in each possible combination would, for the purposes of paragraph 5, lead to different results in each case.

Another possible approach in gauging the level of the common tariff would be to compare customs duties collected under the existing tariffs with those under the new tariff. It would appear desirable that the total amount of revenue should fall, but this criterion, however, was not valid. If the customs duty on a particular product was consistently increased in graduated steps from zero to a prohibited import level, customs revenue would first rise from zero to a peak level and fall once more toward zero when the duty becams prohibitive. It was feasible to apply this model in practice and although customs revenue fell, rates of duty could have been either increased or reduced.

In the light of these considerations Mr. Corse concluded that the overall judgment required in paragraph 5(a) of Article XXIV could only be appropriately made on the basis of a commodity-by-commodity study.

Mr. Corse then turned to paragraph 6 of Article XXIV. He suggested that the problems raised in connexion therewith should be approached along similar lines to those arising from paragraph 5(a) since he believed some theoretical relationship existed between the two paragraphs. Any negotiations deemed necessary pursuant to paragraph 5(a) could then be carried on simultaneously with negotiations under paragraph 6. It did not appear likely that a plan and rules for the conduct of negotiations could be formulated at this stage since this must await the establishment of the relevant institutions as provided for in the Treaty. Nevertheless, some preliminary exploration could be made in this field. There was a need for clarification on those items for which the rates of duty to be applicable had not yet been determined. The Committee should also examine the situation concerning those items initially negotiated with the Member States and make some determination as to the loss of present bindings in return for new bindings in the common tariff. This would also have to make reference to reductions in bound rates by the Member States. It seemed the procedures of Article XXVIII would be adequte for these problems. The Committee would also have to devote its attention to the plans for the elimination of duties between the Member States themselves.

In conclusion Mr. Corse said that his delegation would support the establishment of a Working Party to consider these questions in greater detail should that be the desire of the Committee.

Mr. WESTERMAN (Australia) supported the proposal that this question be referred to a working party to give immediate attention to those points on which a settlement could be reached at this Session and to suggest procedures for dealing with those which could not be so resolved. The United States representative had made it clear that even if the European Economic Community was a genuine customs union in the sense of paragraph 8 of Article XXIV it still was not exempted from the provisions of the General Agreement until the CONTRACTING PARTIES found that the duties and other regulations of commerce were not on the whole "higher or more restrictive" than those in force prior to the customs union. He referred to the suggestion made by the United States representative for an examination of the tariffs on a commodity-by-commodity basis and pointed out that if, as many contracting parties had stated in the plenary discussions, the duties were in fact more restrictive for them, then a prima facie examination could more easily be made on a country-by-country basis.

Mr. Westerman underlined the importance which his delegation attached to the relationship between paragraphs 5(a) and 6 of Article XXIV. This relationship was important to the provisions of the General Agreement as a whole and particularly to paragraph 4 of Article XXIV which prescribed the general philosophy of that Article. If, in fact, the practical outcome of both the new rates of duty to be introduced by the Six and those yet to be determined was to increase significantly the general protective effect of both bound and unbound rates, there would be serious consequences for other contracting parties. For increases in bound rates the application of Article XXVIII would become unmanageable because compensation claims could not be adequately met. In the case of increases of unbound rates, such was the importance of the Six in world trade, that the overall objectives of not raising barriers to the trade of other contracting parties as prescribed in Article XXIV:4 would be defeated.

Mr. VALLADAO (Brazil) referred to paragraph 4 of Article 19 of the Rome Treaty which stated "The duties applicable to products mentioned in List F shall be those laid down therein". This seemed to imply mandatory action to be taken by the Council of the Member States and he enquired whether these duties would in fact be applied without the opportunity for consultations as prescribed in Article XXIV:6.

Mr. DONNE (France) said that List F set out the rates of duties, for those items included therein, which had been fixed by mutual agreement of the Member States and which would apply at the end of the transitional period. These were not, therefore, duties on which negotiations could immediately be entered into. However, the Commission, when established, would by virtue of the provisions of Article III of the Treaty, have power to enter into tariff negotiations with third countries on a reciprocal and mutually advantageous basis in regard to the whole of the common customs tariff.

Mr. van LANGENBERG (Ceylon) recalled that in the plenary discussions a representative of the Six Member States had stated that according to calculations based on 60 per cent of imports effected by them from third countries the application of the common tariff submitted to the CONTRACTING PARTIES as the specimen tariff would lead to a decrease in customs revenue to the extent of $30 to 60 million. These results, however, had been obtained by the determination of certain maximum duties, a level below that which would have resulted from the arithmetical average. On the whole the general incidence itself might be unchanged, but nevertheless what was of particular concern was that the general pattern of tariffs had been altered. For certain countries this would operate to their advantage and for others to their disadvantage. Ceylon was in the latter category.

He did not think that the General Agreement contemplated that in such tariff adjustments there would be a metamorphasis of the pattern of tariffs. This accidental discrimination against particular countries was no doubt unintentional on the part of the Six, but he suggested that the Working Party study the consequences which this revised pattern of tariffs would have on the trade of those particular countries affected.

Mr. MAKATITA (Indonesia) said that his delegation felt that the procedures for compensation as prescribed in Article XXVIII could not possibly be adequate in these circumstances. By way of illustration he pointed to the difficulties of certain outside countries who were traditional exporters to the low tariff Member States; these tariffs would be increased to enable these Members to participate in the Common Market. This should mean, therefore, that compensation be offerred not only by the former low-tariff countries themselves, but also by their high tariff partners who had forced up the overall tariff rates. The Working Party should pay particular attention to this point with a view to arriving at an equitable method for compensatory negotiations which, in these circumstances, should be on a multilateral basis.

He cited the case of tobacco, which Indonesia exported in appreciable quantities to the Netherlands, a low tariff country. The higher common tariff rate could lead to reductions in exports to the Netherlands and he thought it equitable that in such circumstances exporting countries should have the possibility of increasing their exports to other partners when their exports to one Member fell. In this connexion he enquired as to the scope of negotiations envisaged in Article 18 of the Rome Treaty and of the possibility of transposing certain items on the Lists annexed thereto.

Mr. GARCIA-OLDINI (Chile) referred to the reply given to the question raised by the representative of Brazil concerning the negotiation of items in List F and from which he had inferred that these items would not in fact be negotiated until the definitive tariff came into force at the end of the transitional period. In this connexion, however, his interpretation of Article III of the Rome Treaty was that they could be negotiated during the transitional period.

He recalled his statement in the plenary discussions that the basic condition inherent in the whole of Article XXIV was to be found in paragraph 4 of that Article. The calculation of the common tariff on the basis of an arithmetical average could not result in these conditions being met. He pointed out that Chile was the sole exporter of natural nitrates to the Six, and that hitherto such exports were admitted duty-free in all except one of the Member States and in this case the rate of duty applicable had been suspended in view of a quota agreement with Chile. He had observed that a duty of 3 per cent would now be imposed on imports of natural nitrates and customs revenue previously zero would amount to $0.5 million. This commodity was not produced by any of the Member States and represented an example of how inequitable the results of the calculation of tariffs on the basis of an arithmetical average could be for particular countries.

Although the Six had stated that the duties taken into account for the purpose of calculating the arithmetical average were those applied on 1 January 1957, there were certain exceptions to this rule. The effects of introducing those exceptions for the purpose of the overall calculation should be closely examined by the Working Party. The text of Article XXIV:6 was clear in that the Six were to provide for compensatory adjustments, but his delegation considered these provisions inadequate in the circumstances and the Working Party should explore other possibilities.

Mr. REISMAN (Canada) referred to several general considerations raised in the plenary discussions which he said would have to be borne in mind in the formulation of any judgments on the proposed tariff arrangements. Since the information available was not yet complete it would not be possible to carry these deliberations to a definitive stage. A customs union, in an economic sense contributed to world trade only if its impact was creative of new trade and not diversionary of established trade. It was recognized that a customs union could have some effect in diverting traditional channels of trade, but by the same token it should have the effect of creating new opportunities for trade. This was the philosophy underlying paragraph 4 of Article XXIV and it was in this light the tariff arrangements should be examined.

Although paragraph 5(a) of Article XXIV provided the framework for an examination of the general incidence of the common tariff it had no precision in that there were many highly complex questions which could not be reduced to simple mathematical proportions. Low tariffs maintained by a highly developed country for instance might be prohibitive whereas high tariffs in an underdeveloped country might not be. He thought therefore that the suggestions made by the representatives of the United States and Australia could be effectively incorporated to develop both a commodity-by-commodity and country-by-country approach.

Difficulties also arose from the fact that while in some cases calculations of the duties for the common tariff had been based on the arithmetical average method, in others the negotiating technique had been employed. In situations where the formula was not precise, therefore, separate judgments would have to be made in an endeavour to arrive at some form of compromise. He expressed doubt as to whether the procedures of Article XXVIII were appropriate, but thought, this could best be resolved at a Working Party level.

It was important, meanwhile that the CONTRACTING PARTIES receive more precise information from the Member States in connexion with their intention on the items in List G. There was as yet no definite indication of what rates of duty were likely to be applicable and for countries such as Canada trade in these items represented a substantial proportion of their total trade with the Six. When final consideration was given to these items, mostly agricultural products and raw materials, he urged the Six to bear in mind that such products normally bore low rates of duty.

Mr. DONNE (France), in reply to a question raised by the representative of Chile said that the duties on the products contained in List F of Annex I to the Treaty had been fixed by mutual agreement between the Member States and not by means of the method of arithmetical averages. During the transitional period the Member States would progressively bring the duties at present in force closer to the rate of the common customs tariff. These duties were subject to the same legal rules as the duties covered by other provisions of the Treaty. Consequently, the negotiations which the Six were eventually to conduct pursuant to paragraph 6 of Article XXIV and those envisaged in Article III of the Treaty would also cover the tariff headings contained in Annex F.

Mr. PHILIP (France) pointed out that the only question to be discussed was the general incidence of the common tariff. Indeed, a study of the incidence product by product could only lead to endless discussion and create insoluble problems of compensation for each item. It had been proposed to study the incidence of the common tariff country by country. This appeared to be an extremely difficult, if not impossible task for it would require weighting with volumes of trade and furthermore disregard the basic rule of GATT which is set out in Article XXVIII that a concession initially negotiated with one or more countries pertains to all contracting parties so that in the course of renegotiation other countries with a substantial interest are authorized to intervene.

The proposal by the United States delegation to examine the general incidence commodity by commodity, however delicate, would perhaps be better to assess the general incidence of the tariff, it being understood that one would have to take into account the conventional or autonomous duties existing at the date of 1 January 1957. There were two methods to carry out this process of assessment: arithmetical average and the weighted average. During the discussions preceding the signature of the Treaty work had been started on the calculation of the weighted average for agricultural products. This cumbersome method had, however, been discarded mainly because it led to distinctly higher averages than the more simple and more precise method of the arithmetical average. Accordingly, if after insisting on the use of the weighted average the CONTRACTING PARTIES discovered that this method led to a higher tariff than that proposed by the Member States they would have to recognize their right and draw the appropriate conclusions. The Member States had calculated the general incidence of the common tariff for a large number of the most representative basic commodities of the trade between Member States and the other contracting parties. This study had shown that for these commodities, representing some 65 per cent of the trade of the Community, this incidence was in fact lower than that resulting from the application of present individual actual tariffs. He hoped that the contracting parties which had reached different conclusions would make available their data. For their part the Member States had submitted to the secretariat a study which compared, for commodities representing 65 per cent of the trade of the Six, the customs receipts under the proposed common tariff and those which would result from the application in each case of the actual tariffs of the Six Member States. It would be desirable to compare scientifically this study and others which might have been made on the subject.

Mr. SVEC (Czechoslovakia) said that the discussion had amply illustrated the many complicated aspects of the problem and he considered that some attention should now be given to facilitating their future examination. He had observed that the Articlesof the General Agreement relevant to the examination of the Rome Treaty, although lucid, could be subject to different and controversial interpretations. In this connexion he enquired whether it would be possible for the secretariat to furnish extracts from the Havana Reports related to the interpretation of the Articles concerned. To illustrate the importance of such information he cited the phrase "general incidence of the duties" which had been the subject of some discussion by the Committee and pointed out that at Havana this wording had replaced the previous text "average level of the duties". It was stated in the Havana Report that the intention of the phrase "general incidence of the duties" was that it should not require a mathematical average of customs duties but should permit greater flexibility so that the volume of trade might be taken into account.

Referring to the task of the Working Party he felt that it would be beneficial if the main apprehensions of outside countries, both individually and collectively, could first be identified. Procedures could then be worked out to ensure that there would be no damage to their trade interests.

The CHAIRMAN reported that most of the drafting changes to Article XXIV made at Havana had been done by a sub-group for which no records were kept. However, the relevant extracts from the records of the higher Committee and earlier drafting history of Article XXIV would be made available.[1]

Mr. PHILIP (France) thanked the Czechoslovak representative for reminding the CONTRACTING PARTIES that at the Havana Conference the French delegation had played a prominent rôle in the insertion and drafting of the present Article XXIV. Already at that time France envisaged the creation of a large common market in Europe; hence its particular interest. The present Article had therefore undoubtedly been drafted to apply to schemes such as the one now before the CONTRACTING PARTIES. The French delegation at Havana had had in mind the arithmetical average for the calculation of the common tariff. This concept had subsequently been broadened in the sub-committee in order to take account of the flow of trade.

Mr. PRESS (New Zealand) stated that it was now up to the CONTRACTING PARTIES to determine whether the general incidence of the common tariff did in fact conform with the requirements of paragraph 5(a) of Article XXIV. In this regard his delegation held the same view put forward by the representative of Australia that the only effective method of calculating the height and restrictiveness of the common tariff would be on a country-by-country approach. He thought that each contracting party individually should state its position to the Working Party which could then endeavour to form an overall assessment of the effect of the common tariff. The problem was not confined purely to the arithmetical averages that had been calculated as other techniques had also been employed. Further the rates of duties for the items in List G were not yet known and he joined previous speakers in urging that the Six make every effort to determine these rates at an early date.

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[1] The information has been distributed in W.12/18.

Mr. Press referred to the statement by the representative of Indonesia pointing to the difficulties of contracting parties whose export trade had been principally with low-tariff Members whose rates were to be forced up in conformity with their obligations under the Rome Treaty. There was another aspect to this problem in that those exporting countries would not only have to face increased protection in the form of tariffs but also through import controls. The Working Party would therefore have to take into account this inter-relationship of tariff aspects with other protective measures and provide effective co-ordinating machinery.

He expressed concern at the fact that not only were the rates of duty on some items in List F rather high but there was also the possibility that the minimum price provisions of Article 44 of the Rome Treaty might be applied to these items. Although the representative of France had informed the Committee that the Six did in fact envisage the possibility of entering into negotiations on these items during the transitional period Mr. Press thought that the question of principle he had raised should be borne in mind by the Working Party.

Mr. GARCIA-OLDINI (Chile) said that the CONTRACTING PARTIES did not possess sufficient information to assess the general incidence of the common tariff. Although the general principle was that the duties of the common customs tariff would be at the level of the arithmetical average of the duties applied in the four customs territories, there were numerous exceptions to this rule. The Treaty itself provided that in numerous cases the duties taken into account for calculating this average would be higher than those applied by the Member States on 1 January 1957. Admittedly if for other items the common tariff was lower than that obtained by applying the general rule, this might cause serious difficulties for a contracting party which would be in the hapless circumstance of seeing these reductions benefit other countries while being itself hurt by the application of a higher tariff on its export products. Such a contracting party would no doubt be entitled to compensation.

His delegation hoped that the Six Member States would make every attempt to safeguard the interests of all contracting parties.

Mr. SANDERS (United Kingdom) said it was clear from the discussion that the question of the common tariff was one of the most important issues for the CONTRACTING PARTIES to examine. It was also clear that there were many aspects which required detailed examination in a Working Party and he went on to outline some of these points.

The rates of duty for the items in List G were still to be negotiated. Calculations by his delegation had indicated that the items concerned represented approximately 20 per cent of the external trade of the Six - a substantial percentage. The tariff rates eventually fixed for these items could affect the level of the common tariff substantially and his delegation had already stressed the importance of the rates for this remaining sector being settled at a moderate level. The level at which it was ultimately fixed would be one of the important tests of the spirit and philosophy of the Six. The items

in question were not only of considerable export interest to outside countries but were such products as would have far-reaching effects on the whole industrial structure of the Six.

If the general safeguards laid down in Article XXIV were to be meaningful for all contracting parties then the provisions of that Article including those of paragraph 6 should be applied in such a way as to take into account the trade of all of them including those whose trade with the Six was rather limited or confined to one or two products only. The Working Party should also seek further clarification of the question first raised by the representative of Chile on what the powers of the Community would in fact be in relation to the common tariff.

Although assurances were given by Baron Snoy at the Intersessional Committee in April that the period of fifteen years was the absolute maximum for the achievement of the stated objectives there was still nevertheless a certain risk that there could be periods of delay between the phases in the elimination of internal tariffs. This aspect of the plan and schedule was one to which some attention should be given in the Working Party.

Mr. SWAMINATHAN (India) referred to problems faced by underdeveloped countries largely dependent on their export income for economic development programmes; he expressed the hope that the Working Party would examine the level of the common tariff and the plans for the elimination of tariffs between the Member States with a view to ensuring that the export trade of underdeveloped countries would be maintained and that opportunities existed for it to increase. He agreed with the representative of Canada that a combination of the commodity-by-commodity and country-by-country approach would be appropriate.

The CHAIRMAN, concluding the discussion said that there had been almost unanimous agreement that a Working Party be established to consider this question in greater detail. The Working Party would take into consideration the points raised in this discussion together with the other available documentation. The Working Party would report to this Committee before the end of the Session and upon doing so its mandate would expire. Action beyond the Session would be taken up under points B and C of the Committee's terms of reference.

The Working Party would be nominated when the general discussions of the other aspects of the Rome Treaty had been concluded.