

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/656

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TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY

Replies from the Interim Committee for the Common Market and Euratom to the questions submitted by contracting parties

In conformity with the procedures agreed upon by the Intersessional Committee at its meeting on 24-27 April (IC/SR.30) the Interim Committee was invited to supply explanations in answer to questions submitted by contracting parties concerning the provisions of the Treaty and its implementation. A consolidated list of questions was prepared and transmitted to the Chairman of the Interim Committee (L/639). The Interim Committee has now forwarded their replies to the questions and they are distributed herewith.

INTRODUCTION

The Interim Committee for the Common Market and Euratom has attempted to reply to questionnaire L/639 of the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade and so to clarify further the points already contained in the Memorandum submitted to the CONTRACTING PARTIES on 29 May 1957. (L/657).

Certain questions indicate that the CONTRACTING PARTIES fear that expansion in trade between Member States might be obtained at the expense of traditional currents of trade.

This fear is baseless. In fact, the establishment of the Common Market is intended to lead to a more rapid development of the economy of Member States, and there is no reason to expect a falling off of their trade with third powers. On the contrary, the Community will be forced to increase its purchases abroad in order to meet the increasing needs of an expanded economy.

It was these very considerations which led the CONTRACTING PARTIES to recognize, at the time when the General Agreement was being worked out, that customs unions should not be subject to the general rulings covering most-favoured nations.

Other questions deal from various angles with the inequalities that will ensue from the application of the Treaty, in trade and in other matters, between the way Member States treat each other and the way they treat third countries.

These inequalities are an inevitable and direct result of the general exception to the most-favoured-nation clause, an exception dealt with in Article XXIV of the General Agreement. The formation of a customs union which could in no case be dissolved, even when a Member State finds itself in balance-of-payments difficulties, is a joint action aimed at increased freedom of trade such as is envisaged by the General Agreement.

Furthermore, the provisions contained in the Treaty of Rome on common action in economic and financial matters mean that the Community is an organization which goes far beyond a mere customs union: these provisions form a basic element in the advance of trade exchanges, since they strengthen the economies of the Member States and in this way improve their balance-of-payments positions. They are therefore additional guarantees of international cooperation.

There can be no doubt that the establishment of the Common Market will play a considerable role in the prosperity of Western Europe, and the GATT report on International Trade, 1956, has underlined the importance of Western European prosperity for the economy of the world in general.

The Interim Committee has, however, had some difficulty in replying to certain questions on points that are outside the field of the General Agreement or which deal with presumed intentions of the Member States or of the institutions of the Community.

At this point it should be noted that Member States should not be subjected, in connexion with the General Agreement, to a treatment which is different from that accorded to other contracting parties, and that the actions taken by them individually or jointly must be judged on a factual basis.

The Interim Committee wishes to draw attention to the provisions of Article 234, which indicate that the institutions of the Community will exercise their powers with due respect for the international agreements to which the Member States are parties.

The Interim Committee would like to stress once more its readiness to give the CONTRACTING PARTIES any information which they may still require concerning the Treaty establishing the European Economic Community. The Committee believes, however, that the information already supplied in the Memorandum (L/637) and the replies given to the various questions put by the CONTRACTING PARTIES should dispel a number of fears and misunderstandings.

I. THE TRANSITIONAL PERIOD

ARTICLE 8

Questions 1 and 2

1. This Article provides that (a) a decision is needed before passing to the second stage; (b) the second and third stages are each of four years; and (c) the total period of transition may not be longer than fifteen years.

The representative of the Interim Commission stated at the meeting of the GATT Intersessional Committee in April that (c) was an "absolute guarantee ... of a maximum transitional period of fifteen years". Having regard to this assurance and to (b), can the Member States say what is implied in (a)? Is the effect of these provisions, taken together, that there must be a move from the first stage to the second stage at the latest at the end of the first seven years?

2. (a) Could an indication be given of the "main aims" referred to in paragraph 3?

(b) What will happen if these aims are not achieved? Will the Treaty be null and void, or will the preferential system established in the first stage be maintained? (Ref: Article 240)

Reply

Article 8 of the Treaty lays down the length of the transitional period. It provides that this period shall in no case extend beyond fifteen years, even though the Article contains provisions which would in certain circumstances allow of changes in the length of the successive stages of this total period.

Under this same Article, it is the task of the Council of Ministers of the Community to make a statement confirming that the essence of the objectives specifically laid down as the condition of passing from the first to the second stage has or has not been achieved. This is a matter of appreciation which is left to this institution.

If the above statement, which requires unanimity at the end of the fourth or of the fifth year, has not been made at either date, it shall be made by a qualified majority at the end of the sixth year.

At this point each Member State voting in a minority or, if the required majority vote has not been obtained, any Member State, shall be entitled to require the Council to appoint an Arbitration Board whose decision shall bind all Member States and the institutions of the Community.

The Arbitration Board shall give its award within six months from the date of the vote by the Council taken at the end of the sixth year.

Question 3

Article XXIV:5(c) of GATT requires that an interim agreement for the formation of a customs union "shall include a plan and schedule". Is it the intention of the Member States to provide a more precise plan and time-table of the action to be taken during the transitional period?

Reply

The Treaty itself contains not only a plan and a schedule which are most precise and most detailed, it also contains a whole set of rules and other means of ensuring that, on the expiry of the transitional period, a customs union shall exist which is in conformity with the provisions of Article XXIV.

Referring to paragraph 2 of their Memorandum, the Member States wish to take the opportunity of emphasizing once again that the Community they have decided to establish goes far beyond the formation of a customs union as defined in Article XXIV of the General Agreement.

II. THE ELIMINATION OF CUSTOMS DUTIES BETWEEN MEMBER STATES
(Articles 12 to 17)

ARTICLE 14

Question 4

This Article provides for a 30 per cent reduction overall in each of the first two stages and 40 per cent in the third stage. Paragraph 3 calls for a minimum reduction of 20 per cent on individual products in the first stage, and 35 per cent by the end of the second stage, leaving 65 per cent to be completed by the end of the third stage. Paragraph 6, however, requires Member States to endeavour to achieve reductions of 25 per cent on individual products in each of the first two stages, leaving 50 per cent in the last stage.

- (a) What is the force of the requirement in paragraph 6 and to what extent does it override the minimum reductions provided for in paragraph 3?
- (b) In view of the form of the plan is there not a real danger that even if Member States achieve the targets set in paragraph 6, they will find themselves left with such heavy commitments in the final stage that they may not be able to complete the programme of tariff reductions by the end of the transitional period, with the result that the achievement of a full customs union is further delayed at least for a substantial number of tariff items?
- (c) What measures have the Member States in mind in providing (in paragraph 6) for the Commission to make recommendations to members where there is a risk of failure to achieve these targets and the objectives in Article 13? In particular, what measures do they contemplate to prevent the accumulation of hard-core duties? Is it their intention to administer the rules regarding escape clauses in such a way that resort to them will be granted only in very exceptional and serious circumstances?

Reply

- (a) The provisions of paragraph 3 are mandatory and override those contained in paragraph 6 of Article 14 of the Treaty.
- (b) As pointed out in the reply to the last question, the Treaty itself contains a whole set of rules and other means which ensure that the danger referred to shall not materialize.

The provisions of paragraph 6 are among the rules and other methods which serve this purpose. Furthermore, as pointed out in paragraph 13 of the Memorandum (L/637), it was in the interest of the Member States and of the Common Market that a mandatory time-limit be fixed for the expiry of the transitional period, because any adjustments necessary in the policies of the Member States and in the operation of undertakings would be affected all the better if it were absolutely certain that progress would not be blocked and that there would be no retrogressive step.

The right to use waivers is moreover subjected to control by the institutions of the Community. This control also ensures that the European Common Market shall be fully achieved within the time limits laid down, because the Member States are aware that undue recourse to escape clauses on the part of any member might hamper the adaptation of its national economy within the Common Market, with the result that the country concerned would never be able to play its part as a participant in the Union. Such a consequence would not be acceptable to other Member States because those benefits that would accrue to them as a result of the establishment of the Community would be nullified and they would have to bear the whole burden of the adjustments necessitated by the formation of the Union without receiving any compensation in return.

- (c) If the question refers to the provisions of Article 226 of the Treaty, these cannot in fact be used except in case of serious difficulties which are likely to persist. It is then the task of the European Commission to lay down the measures of safeguard which it considers necessary.

ARTICLE 14(5)

Question 5

What "special problems" are foreseen?

Reply

The problems foreseen are essentially technical, e.g. the fixing of the basic duty, particularly in the case of seasonal duties and mixed duties, harmonization of customs nomenclature, etc.; settlement of these problems can have no influence on the speed with which the customs union is established.

ARTICLE 14(7)

Question 6

What circumstances are envisaged as giving occasion to amend the terms of Article 14, and thereby to change or retard the timing of the reduction of duties and the achievement of a true customs union? Would any such amendment be subject to the provisions of Article 8(6) which fix the maximum transitional period at fifteen years?

Reply

The provisions of paragraph 7 of Article 14 are intended to facilitate any changes made necessary by the development of the Common Market.

It should, however, be noted that the forms of adaption thus made possible concern the provisions of Article 14 only and can in no circumstances be used to raise the question of the total maximum length of the transitional period, which is fifteen years.

ARTICLE 16

Question 7

What export duties and taxes are at present effective in Member States?

Reply

The table given in the Annex to this document supplies the answer to this question.

III. THE COMMON TARIFF AND NEGOTIATIONS ON GATT CONCESSIONS
(Articles 18 to 29 and III)

ARTICLE 18

Question 8

This Article contains an expression of the willingness of the Member States to enter into agreements which at reducing duties below the general level which these States could claim to force on the establishment of the customs union. Would contracting parties be correct in assuming that this provision envisages negotiations only where they seek concessions on the rates of a common tariff which has been drawn up in accordance with Article XXIV of the GATT?

Reply

The provisions of Article 18 of the Treaty were intended by Member States to prove their willingness to contribute to the development of international commerce and the reduction of barriers to trade, by showing that the duties laid down in the common tariff of the Community will not be inflexible but will be liable to reduction by negotiation on the basis of the principles for tariff negotiations set out in the General Agreement.

Question 9

Does this Article envisage bilateral negotiations between individual Member States and third countries on the tariff rates applicable to specific commodities entering the customs union?

Reply

The conditions in which tariff negotiations will be conducted are given in chapter 3 of Title II of Part Three of the Treaty.

This chapter does not provide for any form of bilateral tariff negotiations between a third country and an isolated Member of the Community, but only between a third country and the Community.

Question 10

Is the establishment of the common tariff likely to result in a strengthening of the bargaining position of the Member States vis-à-vis less developed countries and countries largely dependent upon the export of primary commodities? Will this be further aggravated by the association of the dependent territories?

Reply

It is evident that the Community, with its enormous market, will be of particular interest to outside countries when trade negotiations are under discussion.

The concessions which the Community will find it useful to make will consequently have a special value.

It is not, however, obvious how the situation of less-developed countries can be "aggravated" by the association of the overseas countries and territories and by the establishment of a common customs tariff in which the duties on primary commodities are, except for a few special products, low or non-existent, especially when one recalls the system of levelling down, which deals in advance with the fear expressed by certain contracting parties. It would seem, on the contrary, that by gradual progress towards its objectives - continuous and balanced expansion and increased stability - the Community will ensure that those countries which export primary commodities will have larger and more stable markets for their goods.

Question 11

Whereas some Member States have imposed only low duties on many primary products, such as tobacco, tea, coffee and spices, the duties of the common tariff on such commodities may be considerably higher. What could be done to remedy this situation?

Reply

It must be pointed out from the start that in each of the Member States the products referred to in this question are today usually a monopoly or else subject to considerable fiscal charges.

On the other hand, however, the provisions of Article XXIV of the General Agreement stipulate that the common tariff duties shall not on the whole be higher than the general incidence of previously existing duties.

Moreover, the expansion that will result from the establishment of the Common Market should increase the consumption in Member States of the products in question and so facilitate the expansion of traditional currents of trade. It is obviously in the interest of the Community to increase its purchases from outside countries in order to expand its exports to these countries.

In this spirit the European Commission must (Article 29(a) of the Treaty) be guided, in carrying out the tasks entrusted to it, by the need for promoting commercial exchange between the Member States and third countries and must be on the look-out for any difficulties that may arise.

ARTICLES 19 and 20

Question 12

- (a) When is it expected that the Community will have available, for consideration under Article XXIV of GATT, the proposed rates of duty for the common external tariff that result from the application of the various relevant Articles of the Treaty, including Articles 19 and 20?
- (b) Can copies of the tariffs of the four customs areas covered by the Community, containing the duties levied on 1 January 1957, on which the common tariff is to be based, be made available to the CONTRACTING PARTIES?

Reply

- (a) In view of the material and technical difficulties, it is not at present possible to state the date on which the rates of duty for the common tariff will be made available to the CONTRACTING PARTIES; nonetheless, as indicated in paragraph 33 of the Memorandum (L/637), the Member States will submit to the CONTRACTING PARTIES by September 1957 a "specimen tariff"¹ showing the rates of duty applicable to products considered to be the most representative items of the trade between the Member States and outside countries.

In principle, the first changes in the existing tariff that will be made in the course of progress towards the common tariff will not occur until the end of the fourth year.

- (b) ~~The answer to this question is in the affirmative.~~

Question 13

The provisions of Article 19 appear to require generally that arithmetical averages of the duties levied on 1 January 1957 should be adopted (taking no account of the volume of trade passing across the various customs frontiers). There are, however, a number of exceptions to this general rule including, in particular, the following:

As regards the Italian tariff, the duties taken for the purpose of calculating the common tariff will ignore the reduction of 10 per cent which has been in operation over a wide range of the Italian tariff since 1951. Moreover, conventional Italian rates are to be used in the calculation instead of applied rates where the former do not exceed the latter by more than 10 per cent. Where conventional rates exceed the applied rates by more than 10 per cent, the applied rates plus 10 per cent are to be used.

¹The "specimen tariff" is based on a combination of the rules contained in the Treaty and of the many details at present found in the four tariffs. Though the level of duties given in the tariff is to remain unchanged, the rates and the definition of sub-items will probably be amended slightly in order to tidy the nomenclature and to adapt it more fully to commercial and administrative requirements.

Compare too the reply given to question 24.

List A in the Annex sets out a number of items where the "legal" French tariff rates are to be used instead of the rates which have actually been applied for many years.

For products in List E where the Benelux tariff does not exceed 3 per cent it is to be deemed to be 12 per cent for the purposes of calculating the common tariff.

The duties agreed in List F in respect of a number of important agricultural products are substantially in excess of the rates which would have resulted from the application of the general treaty provisions.

- (a) Having regard to the special treatment covering some sections of the common tariff, referred to above, is it not the case that this will result for a wide range of products in higher common duties than if the general rules had been applied? How do the Member States intend to ensure that the duties in the common tariff shall not on the whole be higher than the general incidence of the duties now applicable in the constituent territories, with due regard to the volume of trade passing across the various customs frontiers?
- (b) Where these higher-than-average duties in the common tariff may threaten particularly damaging effects on the trade of individual contracting parties do the Member States accept that this would be difficult to reconcile with the general spirit of the GATT, and in particular the provisions of paragraph 8 of Article XXIV "that the purpose of a customs union ... should be to facilitate trade between the parties and not to raise barriers to the trade of other contracting parties with such parties"? How do the Member States intend to mitigate such risk of damage to the trade of individual contracting parties?
- (c) Are the Member States prepared to reduce the level of their draft common tariff if it is proved to be higher than the duties previously applicable?

Reply

- (a) The Member States intend to maintain scrupulous respect for their obligations within the framework of the GATT. Furthermore, while observing the provisions of Article XXIV of the General Agreement, they have adopted a method which leads to a common tariff whose general incidence is below the limits authorized by the Article.

In fact, under Article 19(1) the duties of this tariff have in general been calculated on the basis of the arithmetical average of the duties that are being effectively applied and not, as might have been done, on the basis of autonomous and conventional tariffs, which are by their nature higher.

Moreover, this action has been supplemented by the levelling down provided for in Lists B, C, D and E annexed to the Treaty.

- (b) It would be well to wait, before replying on this point, until damage has been shown to arise.
- (c) In view of what has been said under (a) above, the Member States feel that the question does not arise.

Question 14

Will duty suspensions at present in force be continued?

Reply

The suspensions of duty that are at present in force are the results of unilateral decisions by each of the Member States.

It is not possible to foresee what steps will be taken in these matters at a later date, but they must not disturb the bringing into line of the tariffs of individual Member States and the common external tariff.

Question 15

Will tariff quotas established in GATT tariff negotiations remain effective?

Reply

The tariff quotas established in the GATT will be treated in the same way as other bound duties.

Question 16

Will the Community's common tariff be a single tariff system applicable to all non-member countries?

Reply

The Treaty provides for the establishment of a common customs tariff. In view of the international agreements to which the Member States are parties, it is not possible to foresee what tariff system the institutions of the Community will adopt towards third countries.

Question 17

Will France maintain its multiple tariff system (preferential, most-favoured-nation and general) throughout the transitional period?

Reply

The Treaty leaves France with the right to maintain this system during the transitional period.

Question 18

What are the reasons for, and the basis on which are established, the various lists mentioned in Articles 19 and 20?

Reply

The various lists mentioned in Articles 19 and 20 are the result of internal negotiations. The CONTRACTING PARTIES will find it useful to refer to paragraphs 26 and 27 of the Memorandum (L/637).

Question 19

Why is wool included in list B when the average of existing rates is below 3 per cent, and what rates are proposed for wheat and wool?

Reply

The purpose of including products in List B is to show that duties on these products shall in no case exceed 3 per cent, whatever the rates on which the calculation of the arithmetical average be made.

It is already possible to state that wool, not carded or combed, will be duty-free.

Duty on wheat will be 20 per cent. However, certain provisions are included in Note 1 of the relevant page in List F.¹

Question 20

Would the Interim Committee indicate, so far as possible, the tariff rates and import taxes which will be levied in the various stages on raw jute, raw cotton, hides and skins, tea, wool, cotton yarn, cotton piece-goods, cotton and rape-seed cake, animal hair, bones and bonemeal, carpets, sports goods and products of cottage industries, and how these compare with the duties and taxes at present levied in each of the Member States?

Reply

The duties that will be included in the common tariff in connexion with the products referred to in this question will in most cases be found in the specimen tariff which Member States will submit to the CONTRACTING PARTIES by September 1957.

¹ Paragraph (b) of Note 1 reads as follows: "Until a decision as to the duties to be applied has been taken, under the measures provided for in Article 40, paragraph 2, Member States may, by derogation from the provisions of Article 23, suspend the collection of duties on these products."

At the end of each stage the gap between the duties levied by each Member State and the duties in the common tariff will be reduced in accordance with Article 23 of the Treaty.

Question 21

What steps will be taken to keep third countries informed of contemplated additions to list G and of the progress of negotiations towards fixing the common duties for the various items?

Reply

The additions to List G will be notified to the CONTRACTING PARTIES as soon as they are known.

The result of the negotiations on List G will also be notified to the CONTRACTING PARTIES on completion of the negotiations.

Question 22

Will the duties fixed for items in list G be submitted to the CONTRACTING PARTIES for their consideration?

Reply

Duties on products of List G will be notified to the CONTRACTING PARTIES on the same basis as for other products.

Question 23

Will the general principle of the arithmetical average be applied in the fixing of the duties for items in List G?

Reply

The principle adopted for settling the duties applicable to List G is that of negotiations between Member States.

The negotiations are to begin before the close of the first stage.

If it proves impossible in the case of certain products to reach agreement, the Council acting up to the end of the second stage by means of unanimous vote and subsequently by means of a qualified majority vote shall fix the duties under the common customs tariff.

ARTICLE 21

Question 24

Can the duties of the common tariff be arbitrarily changed by the Council in order to "ensure the internal harmony" of the tariff?

Reply

The duties in the common tariff may be changed to "ensure the internal harmony" of the tariff, but not "arbitrarily". The provisions of Article 21 (2) of the Treaty are only intended to facilitate the changes necessary to correct anomalies which would not fail to arise from a hard and fast application of the Treaty, especially owing to the effects of the arithmetical average. It is quite obvious in fact that a tariff, based fundamentally on taking the duties of four tariffs and dividing by four the total for each item, will contain anomalies which it must be possible to rectify. It will be the task of the Commission to make the relevant proposals, and in doing so to observe the spirit behind the formulation of the different parts of the common tariff.

ARTICLE 22

Question 25

- (a) Can the Interim Committee give some indication of the extent to which customs duties of a fiscal character are likely to be taken into account for calculating the arithmetical average?
- (b) Would the duties thus taken into account be the basic duties before deduction of any amounts transferred to internal taxes?

Reply

In this field it is not possible for the Interim Committee to foresee what decisions will be taken by the European Commission.

Questions 26 and 27

Will all fiscal duties be aligned or will Member States be free to impose different rates on imports from third countries?

Could the Interim Committee give some indication of the products that are likely to be subject to fiscal duties?

Reply

The common tariff will make no distinction between fiscal and protective duties.

ARTICLE 23

Question 28

Paragraph 1(a) states that on items where the duties do not deviate from the common tariff by more than 15 per cent, the individual rates shall be brought to the common tariff level by the end of the first stage. Will this adjustment take place at this rate where an item is within this range in one or two countries, or only when the duty in all countries is within a 15 per cent deviation from the common rate?

Reply

The adjustment provided for in Article 23(1)(a) of the Treaty is to be made by a Member State when the duties applicable to a tariff item are within the limits indicated, without reference to the position in other Member States.

ARTICLE 25

Question 29

Will tariff quotas be non-discriminatory? If not, how will quotas be allocated? How will the size of quotas be determined? Will Member States be able to undertake bindings in respect of such quotas? If so, for what length of time would such bindings be undertaken?

Reply

Tariff quotas will be managed in conformity with the international undertakings of Member States.

Question 30

Why is there no provision for the granting of tariff quotas for the products in List F?

Reply

The tariff quotas provided for under Article 25 are, as far as third countries are concerned, granted by autonomous action and can always be altered unilaterally by the Community. Internal considerations within the Community have governed the choice of products that might be made subject to tariff quotas.

Furthermore, it is pointed out that the duty applied to many products on List F is nil, and that many other products on this list, which also appear in Annex II to the Treaty, may be made the subject of tariff quotas.

ARTICLE 28

Question 31

Do the terms of this Article imply that, during the transitional period, amendments to the common tariff rates, and the lists, established by Article 19 may be made by a unanimous vote of the Council?

Reply

The answer to this question is in the affirmative.

i.e. YES

Question 32

If any modification involves an increase of a bound rate of duty, would the appropriate provisions of the General Agreement be applied?

Reply

In any case where, as a result of negotiations under Article III of the Treaty and within the framework of the GATT, a modification involves the increase of a bound rate of duty in the common tariff, the provisions of the General Agreement will be applied.

ARTICLE 29

Question 33

Do the provisions of Article 29(a) mean that the Commission is under the obligation to approve measures necessary for the promotion of trade with third countries and to act against measures which obstruct such promotion?

Reply

Article 29 provides that the Commission shall be guided by various considerations, and these expressly include the need for promoting commercial exchanges between the Member States and third countries. It will be for the Commission to apply these general directives to the particular cases with which it will be faced.

ARTICLE 111

Gatt Tariff Concessions

Questions 34, 35 and 36

Seeing that the transitional period may be as long as fifteen years, how do the Treaty countries propose to comply with the provisions of GATT Article XXIV:6? When and how do the Member States propose to enter into negotiations with contracting parties?

Article XXIV:6 requires that in providing for compensatory adjustment due account should be taken of compensation afforded to third countries by the reductions brought about in the corresponding duty in the other constituents of the union. Such compensation will not always be adequate; indeed where the common tariff has been fixed on a particular item above the average level of the existing duties, there may be no compensation whatever of this kind. What arrangements do the members of the Community contemplate in the negotiations foreseen under paragraph 5 of Article XXIV for adjustment of the proposed tariffs or effective compensation elsewhere so as to satisfy individual contracting parties in respect of the range of trade in which they are particularly interested.

When Member States propose to enter into negotiations with contracting parties to what extent will the Commission be consulted? What powers are conferred on the Commission in this connexion?

Reply

The attention of the CONTRACTING PARTIES is drawn to the fact that the first changes in customs duties on the imports made by Member States from third countries will occur only at the end of the fourth year after the Treaty has come into force.

The Commission is the joint representative of the Member States in tariff matters. It acts within the framework of directives given by the Council.

It will therefore be possible; as soon as the institutions of the Community have been installed, to open discussions on the application of paragraph 6 of Article XXIV of the General Agreement.

Question 37

On some items which at present appear in the GATT Schedules of the Member States, rates of duties will be fixed by negotiations between these States. Will the countries in whose favour the rates of duties on these items were bound be consulted before the new rates are negotiated?

Reply

The Treaty does not provide for such consultations.

Question 38

In what way are tariff negotiations to be conducted concerning the external tariffs of overseas countries and territories?

Reply

The Treaty contains no provisions altering the system of tariff negotiations concerning the external tariffs of overseas countries and territories.

IV. ELIMINATION OF QUANTITATIVE RESTRICTIONS
BETWEEN MEMBER STATES
(Articles 30 to 37)

Question 39

Articles 30 to 33 require Member States to remove progressively all their quantitative restrictions on trade among themselves and to eliminate them entirely by the end of the transitional period.

- (a) Do these obligations mean that with respect to trade within the Community balance-of-payments criteria would no longer be relevant in determining import restrictions policy?
- (b) Do these obligations mean that for a Member State experiencing balance-of-payment difficulties of a given intensity import restrictions imposed against third countries would be more intense than would be the case if they were applied on a non-discriminatory basis?
- (c) Similarly, do they mean that for a Member State experiencing an improvement in its balance-of-payments position, progress in the removal of restrictions against third countries would tend to be slowed down?

Reply

The removal of quantitative restrictions and all other obstacles to trade between Member States will result in an expansion of the market, and so in an increase in the needs of the Community. The attainment of the objective of continuous and balanced expansion, which the signatory States of the Treaty of Rome have set themselves, cannot but be beneficial to third countries, for it will contribute to the growth of international trade.

The benefits that will occur to all outside countries when the Treaty is implemented should not be forgotten when particular provisions concerning various aspects of the elimination of obstacles to trade come up for discussion.

- (a) Articles 30 to 33 do not merely set out aims for Member States; they impose obligations without, however, referring directly to the question of the balance-of-payments. The signatory States of the Treaty of Rome have not, however, underestimated the difficulties which may arise in the execution of these obligations through the disequilibrium in their balance-of-payments.

Articles 104 to 109 are intended to provide a solution for these difficulties.

- (b) Please see the reply to question 89.
- (c)

ARTICLE 33

Question 40

This Article provides that one year after the entry into force of the Treaty existing import quotas arranged bilaterally among the Member States would be consolidated into single quotas to all Member States without discrimination, and the total value of all such quotas would be increased by 20 per cent and by at least 10 per cent for each product. The quotas are to be increased each year in accordance with the same rules and in the same proportion by comparison with the preceding year.

- (a) Does this system apply to all products for which there are import quotas in existence, including agricultural products?
- (b) What safeguards would there be to ensure that the yearly increases in these quotas will not lead to reduction of the import quotas which individual Member States may have for imports from outside countries?

Reply

- (a) The reply to this question is in the affirmative.
- (b) Outside countries will, of course, share in the growth of international trade which will result from the implementation of the Treaty of Rome, as pointed out in the reply to question 39.

Question 41

- (a) The system laid down in this Article would have the effect of intensifying discrimination against third countries. What provision is proposed for the elimination or relaxation of restrictions on imports from third countries?
- (b) What treatment will be given in the various stages to imports from third countries of primary commodities and raw materials, such as jute, cotton, hides, tea, wool, etc., and how will this compare with the treatment now accorded to these products by the various Member States?

Reply

- (a) Article XXIV of the General Agreement requires the elimination of quantitative restrictions between the Member States of a customs union only for a substantial part of their trade. The signatory states of the Treaty of Rome have decided to follow this ruling in setting up amongst themselves as complete an economic and customs union as possible. Article XXIV does not require them to take identical and simultaneous steps vis-à-vis third countries; the terms of this Article in fact provide that customs unions may form a general exception of the rules of the Agreement, including those which apply to quantitative restrictions. It is therefore inexact

to speak of discrimination in the case of contracting parties to the General Agreement who decide to form a customs union.

It should also be stressed that the Member States are anxious to help the harmonious development of world trade, the progressive abolition of restrictions on international exchanges, and the lowering of customs barriers. That is the purpose of Articles 110 to 116 of the Treaty.

- (b) The Member States can no more reply to this question than any other contracting party when asked about its more or less long-term commercial policy.

Question 42

If quantitative restrictions against third countries are maintained during the transitional period, on what principles will the import control be based (global or bilateral quotas, seasonal liberalization, etc.)? What co-ordination will there be of existing free lists? Will such restrictions be maintained after the end of the transitional period?

Reply

The principles that apply to the maintenance of quantitative restrictions against third countries are those which arise from existing international obligations. The Member States are taking as their objective as high a level as possible in their lists of liberalization. The decisions of the Community will depend on the economic situation as it exists on the expiry of the transitional period.

ARTICLE 37

Question 43

In paragraph 5 it is stated that "obligations shall be binding only so far as they are compatible with existing international agreements". What is the significance of this reference? Is this intended as a reference to such agreements as the International Wheat Agreement or to the State-trading provisions of GATT?

Reply

Paragraph 5 is intended to allow for the obligations of certain Member States which arise from special agreements and conflict with the general application of the terms of Article 37 (the monopoly of matches in the Federal Republic of Germany).

V. AGRICULTURE
(Articles 38 to 47)

Transitional Period

Question 44

- (a) Does the provision of Article 8(6) to the effect that the total period of transition cannot be longer than fifteen years apply fully to all the provisions of the agricultural sector?
- (b) Which are the features of the regime allowed by Articles 38 to 47 which are considered to be confined exclusively to the transitional period?
- (c) Is there any provision whereby the operation of these features could be prolonged beyond the transitional period?

Reply

- (a) The transitional period for agriculture is the same as for other sectors. The provisions of Article 8(6) apply equally to agriculture.
- (b) Under the terms of Article 44, each Member State may in the course of the transitional period and in certain conditions lay down, in substitution for quotas, minimum prices for certain products, subject to the terms of Article 44(6).
- (c) According to Article 44(b) "At the expiry of the transitional period, a table of minimum prices still in force shall be drawn up. The Council ... shall determine the system to be applied within the framework of the common agricultural policy".

Question 45

In view of the comprehensive provisions of Article 40(3) and of the provisions of Article 44(6) and Article 46 can it be stated that all duties and other barriers to trade in agriculture within the Community will have been removed within the transitional period? Is there not a risk that the provisions of this part of the Treaty will result in the perpetuation of a preferential area instead of a true customs union as contemplated in Article XXIV of the GATT?

Reply

The measures provided for on the establishment of the Common Market are applicable to agricultural products by virtue of the terms of Articles 39 to 46 inclusive, and these make allowance for the special conditions in agriculture, which have led throughout the world, to the adoption of special systems in this sector of the economy. These provisions show the willingness of the six

governments to set up not merely a customs union but a real economic community, by determining common aims and procedures which shall ensure that trade within the Community will enjoy conditions similar to those found in a national market.

The provisions concerning agriculture which are contained in the Treaty are of such a character as to give clear assurance that customs duties and other restrictive trade measures will be abolished between Member States.

Development of Agricultural Policy

Question 46

What specific steps are envisaged, in connexion with the development of a common agricultural policy, to improve the competitive position of agriculture?

Reply

The common agricultural policy will be worked out with an eye on improving the competitive position of agriculture. It will be for the institutions of the Community to decide specific measures which can be taken in this connexion and which will be based on the general principles put forward in Title II of the Treaty, particularly in Articles 39(a), 39(e) and 41(a).

Paragraph (a) of Article 39(1) states that the aim of the common agricultural policy shall be "to increase agricultural productivity by developing technical progress and by ensuring the rational development of agricultural production and the optimum utilization of the factors of production, particularly labour".

Question 47

Can it be accepted that in the formulation of their common agricultural policy the Member States will not aim at self-sufficiency to the detriment of the interests of third countries which are established suppliers of particular agricultural products?

Reply

Member States have frequently, in the Preamble and in Articles 110, 234 and 238, and also in a Declaration annexed to the Treaty, stressed their willingness not to set up a closed community but, on the contrary, to help by establishing the European Economic Community in "the progressive abolition of restrictions on international exchanges". As far as agriculture is concerned, their position is brought out by Article 45, which lays down that agreements or long-term contracts shall be made with due regard to "traditional trade currents".

Please refer also to the reply to question 11.

Question 48

In view of the importance of the method of implementation of the special agricultural regime and of the fact that the detailed provisions have yet to be developed by the agricultural conference, can the Member States suggest a satisfactory form of liaison with the GATT secretariat which will enable the CONTRACTING PARTIES to be kept fully informed of developments?

Reply

Under the terms of Article 229, the European Commission is, in general, "responsible for ensuring all suitable contacts with the ... General Agreement on Tariffs and Trade".

Question 49

GATT Article XXIV:8(a)(i) requires that "duties and other restrictive regulations of commerce ... are eliminated with respect to substantially all the trade between the constituent territories of the union". In the light of these provisions, what proportion of the trade between the Member States would be subject to special restrictive trade arrangements under this Chapter of the Treaty?

Reply

Please see the reply to question 45.

Questions 50 and 51

How would the special provisions for regulation of imports of agricultural products be reconciled with the provisions of the GATT?

Should the operation of these systems result in Member States imposing or maintaining restrictions on imports from third countries contrary to GATT obligations, is it envisaged that waivers would be sought by Member States individually?

Reply

It would be helpful if the formulation of these questions were made more precise, especially as regards the meaning of "special provisions for the regulation of imports of agricultural products".

ARTICLE 38

Question 52

Paragraph 1 provides for the inclusion of agriculture and trade in agricultural products in the Common Market, while paragraph 2 stipulates that certain special provisions of the agricultural chapter override the general rules of the Treaty. Among these special provisions are the following:

The establishment of a common organization for agriculture which may involve any necessary measures to implement the objectives of the common agricultural policies (Article 40(3)).

The setting up of special rules of competition to be determined by the Council (Article 42).

The introduction of minimum price systems allowing for quantitative restrictions (Article 44).

The introduction of long-term agreements which may impose upon members the obligation of applying quantitative restrictions among other measures, in order to ensure their fulfilment (Article 45).

- (a) Do these special rules applicable to the agricultural sector provide for the elimination of restrictive regulations of commerce leading to the free movement of agricultural products within the area, and if so how?
- (b) In regard to trade with the outside world are not these special rules and regulations even more restrictive than the temporary restrictions which the six member countries now have on their agricultural imports from third countries?

Reply

These various measures are intended to inaugurate an agricultural policy for the Community which will be comparable with the national agricultural policy of any state; the aims of this policy are defined in Article 39.

Please see also the reply to question 45.

Question 53

Will the existing policies of Member States with respect to imports from third countries be maintained until the entry into force of the common agricultural policy, or will Member States be expected to start aligning their separate policies towards third countries as soon as the Treaty enters into force?

Reply

Pursuant to Article 111 (1), Member States will, during the transitional period, "co-ordinate their commercial relations with third countries in such a way as to bring about not later than at the expiry of the transitional period, the conditions necessary to the implementation of a common policy in the matter of external trade".

ARTICLES 39 and 40

Question 54

Article 39 sets forth the purpose of the common agricultural policy to be, inter alia, to stabilize markets, to guarantee supplies, and to ensure reasonable prices to the consumer. Article 40(3) spells out in more detail the measures to be taken to achieve these aims, in particular, price controls, subsidies on production and sale of various products, arrangements for stock-piling and carry-forward, and common machinery for stabilizing imports and exports.

- (a) Does this not mean that the Treaty envisages, even after the transitional period, a regulated system for agriculture involving subsidies, controls and restrictions and that the system will not provide for the free movement of agricultural products within the Community?
- (b) Is it not the case that such a system will afford protection to the respective national agricultures of the Member States vis-à-vis each other, and will increase the general level of protection vis-à-vis the outside world?

Reply

- (a) These provisions, which will not necessarily apply to all products in Annex II, are intended simply to allow for the conditions peculiar to agriculture which have throughout the world led to the adoption of a special system for this sector of the economy. For just this reason it was found that "The functioning and development of the Common Market in respect of agricultural products shall be accompanied by the establishment of common agricultural policy among the Member States" (Article 38(4)).
- (b) The reply to this question is contained in the replies to questions 47 and 54(a).

Question 55

Are quantitative restrictions and other non-tariff devices to be used to introduce and subsequently implement the common agricultural policy?

Reply

The Member States recall what they have already stated in reply to questions 45 and 47, but must at the same time point out that they cannot forecast what measures will be decided upon by the institutions of the Community in respect of the common agricultural policy within the framework of the international obligations undertaken by the Member States.

Question 56

How will the provisions of these Articles affect trade with third countries? How do the Member States intend to safeguard the legitimate trade interests of third countries?

Reply

There is no good reason for supposing that an agricultural policy common to six states will be any more likely to harm the legitimate interests of the CONTRACTING PARTIES than the policy of any other state.

Question 57

Article 39(1)(a) refers to "un emploi optimum des facteurs de production". How would the Member States define the "optimum" for the purposes of this provision? What are the criteria by which it is to be judged? How is it likely to affect the volume of agricultural imports?

Reply

It should be noted that the "emploi optimum des facteurs de production" is almost anywhere in the world one of the first aims of economic policy as it is of agricultural policy. In this sense it can be said that the "emploi optimum" referred to means the conditions which, from the economic angle, ensure the maximum utilization of productive factors without neglecting the other aims listed in Article 39.

At the same time it is obvious that the very conception of "emploi maximum" makes a policy of autarky impossible.

Please see also the reply given to Question 47.

Question 58

What is meant by the objective "de garantir la sécurité des approvisionnements" in Article 39(1)(d)? Do the Member States consider that supplies cannot be guaranteed by the free movement of agricultural products in international trade, and that the security of supplies must, therefore, be achieved by increased production within the Community?

Reply

It is natural that the objective "de garantir la sécurité des approvisionnements" is included among the several objectives of the common agricultural policy to be adopted in the application of the Treaty. Every State is anxious to have certain supplies at its disposal in case difficulties arise from exceptional circumstances. The reference to "sécurité des approvisionnements" should not in any case be taken to imply an autarkic trend in the common agricultural policy.

Question 59

What role will State-trading play within the framework of Article 40?

Reply

Within the framework of the provisions of Article 40, the part to be played by State-trading will only emerge from the decisions on agricultural policy that will be taken by the Community, and it is not at present possible to forecast what these will be.

Question 60

With regard to State-trading import monopolies: What arrangements will be made to ensure no discrimination in purchases? What arrangements will be made to ensure that protection does not exceed the level of the tariff? What commodities will be subject to such control?

Reply

The situation which would result should the Member States establish import monopolies based on State-trading would be, in relation to the rules of the General Agreement, comparable with that which now exists for items which in individual countries are treated as State monopolies.

Question 61

Article 40(2) provides that a common organization for agricultural markets will be established in the form of a system of common rules to control competition, the compulsory co-ordination of the various national market organizations or a European Marketing Board.

- (a) To the extent that it can be foreseen, which commodities will be subject to each of these forms of common organization?
- (b) Can it be presumed that the compulsory co-ordination of the various national market organizations or the European Marketing Board will not give rise to a more rigorous regulation of the trade with third countries than would be compatible with Article XXIV:5(a) of the GATT?

- (c) Will the compulsory co-ordination of the various national market organizations permit some variation in the national system? Will a Member State whose market for a particular product has been entirely free be required to introduce price controls, subsidies, etc.?

Reply

- (a) No provision has been made on this point. The choice of products will be made by the institutions of the Community.
- (b) Yes. As indicated in the Memorandum (L/637) the provisions of the Treaty are in line with the provisions of Article XXIV:(5)(a) of the General Agreement.
- (c) The possibility is not excluded a priori that some national characteristics might be retained for at least a while. The system to be used will depend on the cases that arise, and due attention will be paid to the general objectives of the common policy.

The institutions of the Community will have to examine the problems of price control and the system of subsidies within the framework of decisions on the subject of common organizations taken under the terms of Article 43.

Question 62

Article 40(3) provides for the use of various kinds of measures to achieve the aims specified in Article 39:

- (a) What is implied by "stabilizing imports and exports", and what is the common machinery envisaged?
- (b) What is the purpose, likely extent and form of administration of the price controls envisaged?
- (c) Do these provisions mean that consumers in all Member States will obtain food products at the same price as soon as the compulsory co-ordination of national market organizations or a European Marketing Board has been established and that producers in all Member States will receive the same remuneration under either system of market organization?

Reply

- (a) As can be seen when the agricultural policies of various States are examined, a large number of possibilities exist; it will be for the institutions to make a choice.
- (b) The possible price controls will be intended to attain the objectives of the common agricultural policy set out in Article 39. Their form and extent will be fixed by the institutions of the Community.
- (c) The ultimate aim is to establish price conditions similar to those found in a national market.

Question 63

What is the purpose of the "agricultural guidance and guarantee funds" provided for Article 40(4)? How will they be financed, and how are the funds to be utilized?

Reply

The working of the common organization for markets may entail certain outlays that will have to be made from one or more agricultural orientation and guarantee funds. The way in which these will be financed and the way they will be utilized will be settled by the institutions of the Community as cases arise.

ARTICLE 42

Question 64

What type of structural or natural conditions are envisaged as warranting the special protective measures which may be authorized by the Council in terms of this Article?

Reply

The great diversity in the natural and structural conditions of agriculture within the Community has forced the Member States to retain the right to take special corrective action in certain situations. It will be for the institutions of the Community to study these problems and to decide what natural or structural conditions will justify the granting of aid to safeguard handicapped undertakings.

ARTICLE 43

Question 65

Articles 43(4) and 45(3) indicate certain circumstances in which raw materials may be imported from third countries. Is it contemplated that in other circumstances such imports will not be permitted? In particular, does this mean that imports of primary agricultural products from third countries for consumption in the Community will be totally prohibited when they are the subject of long-term agreements? If not, what arrangements are contemplated?

Reply

The reply to the first two points is in the negative.

Article 43(4) refers to a clearly defined hypothesis limited to the transitional period.

Obviously measures of this type will no longer apply when a common organization for both raw materials and processed products has been set up. In fact, the policy for imports and exports will be within the field of competence of the Community working on the lines laid down by its institutions.

It would be a mistake to interpret Article 43(4) and Article 45(3) a contrario as providing authority for the prohibition of imports of raw materials from outside countries.

ARTICLE 44

Minimum Price Arrangements

Question 66

What objective criteria will be used in fixing minimum prices? What countries and commodities will be involved?

Reply

The objective criteria referred to in paragraph 3 will be decided by the institutions of the Community in the manner laid down.

Every Member State may fix minimum prices in the conditions laid down by the Treaty; under Article 44 the products affected will be products included in the list in Annex II. Under the rules contained in the Treaty for the abolition of customs duties and of quantitative restrictions between Member States, the resulting prices of these products might be such as to endanger the objectives laid down in Article 39.

Question 67

Do Member States envisage the need to operate quantitative restrictions against third countries as the corollary of the limitation on freedom of movement of agricultural products among themselves involved in the operation of these minimum price arrangements?

- (a) Would such restrictions take the form of similar minimum price arrangements or of simple quota restrictions?
- (b) If either of these two methods is envisaged, how do the Member States reconcile the use of such restrictions with their obligations under the GATT?
- (c) In view of the provisions of paragraphs 4 and 5(a) of Article XXIV of the GATT, can the Member States give an assurance that insofar as the use of quantitative restrictions against third countries is envisaged there will be no question of imposing new restrictions or of intensifying existing quantitative restrictions.
- (d) How would the Member States propose to operate any quantitative restrictions against third countries that may be contemplated so as to ensure that the preference accorded thereby to each other's trade in agricultural products would not exceed the preference automatically created by the reduction of internal tariffs and the introduction of the common tariff?

Reply

In itself the system of minimum prices does not affect the obligations of Member States towards outside countries.

This being so, the Member States do not see the relevance of this question.

Nevertheless, if the system of minimum prices should lead to difficulties in trade relations with outside countries, it would be for the institutions to seek a solution within the framework of the obligations undertaken by Member States.

Question 68

Do the Member States envisage that quantitative restrictions may be imposed by one Member State against imports from other Members? If so, will the restrictions be applied to member and non-member countries on a non-discriminatory basis?

Reply

The general safeguarding clauses of the Treaty are applicable to agriculture in the same way as to other sectors of the economy, without prejudice to the application of the special provisions contained in Title II of Part Two of the Treaty, and especially Article 44.

Question 69

Is it not the case that, to the extent that quantitative restrictions are imposed, the minimum price system will tend to stimulate uneconomic production within the Community?

Reply

In the view of Member States there are no grounds for this assumption. On the contrary, Member States have adopted the system of minimum prices to ensure that the general rules of the Common Market can be applied to agriculture with due regard for the special conditions that exist in this sector, and also to be able to facilitate the changes that are needed to improve agriculture's competitive position.

Question 70

- (a) Under the second form of price control (paragraph 1(b)), imports will be permitted if their prices are higher than the minimum prices established for the product concerned before customs clearance. Does this not mean that imports from third countries will be at a disadvantage not only because they must be higher than the relevant minimum prices but also because they must be higher by the full amount of the tariff?

- (b) Under this control, will the minimum price remain stable or, as the customs tariffs are gradually abolished, will it be increased to a corresponding degree?

Reply

- (a) As indicated in the reply to question 67, the system of minimum prices does not alter the obligations of Member States towards third countries. Obviously, the products of the Member States, when compared with products from third countries, will benefit by the difference in treatment which ensues from the fact that the customs union has been formed.
- (b) The Treaty does not exclude the possibility that minimum prices will vary during the transitional period, but their level is not directly linked with the progressive lowering of customs tariffs.

Question 71

During the transitional period is it proposed that imports from third countries will be freely admitted when the market price is above the minimum price? If not, what would be the reason for such discrimination as the system of minimum prices seems to give the importing countries all the possibilities of protecting their own price level against outside competition?

Reply

Please see the reply to question 67.

Question 72

If the application of the policy should result in prices of some commodities being maintained at levels higher than those prevailing on world markets, is it the intention to overcome this disadvantage by means of export subsidies on goods processed or manufactured from such commodities?

Reply

Measures which do not conflict with GATT rules cannot be excluded a priori in connexion with the products listed in Annex II to the Treaty. It should, however, be noted that the pursuit of improved production methods and the improvement in productivity stemming from the common policy, added to the continued importance of imports from outside countries, make it possible to assume that the cases referred to in this question will grow fewer and fewer.

Question 73

What is the meaning of "natural preference" in paragraph 2?

Reply

"Natural preference" means the preference that arises automatically from the existence of a customs union and the application of the other provisions of the Treaty.

Question 74

Will minimum price arrangements be employed only during the transitional period? If so, what system will replace the minimum price system?

Reply

Please see replies to Question 44.

ARTICLE 45

Long-term Contracts

This article provides for the negotiation of agreements and long-term contracts in the transitional period pending the establishment of one of the forms of common organization.

Question 75

Is a Member State legally bound to conclude agreements or contracts if the conditions set out in paragraph 1 are met?

Reply

Article 45 of the Treaty lays down clearly the conditions in which such agreements or contracts are to be made. In particular, it is stated that these agreements or contracts shall be concluded in the course of the first stage. Member States will avail themselves of any possibilities offered to them as a result of their legislative provisions, particularly as regards import policy with a view to ensuring the conclusion and carrying out of these agreements or contracts.

Question 76

What principles will be applied to imports from third countries in cases where long-term contracts are concluded under paragraph 2?

Reply

The implementation between Member States of the special provisions of Article 45(2) is not an obstacle to further imports from third countries, using existing procedures.

Question 77

In negotiating long-term agreements will Member States give equal opportunities to bids for participation in such agreements to suppliers from third countries and will the agreements be concluded solely on the basis of normal commercial considerations?

Reply

The conclusion of long-term agreements between Member States will continue until the substitution of national organizations by one of the forms of common organization provided for in Article 40(2). These agreements are intended to make a reality of the progressive expansion in trade between Member States as quota and tariff obstacles are gradually eliminated, with due regard to the special conditions of agriculture. They will not prevent the signing of arrangements made with third countries, and in any case due regard will be given to traditional trade currents, but between such arrangements made with third countries and the agreements or long-term contracts between Member States, which are integral parts of the agricultural policy of the Community, there is a difference in character which makes it impossible to assimilate the two.

Question 78

How will the trade interests of third countries, including countries which export products in relatively small quantities, be safeguarded, and can assurances be given that they will have the opportunity to supply an equitable share of the requirements of the Community?

Reply

Paragraph 2 of Article 45 shows that the agreements or contracts will be drawn up with due regard to traditional trade currents.

Question 79

To the extent that imports from third countries are required would these be procured by the national marketing agencies or through normal commercial channels?

Reply

The system used will depend on the situation in each state at the relevant time. It will therefore vary according to products and circumstances, just as it does today in every country.

Question 80

Would all Member States be required in every case to procure their requirements of the commodities concerned by means of long-term contracts arranged by their national marketing agency?

Reply

In negotiating contracts Member States will avail themselves of any possibilities offered to them as a result of their legislative provisions, particularly as regards import policy.

Question 81

Is it envisaged that Member States will resort to quantitative restrictions (whether on private trade or made effective through State-trading) in order to safeguard long-term agreements?

Reply

The system of long-term contracts does not of itself affect the obligations of Member States towards outside countries.

Question 82

In view of the provision that the prices in the long-term purchase agreements are to approach progressively those paid to national producers in the home market of the purchasing country, how is it intended to avoid the equalization of prices at an unduly high level?

Reply

Imports from outside countries will still exert an influence on prices. Furthermore, the common agricultural policy aims at modernizing agriculture and so at helping to reduce prices.

The working of the long-term contracts will itself exert pressure on the prices ruling in those importing countries which have the highest prices.

Finally it should be noted that prices will be fixed between the interested parties on the basis of directives issued by the Commission.

Question 83

Will agreements or long-term contracts be negotiated between surplus and deficit countries of the Community?

Reply

This assumption seems reasonable, subject to the first of the two conditions laid down in Article 45(1).

Question 84

What arrangements are contemplated, particularly as regards import policy, to give effect to contracts or agreements affecting trade in raw materials?

Reply

Article 45(2) lays down in its last sub-paragraph that "Member States shall avail themselves of any possibilities offered to them as a result of their legislative provisions, particularly as regards import policy, with a view to ensuring the conclusion and carrying out of these agreements or contracts". The procedure used will therefore vary from case to case.

Question 85

Will agreements and long-term contracts be employed as part of a common agricultural policy beyond the end of the transitional period?

Reply

Article 45(1) states that agreements or long-term contracts will be made "until the substitution of the national organization by one of the forms of common organization provided for in Article 40(2)".

ANNEX II

Question 86

By what standards have the products listed been selected? By what standards will other products be added to this list?

Reply

It was necessary to list the products for which it might a priori be found advisable, in view of the special conditions affecting their production and marketing, to apply the measures laid down in Title II. The list given in Annex II is the result of negotiations between Member States.

As regards the addition of other products, it is not possible to forecast what decision the institutions of the Community will take in this matter.

Question 87

Is it the intention to apply the special provisions of Articles 38-47 to all products listed? If this is not intended, on what basis will these provisions be applied to particular products and what arrangements are proposed for specifically tropical products (e.g. copra, cocoa and coffee)?

Reply

It will be possible to apply any or all of Articles 38 - 47, which form a group of possible measures available to the institutions and to Member States, but they will not necessarily be applied to all the products listed in Annex II.

The system will vary from case to case in accordance with the decisions that will be taken by the institutions.

Question 88

The Annex includes certain commodities, which appear to be produced only in one of the countries of the Community or only in their associated territories. It follows that in such cases there can be no problem of protection for those members of the Community which do not produce the commodities in question against imports from the producing member. Can the Member States give an assurance that quantitative restrictions (whether applied to private imports or operated through national organizations or through the central organizations to be set up within the customs union under Article 40) will not be used in respect of such commodities except where the individual country employing the restrictions is entitled to do so on balance-of-payments grounds? Can they further give an assurance that no arrangements will be adopted in connexion with these commodities which would have the effect of giving a preference within the customs union in excess of the tariff preference?

Reply

Please see the answer given to the preceding question.

VI. BALANCE OF PAYMENTS
(Articles 104 to 109)

Articles 104-109 provide that Member States will deal with balance-of-payments difficulties through a variety of economic and financial measures including mutual aid and will have recourse to import restrictions among themselves only as a last resort requiring approval of the Council.

Question 89

- (a) Having in mind the GATT obligations with respect to the non-discriminatory use of quantitative restrictions, do these provisions mean that Member States are in effect undertaking to renounce the use of quantitative restrictions against any countries as a technique for dealing with any future balance-of-payments difficulties, unless they obtain special permission from the Council to impose such measures within the Community?
- (b) Or does this mean that a Member State which finds it necessary to reimpose quantitative restrictions to deal with an overall balance-of-payments emergency would in the ordinary course of events apply these in a discriminatory manner, that is only against third countries?
- (c) If the difficulties of the Member State arise from the elimination of restrictions on the movement of goods and capital within the Community, will the situation be corrected by tightening restrictions on imports from third countries?
- (d) Do these provisions mean that a Member State which finds it necessary to reintroduce import restrictions to achieve a certain reduction in its exchange outlays would apply more severe restrictions against third countries than would be the case if it were not precluded from imposing quantitative restrictions in a non-discriminatory manner, that is against all countries including other Member States?
- (e) If restrictions are to be imposed on imports from third countries, will these countries be consulted?

Reply

This question deals with the possibility that a Member State in difficulties or seriously threatened with difficulties as regards its balance of payments might reimpose quantitative restrictions on imports. It does not deal with all the Articles from 104 to 109 but only with Articles 108 and 109.

(a) and (b)

1. In the Treaty Member States have undertaken no obligations vis-à-vis outside countries. Their obligations to these countries are governed by existing international agreements.

2. During the transitional period Member States will handle the co-ordination of their commercial relations with third countries in such a way as to bring about, not later than at the expiry of the transitional period, the conditions necessary to the implementation of a common policy in the matter of external trade.

The Commission will submit to the Council proposals regarding the procedure to be applied, in the course of the transitional period, for the establishment of common action and regarding the achievement of a uniform commercial policy.

3. The adoption of a system of handling quantitative restrictions which makes a distinction between the treatment of imports from third countries and of those between Member States is not discriminatory. It is a consequence of the formation of a customs union in accordance with the provisions of Article XXIV of the General Agreement.

(c) and (d)

1. The actions referred to in these paragraphs do not necessarily follow from Articles 108 and 109.

2. It is not possible to forecast what policy will be followed within the framework of their international obligations by Member States in difficulties.

(e) The Treaty in no way alters the rules imposed in this connexion by other international agreements; should the case arise, these rules will be observed.

Question 90

When consideration is being given to the imposition of quantitative import restrictions will this be based upon a common balance of payments for the Community including the associated territories, on a common balance of payments excluding the associated territories, or if for these purposes the balance of payments of each Member State will be considered separately will the balance of payments of associated territories be taken together with those of the Member States with which they have special relations? May it be presumed that each Member State will continue to have a separate quota in the International Monetary Fund?

Reply

1. Like question 89, this question relates only to Articles 106 and 109.
2. The procedure laid down in Articles 108 and 109 will come into use in the case of a Member State being in difficulties or seriously threatened with difficulties as regards its balance of payments, but not in the case of the Community as a whole. In evaluating these difficulties account will be taken of the balance-of-payments position of countries and territories which have special monetary relations with the Member State which is in difficulties.
3. The choice between mutual aid and safeguarding measures (which can obviously include the reimposition of quantitative restrictions) will depend on the circumstances in which the balance-of-payments difficulties arise, including the balance-of-payments position of the other Member States. It is not possible to forecast what decisions will be taken by the Council should the case arise.
4. The Treaty does not provide for the formation of a joint quota for the Member States in the International Monetary Fund.

ARTICLE 106

Article 106 provides for the progressive abolition of payments restrictions within the Community, prohibits the imposition of new payments restrictions between Member States and refers to measures which the Member States may take in concert to facilitate the attainment of these objectives.

Question 91

- (a) What specific measures are contemplated in paragraph 4?
- (b) Should a Member State which finds itself in difficulty impose exchange restrictions, is it correct to assume that the measures referred to in paragraph 4, which Member States can concert to take, will in no circumstances include the imposition of parallel exchange restrictions on the part of other Member States not experiencing balance-of-payment difficulties?

Reply

- (a) The provisions of paragraph 4 of Article 106 of the Treaty are intended to make it possible for Member States, should the European Payments Union not be extended and the European Monetary Agreement not be implemented, to take the necessary measures to effect the payments and transfers arising out of their mutual trade.

- (b) Consequently these provisions can in no case lead to the re-
imposition of restrictions on payments and transfers or to the
introduction of quantitative restrictions between Member States.

ARTICLE 107

Article 107 deals with exchange rates and provides that should a Member State make any alteration in its exchange rate which is incompatible with the objectives of the Treaty, the Commission may authorize other Member States to adopt retaliatory measures.

Question 92

Since a Member State wishing to alter its exchange rate is under obligation to submit the matter to the International Monetary Fund should Article 107 be interpreted as meaning that the Commission could authorize other Member States to adopt retaliatory measures only in cases when a Member State may have altered its exchange rate without having obtained the approval of the IMF?

Reply

Implementation of the provisions of Article 107 is a matter for the institutions of the Community, and these institutions will act within the framework of the international obligations undertaken by Member States.

ARTICLE 108

Article 108 provides for various kinds of assistance which a Member State faced with balance-of-payments difficulties can receive from other Member States. Such assistance may, inter alia, take the form of credits, of concerted action in seeking the co-operation and assistance of international organizations, and of measures designed to prevent the diversion of trade.

Question 93

- (a) Does the Treaty envisage that a Member State might be expected to impose or intensify quantitative restrictions against third countries, regardless of its own external financial position, as one form of "mutual aid" intended to facilitate increased imports from a Member State in difficulty?
- (b) What measures are contemplated to prevent diversions of trade? Could such measures include the imposition of quantitative restrictions against third countries corresponding to those adopted by the Member State in difficulty?

- (c) Could trans-shipment controls in the form of export prohibitions be imposed, or is the use of such controls prohibited by Article 34?
- (d) If restrictions such as those referred to in (a), or (b) above are to be imposed, will third countries be consulted?
- (e) Will credits granted under paragraph 2(c) be as transferable as the balance in the currencies of the donating members?

Reply

(a) to (c)

1. The Treaty does not give a list of all the forms that mutual aid could take. It will be for the Council to define the measures to be taken by Member States in this connexion. It is not possible to forecast what it will decide.
 2. This reply holds good for all forms of mutual aid, including those intended to obviate the risk of diversions of trade.
 3. In the case of transit obligations, the Member State in difficulty will have no need of mutual aid from its partners in any form whatsoever, including export prohibitions, because the goods in question would not be freely available in the Community, and so no provision of the Treaty would prevent the State concerned from applying its own legislation.
- (d) The Treaty of Rome in no way alters the rules imposed in this connexion by other international agreements; should the case arise, these rules will be observed.
 - (e) The Treaty of Rome makes no reference to this point. It is not possible to forecast what decisions will be taken by the Council and Member States in this matter.

VII. COMMERCIAL POLICY
(Articles 110 to 116)

Question 94

Sole powers for conducting trade negotiations on behalf of the Community with third countries is conferred on the Commission. Is it the intention that representations from third countries, with respect to aspects of the common commercial policy which affect their export interests in particular Member States, should be addressed to the Commission, or should such representations continue to be directed to the governments of the Member States concerned? Will individual negotiations be permitted to the extent that resultant concessions do not affect the duties of the common tariff?

Reply

Outside states may decide for themselves whether they prefer to send to the Member States, to the Commission or to the Council of Ministers the representations that are referred to in the question.

Authority on matters of commercial policy rests with the Council of Ministers. The Commission is the body which negotiates on behalf of the Community within the framework of directives received from the Council.

It would be helpful if the CONTRACTING PARTIES would explain just what is meant by the last part of their question.

Question 95

During the transitional period, what will be the position regarding:

- (a) existing bilateral trade or tariff agreements between third countries and Member States, and
- (b) the renewal of such agreements? What will be the procedure for renewal of existing bilateral agreements or the negotiation of new ones?

Reply

Subject to alterations reached by mutual agreement, bilateral trade or tariff agreements between third countries and the various Member States will remain in force till they expire or till they have been revoked in accordance with the relevant provisions of the agreements. When, however, these agreements are renewed or new agreements made, the provisions of Article 111 of the Treaty will apply. These in fact provide for the co-ordination of commercial relations

between Member States and third countries in such a way as to bring about, not later than at the expiry of the transitional period, the conditions necessary to the implementation of a common policy in the matter of external trade. The procedure to be applied in the course of the transitional period, for the establishment of common action and regarding the achievement of a uniform commercial policy will be fixed by the Council on proposals submitted by the Commission.

After the expiry of the transitional period the procedure laid down in Article 113 of the Treaty will apply.

On tariff negotiations please see also the replies to questions 8 and 9.

Question 96

Would the Member States be ready at any time to enter into negotiations for tariff concessions if so requested by a contracting party and to participate in any general round of negotiations arranged by the CONTRACTING PARTIES?

Reply

In this matter Member States will maintain the same attitude as in the past, within the framework of the procedures laid down in the relevant Articles of Part Two of the Treaty.

Question 97

Would the Member States agree that contracting parties are entitled to compensation in respect of GATT concessions which are impaired by the elimination of duties on imports from other Member States?

Reply

No. This is not provided for in the Article of the General Agreement which deals with customs unions.

Question 98

Article 111 provides that during the transitional period Member States shall aim at securing uniformity in their liberalization lists with respect to third countries; Article 113 provides for the standardization of liberalization measures with respect to third countries at the end of the transitional period.

- (a) Should these provisions be interpreted to mean that a Member State is expected to determine its system of quantitative restrictions on the basis of the balance-of-payments and reserves position of other Member States rather than on its own external financial position?
- (b) Would a Member State not imposing restrictions for balance-of-payments reasons be expected to introduce restrictions against third countries because one or more Members maintain import limitations related to their balance-of-payments position?
- (c) Would a Member State experiencing an improvement in its external financial position, and hence required under its prior international commitments to relax or eliminate its import restrictions, be expected not to relax or eliminate such measures as long as one or more Member States were maintaining restrictions for balance-of-payments reasons?

Reply

This problem has already been examined in the Preamble and in certain of the replies given above (for instance the replies to questions 39 and 89).

It will be a consequence of the solidarity which emerges from the Treaty that the policies of the Member States on the freeing of trade will be progressively harmonized within the framework of the common policy.

Article 111 lays down that uniformity of liberalization lists in regard to third countries shall be secured at as high a level as possible.

If uniformity is to be obtained in liberalization lists, as is laid down in the Treaty, then the balance-of-accounts situation in all Member States will perforce have to be considered.

Question 99

- (a) What is the significance of the phrase "at as high a level as possible" in Article 111(5)? If some Member States have liberalized a particular product and others still maintain quantitative import restrictions for balance-of-payments reasons, is it the intention that the product in question will be liberalized by the Member States which now restrict its import?

or

that it will be de-liberalized by those Member States which at present have no restrictions on their imports (i.e. that they will impose quantitative restrictions which are not necessitated by their own balance-of-payments position?

or

that each Member State will continue its individual import régime based upon its balance-of-payments needs?

- (b) What does the provision for "identical treatment" in Article 111, paragraph 5 mean? For example, to take the extreme case, if an item were already completely liberalized for Member States but not for third countries, then would liberalization of the item for third countries require a corresponding improvement in the position of the Member States?

Reply

- (a) It will be for the institutions of the Community to decide according to the circumstances the ways in which this principle will be applied.
- (b) It has not been possible to understand the meaning and scope of this question.

Question 100

In achieving uniformity of liberalization lists, by what standards will differential treatment be established for third countries or groups of third countries?

Reply

As commercial policy is fixed by the institutions of the Community, it is not at present possible to forecast the criteria on which they will base their decisions concerning the treatment of third countries or groups of third countries.

Question 101

Is the Commission empowered to make objections to steps which Member States propose to take to abolish or reduce quantitative restrictions vis-à-vis third countries?

Reply

Quantitative restrictions belong to the field of commercial policy.

In this field the Treaty empowers the Commission to submit to the Council of Ministers such proposals as it thinks fit.

Question 102

What types of situation were envisaged which would make Article 115 operative?

Reply

The diversions of trade which might result from the progressive implementation of the Common Market.

VIII. OVERSEAS COUNTRIES AND TERRITORIES
(Articles 131 to 136 and Applicatory Convention)

Question 103

The Treaty absolves the associated territories from the full obligations which the Member States have themselves undertaken. This appears to involve some deviation from the concept of a complete customs union or free-trade area. On what provisions of Article XXIV of GATT do the Member States base these arrangements? If they are not based on the provisions of Article XXIV, what justification is there for this deviation from the provisions of Article I of the GATT?

Reply

As pointed out in Chapter III of the Memorandum (L/637), the Member States had to consider the problems raised by the institutional links existing between some of them and various countries and territories outside Europe. They might have considered the straightforward inclusion of these countries and territories in the Common Market. Although this solution would have been more advantageous to the Member States, it could not be adopted because it did not take account of the actual situation of those territories which are in the process of economic and social development. Anxious to respect the principles of the United Nations' Charter, the Member States have sought, in the rules they have formulated, to make due allowance for the requirements of this development and also of the International Statute which applies to certain overseas countries and territories.

It should however, be noted that implementation of the general objectives concerning the abolition of restrictions on exchanges between Member States and the overseas countries and territories must in the end produce a free-trade area which will, subject to the time factor arising from the considerations referred to in the preceding paragraph, be complete.

Question 104

The tariff arrangements which will apply in the associated territories with respect to imports from Member States appear to involve an extension of preferences. Would the Member States (or the territories themselves) be prepared to compensate third countries for such extension of preferences by means of approximately equivalent concessions?

Reply

As stated in reply to question 103, the system envisaged by the Treaty will lead, within what is considered a reasonable period, to the formation of a free-trade area that complies with the provisions of Article XXIV of the General Agreement.

The question of concessions from Member States does not therefore arise.

Question 105

Bearing in mind the extent to which these provisions are liable to affect the trade of third countries, particularly of countries whose economies are still in course of development or which are largely dependent upon exports of primary products, how do the Member States propose to mitigate the effects of these provisions so as to ensure fair treatment for third countries and as between third countries? What steps could be taken to enable such countries to maintain their traditional exports to Member States? For example, could low-duty or duty-free quotas, based on present trade volumes, be granted for the importation of such products?

Reply

Please see the reply to question 11, where it is pointed out that under Article 29(a) of the Treaty the European Commission must, in carrying out the tasks entrusted to it, be guided by the need for promoting commercial exchanges between the Member States and third countries and be on the lookout for any difficulties that may arise.

Question 106

Would it be possible in the near future for the Member States to furnish some indication of the programme of agricultural development in their overseas territories?

Reply

On this point Member States are not in a position to supply more precise information than is contained in the documents already published.

ARTICLE 131

Question 107

Is the association of overseas countries and territories with the Community to be on the basis of the overseas countries and territories becoming, ultimately, full members of the Customs Union? What is proposed for the tariffs of these countries and territories vis-à-vis third countries?

Reply

For the reply to the first part of this question, please see the reply given to a question 103.

The Treaty does not affect the customs tariffs applied by these countries and territories to imports from outside countries.

ARTICLE 132

Question 108

Paragraph 4 provides that the nationals of Member States shall be entitled to participate on equal terms in any development in the overseas territories financed by the Community. Does this mean that the nationals of third countries will be precluded from participating on equal terms in tendering for the supply of goods for such development?

Reply

In this matter the Treaty makes no alterations to the rules at present applicable. It only lays down that, in the matter of tenders and supplies arising from investments financed by the Community, no differences shall be made in the treatment of natural or legal persons being nationals of Member States or of the countries and territories.

ARTICLE 133

Question 109

Since the customs duties authorized by paragraph 3 will be of a protective or revenue nature, is it envisaged that these duties will be non-discriminatory vis-à-vis third countries as well as Member States?

Reply

These duties will be "progressively reduced to the level of those imposed on imports of products coming from the Member State with which each country or territory has special relations" (Article 133(3)). This obligation to reduce duties applies only vis-à-vis Member States.

ARTICLE 134

Question 110

What situation is envisaged in this Article?

Reply

The progressive reduction of customs duties between Member States and the overseas countries and territories might lead to diversions of trade if the duty levied by one of these countries and territories were lower than the duty of the Member States.

The provisions of Article 134 are intended to deal with problems that might arise in this manner.

Question 111

Is it the intention of this Article that in cases where third countries, on account of specific cost advantages, are able to compete successfully in the markets of the associated territories to the possible detriment of Member States, steps are to be taken to curb such competition and, if so, how is this far-reaching discrimination to be justified?

Reply

No. Please see the reply to question 110.

Question 112

Could the operation of these provisions result in the harmonization of the rates of duties in the territories on imports from third countries with the external tariff of the Community?

Reply

Please see the reply given to question 103 and the second paragraph of the reply given to question 107.

Questions 113 and 114

Could these provisions be applied in such a manner that territories which are at present excluded from reducing duties on imports from Member States in terms of Article 133 may, nevertheless, be required to impose duties on imports from third countries at the rates which apply in the other territories?

Annex IV

The list of countries and territories includes trust territories. How does this provision conform with the obligations ensuing from Chapter XIII of the United Nations Charter and other obligations towards the United Nations, particularly as regards equal treatment of all Members of the United Nations in the economic and commercial field?

Reply

The Treaty does not alter the position of these countries and territories in respect of their international obligations.

Applicatory Convention

Questions 115 and 116

Article 1 provides for a Development Fund for the territories. On what basis is the financial aid to be given to the territories linked with the grant of tariff and quota preferences to the products of the Member States in the markets of these territories?

What protection is afforded third countries that any specific development projects to be financed in accordance with Article 3 will take into consideration the relationship between such projects and the traditional trade interests of third countries?

Reply

It has not been possible to discover what provisions of the General Agreement serve as a basis for these questions.

Question 117

Will the provisions of Article 11, which provide for increases in the quotas for imports from Member States, affect the size of import quotas granted to third countries? How is it proposed to safeguard the trading interests of third countries?

Reply

Please see the replies given to questions 40 and 41.

Question 118

Do the tariff reductions by the associated countries and territories continue even though the Convention may have expired?

Reply

It follows from the reply given to question 103 that the reply to this question must obviously be in the affirmative.

IX. ARTICLE 234

Preamble and questions 119, 120, 121, 122, and 123

Article 234 provides that the rights and obligations resulting from other international agreements are not affected by the provisions of the Treaty. This Article further provides that where there is any conflict between such other agreements and the Treaty, the Member States will resort to all appropriate measures to eliminate such conflict, including, if necessary, the adoption of a common attitude to this end.

Does this mean that the GATT and other international agreements, such as the Articles of Agreement of the IMF and OEEC, which govern the trade and financial relations between each of the Member States and many other countries throughout the world, take precedence over the Treaty?

If the CONTRACTING PARTIES to the GATT determine that there is a conflict between any provision of the Treaty and the GATT, does this Article mean that the Member States will take all appropriate measures to modify the interpretation and application of the Treaty in order to conform with the GATT?

Similarly, if the Member States, in order to apply certain provisions of the Treaty, seek to obtain a waiver of certain GATT obligations or of other international obligations, such as those of the IMF, and if the international organization in question does not grant such a waiver, are the Member States relieved of the relevant obligations under the Treaty?

If the Member States seek a waiver of GATT obligations, would the application be made by individual governments or by the Community as a whole?

In cases where the Treaty provides that the institutions of the Community have discretionary powers with respect to matters on which provisions of the GATT or of other international agreements, such as the IMF and OEEC, apply (e.g. the imposition or maintenance of quantitative restrictions, exchange restrictions, etc.) is it the case that any decisions taken by the institutions will be subject to the provisions, requirements and procedures of these international agreements?

Reply

Reference should first be made to the statements made at Geneva by the Chairman of the Interim Committee for the Common Market and Euratom (IC/SR.30, p.38) and to paragraph 40 of the Memorandum (L/637).

These statements made it clear that "it had never been the intention of the drafters of the Treaty to limit the scope of this Article solely to bilateral undertakings. The Article in fact applied to all existing commitments, whether bilateral or multilateral, and therefore also to the obligations under the General Agreement. In addition, it was worth noting that even if this stipulation

had not specifically been inserted in the Treaty, it would have made no difference, for one of the basic principles of international law implied that no one could ignore the commitments which he had undertaken".

Furthermore it is, in the opinion of the Member States, highly improbable that any difficulties which might arise cannot be overcome, in view of the spirit in which the Treaty was drafted and of the possibilities offered by both the Treaty and the General Agreement.

X. MISCELLANEOUS QUESTIONS

Question 124

Under Article 85 all agreements and mergers which might interfere with competition within the Common Market are prohibited. Does the Interim Committee interpret any of the provisions of the Treaty as providing an assurance that the trade of the Community with third countries will be conducted on a competitive basis and not distorted by the activities of monopolies or cartels? What would be the outlook of the Member States on the question of providing machinery for examination of difficulties which third countries may experience in this connexion?

Reply

The provisions of Articles 85 and 86 regarding agreements and monopolies are similar to those existing in the legislation of many contracting parties, which also make no specific reference to the activities of business firms on foreign markets.

The provisions of the Rome Treaty constitute an approach on a reciprocal basis to a problem which it has not yet been possible to solve within a wider framework.

Since the question of restrictive business practices is on the agenda of the GATT, a solution might be sought in that organization.

Question 125

Article 238 provides that the Community may, by unanimous vote of the Council after consulting the Assembly, conclude with a third country an agreement "creating an association characterized by reciprocal rights and obligations, joint action and special procedures".

- (a) Would it possible for a third country to negotiate for an association with the Community on the basis of securing specified treatment of its exports of agricultural products to the Community in return for concessions on imports into its territory of products of the Member States?
- (b) Could such an association also provide for participation of the third country in the common institutions of the Community, e.g. the Commission dealing with the common agricultural policy?

Reply

Provision is made for specific agreements. It is impossible to forecast what decisions the Council will reach on the conditions for association, whether multilateral or bilateral.

Question 126

How can this Protocol relating to certain Provisions of Concern to France be reconciled with the Resolutions of the CONTRACTING PARTIES concerning the French special temporary compensation tax on imports?

Reply

There is no incompatibility between the Resolutions of the CONTRACTING PARTIES and the Protocol relating to certain provisions of concern to France.

Question 127

If conventions for economic association with the Community are concluded, pursuant to the Declarations of Intention, with the independent countries of the franc area, Libya, Somaliland, Surinam and the Dutch West Indies will their provisions be similar to those of Part IV of the Treaty?

Reply

It is not possible to forecast the outcome of any negotiations which might be held with the countries referred to in the Final Act.

Question 128

Does the Treaty allow a Member State to decide for itself to observe the principle of equal treatment in its commercial relations with the individual contracting parties to GATT?

Reply

The Treaty provides that Member States shall co-ordinate their commercial relations with third countries in such a way as to bring about, not later than at the expiry of the transitional period, the conditions necessary to the implementation of a common policy in the matter of external trade.

It would nevertheless be helpful if this question were more precisely formulated since neither its meaning nor its scope is clear.

Question 129

What steps will be taken to ensure that the implementation of the Treaty does not result in the raising of barriers to the trade of other contracting parties, contrary to the provisions of Article XXIV:4 of GATT, and what remedial measures do Member States or the Community intend to take if there occurs serious diversion of trade to the detriment of third countries? In particular can a third country which is a traditional supplier of certain products be assured that a discriminatory barrier will not be raised and that its market will not be lost in the event that the products in question are produced in surplus by another Member State?

Reply

Please see the reply to question 11. It should also be noted that the provisions of Article XXIV of the General Agreement do not exclude the possibility of adapting the Community's commercial policy to circumstances which may arise in the course of its development.

Question 130

According to the Preamble to the Treaty, the Member States are "resolved to establish the foundations of an ever-closer union among the European peoples" and wish to ensure the progress of their countries "by common action in abolishing the barriers which divide Europe". What measures are proposed which would abolish the barrier dividing Europe and would ensure an ever-closer union of all European countries irrespective of the attained level of economic and industrial development and of their social and economic systems? What measures does the Treaty envisage to ensure that its implementation will not increase the barriers which divide Europe and prevent a closer economic cooperation of all, especially of European countries?

Reply

The Member States can only refer to paragraph 10 of their Memorandum (L/637) and Article 237 of the Treaty.

Question 131

Will any of the institutions of the Community admit representatives of third countries as observers at their meetings?

Reply

The text of the Treaty does not provide for observers to be present at meetings of the institutions of the Community.

Question 132

As the Treaty gives only the general objectives and the framework of the proposed European Economic Community, the CONTRACTING PARTIES will be concerned to ensure that the Treaty is implemented in conformity with the latter as well as with the spirit of GATT. Would the Member States agree to keep the CONTRACTING PARTIES informed in advance of all important developments and afford an opportunity for discussion of any pertinent issues before final decisions are taken by the institutions of the Community, and to submit an annual report on action taken by the Community and by the Member States? Can the Member States give an assurance that all measures requiring waivers under the GATT will be referred to the CONTRACTING PARTIES before they are put into effect?

Reply

The Treaty not only defines general objectives, it includes, in addition to a very precise and very detailed plan and schedule, a whole set of specific rules made to ensure the attainment, at the end of the transitional period, not merely of a customs union in conformity with the provisions of Article XXIV of the General Agreement, but of an economic union of much wider scope. Moreover, the Community's institutions exist to ensure as completely as possible the attainment of a true customs union, an aim which is in conformity with the provisions of the General Agreement.

With regard to the powers which the Member States or the institutions of the Community may exercise in accordance with the provisions of the Treaty, it is the opinion of the Member States that the exercise of these autonomous powers should not be treated in a manner different from that applied to the exercise of similar powers by the other contracting parties.

There is no provision of the General Agreement which would require the Member States to submit an annual report on matters covered by that Agreement.

It should be noted that Article XXII of the General Agreement provides an opportunity for any consultations which the CONTRACTING PARTIES might wish to hold.

ANNEX

Country	Import tariff item no.	Description of Products	Unit of levy	Rate of duty
Germany		<p><u>General note</u></p> <p>Goods included in the customs export tariff are free of export duty if there is no economic reason why they should not be exported.</p> <p>The "no objection" certificate is issued by the Federal Minister for Food, Agriculture and Forestry for goods in tariff items 12.09 and 12.10 and by the Federal Minister for Economic Affairs for other goods.</p>		
	12.09	Cereal straw and husks, unprepared, or chopped but not otherwise prepared (1)	100 kg	DM 2
	12.10	ex B. - Hay, lucerne, clover, forage kale, lupines, vetches and similar forage products, dried, whether or not chopped (2)	100 kg	DM 3
	ex 26.03	Tin ash, slag containing tin, waste from washing containing tin and originating in dye-works	100 kg	DM 40
		Zinc ash; lead ash	100 kg	DM 3
		Copper scalings and the like	100 kg	DM 10
		Other metallic ash, not elsewhere specified or included	100 kg	DM 5
	74.01	B - ex - 1 Cement copper	100 kg	DM 10
		C - Copper waste and scrap	100 kg	DM 25

Country	Import tariff item no.	Description of Products	Unit of levy	Rate of duty
	75.01	C - Nickel waste and scrap	100 kg	DM 90
	76.01	B - Aluminium waste and scrap	100 kg	DM 50
	77.01	B - Magnesium waste and scrap	100 kg	DM 25
	78.01	B - Lead waste and scrap	100 kg	DM 10
	79.01	B - Zinc waste and scrap	100 kg	DM 10
	80.01	B - Tin waste and scrap	100 kg	DM 90
	81.04	A - ex - 1 Antimony waste and scrap	100 kg	DM 25
BLEU		Horses, mules, hinnies and asses (until 31 October 1957)		
France	ex 05.05	Fish waste, not including scales of whitebait or of similar fish, or fish bladders	value	25 %
	ex 05.06	Sinews and tendons; parings and similar waste, of raw hides or skins: - B. other	value	25 % (3)
	ex 05.08	Bones, unworked	100 kg.B.	120 F.(4)
	ex 73.03	Scrap and waste metal of iron or steel (6): A. Neither sorted nor graded (not including scrap and waste metal of pig iron or of tinned iron)	100 kg.B.	90 F.(4) (5)

Country	Import tariff item no.	Description of Products	Unit of levy	Rate of duty
France (cont'd)	ex 73.03 (cont'd)	B. Sorted or graded III. Other than of pig iron or tinned iron a. of alloy steel b. other	100 kg.B. 100 kg.B.	90 F.(4) (5)(6) 90 F.(4) (5)(6)
	various	All other goods	-	Free
Italy		n i l		
Netherlands		n i l		

The following are exempt:

- (1) Straw intended for covering goods shipped without wrapping, for lining the floors or sides of loaded vehicles, or for separating the various parts of a shipment.
 - (2) Goods included under this item, intended for the feeding of horses, cattle, sheep, goats or swine during transport of these animals, in quantities corresponding to the duration of transport.
-
- (3) This duty is suspended with regard to waste of raw sheep-skins and lobes of cattle-ears.
 - (4) This duty is temporarily suspended.
 - (5) Such scrap and waste metal is free of export duty when resulting from the breaking-up of warships, merchant vessels or fishing vessels.
 - (6) Such scrap and waste metal is free of export duty when exported to the territory of a Member State of the European Coal and Steel Community.