REPORT OF THE WORKING PARTY ON THE EQUATORIAL CUSTOMS UNION

1. The terms of reference of the Working Party were:

   To examine, in the light of the relevant provisions of the General Agreement:

   (i) the provisions of the Convention establishing the Equatorial Customs Union and of the Convention regulating the economic and customs relations between the member States and Cameroon; and

   (ii) the status of the Schedule of Gabon;

and to report to the CONTRACTING PARTIES.

2. The Working Party examined the provisions of the Conventions and the Protocol with particular reference to certain questions which had been put by contracting parties and the replies to which had been circulated as L/2061/Add.3.

3. This examination brought out in particular the following two points:

   (a) there was already a full customs union arrangement in force between the countries of the Equatorial Customs Union and, in effect, between those countries and the Republic of Cameroon;

   (b) the relations between the Union and Cameroon established by the present Convention would be replaced by a treaty which had to be submitted to the heads of States by 15 December 1964. The text of the treaty, when approved, would be communicated by the five heads of State to the CONTRACTING PARTIES.
4. All members of the Working Party expressed their sympathy for the general objectives of the Equatorial Customs Union-Cameroon arrangements. It was generally felt that regional arrangements which provided wider markets and so facilitated larger scale production and industrial diversification could contribute significantly in furthering the developmental objectives of less-developed countries. While regional arrangements could be of benefit to countries outside the region as well as to countries inside, in the case of less-developed countries such arrangements had to be considered primarily in the light of the benefits they brought to the countries parties to the regional arrangements.

5. While reservations (referred to below) were expressed on certain detailed aspects of arrangements relating to this customs union, the general feeling was that, viewed against the background of the general considerations referred to in the preceding paragraph, they were to be welcomed.

6. During the course of an examination of the arrangements regarding the Common External Tariff, it was noted that, before the formation of the Union, the constituent countries did not maintain any tariff protection, but applied only fiscal charges which had their counterpart in the case of domestic production in internal taxes. The Common External Tariff, therefore, which was designed primarily as an instrument of commercial policy, was a new development. Some members of the Working Party, while not disputing the right of the Union to have a common tariff, nevertheless felt that, since the new duties under the common tariff were additional to the fiscal charges already referred to, the arrangements could not be regarded as strictly satisfying the criteria in paragraph 5(a) of Article XXIV that "with respect to a customs union, the duties and other regulations of commerce imposed at the institution of any such union .... in respect of trade with contracting parties not parties to such union .... shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union". Other members, however, felt that these provisions could not be regarded as relevant since the Common External Tariff already existed when the five countries became contracting parties and since there were no protective tariffs at all before the formation of the Union.

7. A number of points were raised about the treatment which would be given to imports from the European Economic Community and the Associated African and Malagasy States: among these were references by a member of the Working Party to the relationship of their treatment to the protective and fiscal effects of the Common External Tariff of the Customs Union. It was agreed that these matters could be taken up when the Convention of Association between the European Economic Community and the African and Malagasy States associated with that Community was examined by the CONTRACTING PARTIES.
8. Some anxieties were expressed about the provision in Article 3 of Act No. 16 of the Management Committee of the ECU (L/2061, page 3) which provides that the commission established under Article 5 of the Convention may, where necessary, apply to certain countries or for certain products, a tariff three times as high as the Common External Tariff. It was recognized that if a regional arrangement was to be successful in promoting industrial development and diversification, it must be possible to give the industries involved an adequate degree of protection, at any rate for an initial period. It was, however, suggested by some members that the provision referred to might open the way to a degree of discrimination between countries which could be undesirable and contrary to the provisions of the General Agreement. It was also suggested that, where imports could come from the European Economic Community, a high rate applied under the provision referred to for protective reasons would be effective in securing its objective only if it were applied to imports from the Community as well as to other imports. The representative of the Union pointed out that the provision referred to was a common one found in many tariffs and that the right to treble the Common External Tariff rate merely set an upper limit to the action which could be taken and did not mean that, where action was taken, rates would necessarily be as much as trebled; further, where this was necessary, the higher rates would be applied to all imports of the products concerned whatever their source. In any event the operation of the provision would be in accordance with the General Agreement. As indicated on page 6 of L/2061/Add.3, the criteria for the application of this provision had not yet been fixed. When they were, they would be notified to the CONTRACTING PARTIES.

Conclusion

9. In concluding its examination of the first part of its terms of reference, the Working Party welcomed an undertaking by the representative of the Union to keep the CONTRACTING PARTIES informed of future developments, and noted that the CONTRACTING PARTIES would be able to examine the matter again, if they so wished.

(11) The status of the Schedule of Gabon

10. The representative of the ECU recalled that in his statement to the CONTRACTING PARTIES on 24 February, H.E. Mr. Georges Damas, Ambassador representing the Republic of Gabon, had said that the entirely new situation resulting from the creation of the Equatorial Customs Union-Cameroon and from Gabon's membership of this Union, made invalid from the practical point of view any reference to the situation existing prior to independence and any reference to the concessions included in Section B of Schedule XI. Some other members of the Working Party, however, pointed out that Gabon had acceded under the provisions of paragraph 5(c) of Article XXVI and that all countries that had acceded under this provision had accepted the obligations which had previously applied to them in relation to the GATT.
They, therefore, felt that negotiations which could be conducted amicably and without difficulty, should be undertaken to reconcile any discrepancies between the previously existing Schedule and the Common External Tariff. The representative of Gabon said that, while he did not necessarily rule out the possibility of negotiations at a later date on the Common External Tariff, subject to the prior agreement of the five Heads of State and to the extent that certain conditions had been met, he could not accept this interpretation of the legal position. It was pointed out by several members of the Working Party in this last connexion that the case of Gabon should be regarded as exceptional since, despite the negotiation of the Schedule, no tariff had, in fact, been in force in Gabon until the adoption of the common tariff.