1. The Member States of the European Economic Community have already explained to the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade the reasons for which they feel justified in claiming exemption from the rules of the General Agreement, as set out in the provisions of paragraph 5 of Article XXIV of the Agreement, i.e. that they are entitled to obtain from the CONTRACTING PARTIES the recognition of the fact that the Rome Treaty fulfils the conditions enumerated in paragraphs 5-9 of Article XXIV, to which such exemption is subordinated.

2. It may indeed be recalled that even prior to the conclusion of the Treaty, the CONTRACTING PARTIES were notified of the advanced stage of the negotiations by the report transmitted to them by the Intergovernmental Committee set up at the Messina Conference, as well as by the details given to them during their ordinary session in October 1956.

Having concluded their work, the Six (Nations), by transmitting the Treaty establishing the European Economic Community to the CONTRACTING PARTIES on 17 April 1957, fulfilled the promise made to submit this Treaty to the CONTRACTING PARTIES after its signature and before its ratification.

They subsequently requested the Chairmen and the Interim Committee for the Common Market and Euratom to attend the meeting of the Intersessional Committee of the CONTRACTING PARTIES which met in April 1957.

On 1 January 1957, they deposited a Memorandum explaining, in particular, the mechanics of the Treaty and its relationship to the General Agreement (document M/E 959/57).

*Provisional translation*
On 28 July 1957, they replied to a questionnaire sent to them by the CONTRACTING PARTIES (document MAE 1079/57) and transmitted, on 16 September 1957, a specimen common customs tariff for goods which could justifiably be considered as the most representative of trade between Member States and third countries parties to the General Agreement.

Subsequently, they again requested the Chairman of the Interim Committee to attend the Intersessional Committee meeting of September 1957 when, as well as during the October meetings of the Committee, they gave clear proof of their intention to supply the CONTRACTING PARTIES with all necessary information.

3. The Member States therefore consider that they have conscientiously fulfilled the obligations laid down in paragraph 7 of Article XXIV of the General Agreement and that the CONTRACTING PARTIES are now in a position to grant the recognition required of them under paragraphs 5–9 of Article XXIV.

4. It seems, however, that some uncertainty reigns as to the nature, contents and scope of the provisions of the Treaty governing the association of overseas countries and territories. In order to clarify and define more accurately the juridical data of the Treaty on this point, the Member States beg to submit the following considerations to the CONTRACTING PARTIES to the General Agreement.

5. The Member States desire, in this connexion, to assert most strongly that the association of overseas countries and territories with the European territories of the Member States of the Community is one of the fundamental characteristics of the edifice which the Six propose to set up and that in no case could the disassociation of the overseas countries and territories from the system of integration of Member States be accepted by them.

* * *

6. With the exception of Algeria and the French overseas departments which form part of the metropolitan customs territory of the French Republic and to which the provisions of the Treaty in respect of trade apply in toto, the Treaty
establishes for the countries enumerated in Annex IV of the Treaty rules which — although not mentioned in the Treaty, because the system of association, in the plans of the Six, goes much further — set up a free-trade area.

7. Now, paragraph 5 of Article XXIV confers the benefits of a free-trade area on Member States by legally exempting them from the rules of the General Agreement, in the same way as that provided for customs unions.

However, as in the case of a customs union, such exemption is subject to three conditions, fixed in paragraphs 5-9 of the same article. These conditions are as follows:

- trade between the constituent territories of the area must be substantially liberalized;
- customs duties and other regulations of commerce maintained in each of the constituent territories must not on the whole be higher or more restrictive than the corresponding duties and regulations existing prior to the formation of the free-trade area;
- when the area is not immediately constituted, the agreement must include provisions for the formation of such a free-trade area within a reasonable length of time.

The Treaty fulfils these three conditions.

1 That is, French West Africa, including: Senegal, the Sudan, Guinea, the Ivory Coast, Dahomey, Mauretania, the Niger and the Upper Volta; French Equatorial Africa, including: the Middle Congo, Ubangi-Shari, Chad and Gaboon; St. Pierre and Miquelon, the Comoro Archipelago, Madagascar and dependencies, the French Somali Coast, New Caledonia and dependencies, the French Settlements in Oceania, the Southern and Antarctic Territories; the Autonomous Republic of Togoland; the French Trusteeship Territory of the Cameroons; the Belgian Congo and Ruanda-Urundi; the Italian Trusteeship Territory in Somaliland; and Netherlands New Guinea.
A. Liberalization of Trade

8. The General Agreement requires, both for free-trade areas and customs unions, that customs duties and other restrictive regulations on trade be eliminated with respect to substantially all the trade in products from the constituent territories.

(a) Imports of Member States from Overseas Countries and Territories
(or exports from overseas countries and territories to Member States)

9. According to Article 132(1) of the Treaty, Member States shall, in their commercial exchanges with overseas countries and territories, apply the same rules which they apply among themselves. The abolition of customs duties and quantitative restrictions will therefore be total, for this part of mutual exchanges, on the expiry of the transitional period. It will be carried out in the same conditions as those governing the integration of Member States.

(b) Imports of Countries and Territories from Member States
(or exports of overseas countries and territories to Member States)

10. According to Article 132(2) of the Treaty, the associated overseas countries and territories shall apply in their commercial exchanges with Member States the same rules which they apply in respect of the European State with which they have special relations. With the exception of the case—studied later on—of countries and territories subject to special international obligations (Agreement of St. Germain, trusteeship system), this rule implies the abolition of customs duties and quantitative restrictions.¹

¹ Trade between overseas countries and territories and the State with which these countries and territories have special relations are not—with the exception of New Guinea which has a non-discriminatory tariff—subject to restrictive commercial measures nor customs duties. It is, in fact, a question of the whole of the French overseas territories (with the exception of territories whose system depends on international instruments): the customs system of these territories, which is fixed by the Decree of 14 October 1954, provides for exemption from duty for products from French customs territories imported into such countries and territories.
11. At the same time, the overseas countries and territories may continue in virtue of Article 133, to levy duties of a purely fiscal character, but duties of this kind must be clearly distinguished from customs duties of a protective character. With the exception of those imposed in New Guinea, these duties consist of consumption charges. Imported products are, in fact, subject to such duties irrespective of their origin, and products of the same nature coming from the country or territory concerned are liable to a compensatory duty at the same level. Consequently these duties cannot be taken into consideration.

12. Furthermore, in accordance with engagements entered into by Member States having responsibilities in the countries and territories, the Treaty (Article 133(3)) authorizes such countries and territories to levy customs duties corresponding to the needs of their economic development. Such duties are, however, progressively reduced to the level of those imposed on products coming from the Member State with which each country or territory has special relations, in accordance with the rules established for the abolition of customs duties between Member States.

13. But compared with the total volume of exchanges between constituent territories of the free-trade area not coming under the application of the Agreement of St. Germain-en-Laye or a special trusteeship agreement, the part subject to such rights represents only 0.45 per cent and does not constitute a danger for the substantial liberalization of the commercial exchanges.

14. If that was no longer to be the case, it would then and only then be up to the CONTRACTING PARTIES to envisage the possibility of a waiver. However such a situation is most improbable, and were it to occur, it would be of a temporary nature; in fact it could not exist beyond the moment when the economic development of the countries or territories was such that the latter would be able to benefit fully from the advantages of a large common market.

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1 It is interesting to note that the tenfold multiplication of these protective measures would affect rather less than 5 per cent of their total volume, supposing always that the present level of exchanges remains the same.
15. The abolition of substantially all quantitative restrictions on imports from Member States which is, during the five-year period corresponding to the application of the first agreement, realized partially on the basis of rules similar to those laid down for the integration of the European territories, is guaranteed, for the end of the transition period, on the one hand by the general obligation imposed on each of the overseas countries and territories by the general provisions of the Treaty, to apply at the right time to their commercial exchanges with Member States the system which it applies with the Member State with which it has special relations, and, on the other hand, by the provisions laid down for the renewal of the Agreement.

16. The Agreement of St. Germain-en-Laye which covers the conventional basin of the Congo, and the special trusteeship agreements concerning French Togoland and the French Cameroons, as well as Ruanda-Urundi and Italian Somaliland, envisage for the benefit of all States subscribing to these agreements, equality of treatment which, by the application of the most-favoured-nation clause, is extended to all the contracting parties to the General Agreement.

For the time being this juridical system partially hampers the application of the obligations resulting from the provisions of Article XXIV of the General Agreement as it does not allow the countries and territories in question to abolish customs duties for the Member States of the European Economic Community alone. This situation and the need to avoid penalizing these territories on account of their international status justifies the exemption authorized in paragraph 4 of Article 133. The CONTRACTING PARTIES would be badly advised to plead respect of the international obligations imposed on Member States in order to take advantage of the incomplete realization of the free-trade area for these countries and territories.

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1 A system which, as has been stated, does not entail restrictive quantitative measures.

2 i.e. the Belgian Congo, Ruanda-Urundi, French Equatorial Africa and a part of Italian Somaliland.

3 The part of the volume of exchanges between the constituent territories and the free-trade area, including overseas countries and territories coming under the application of the Agreement of St. Germain-en-Laye and special trusteeship agreements, subject to protective duties, does not exceed 3 per cent.
B. Commercial Relations with third Countries

17. A free-trade area differs from a customs union by the absence of a common customs tariff regulating the area's exchanges with countries which do not form part of the area.

Article XXIV (paragraph 5(b)) stipulates that the customs duties which each of the Members of the area are entitled to maintain must not be higher following the establishment of the area than they were prior thereto. No provision of the Treaty contradicts this regulation which the Member States, on the basis of Article 234 of the Treaty, have undertaken to respect.

C. Method of Realization

18. As in the case of the provisions governing the customs union between the European territories of Member States, the system of association of overseas countries and territories is a definite agreement which contains provisions for the promotion of the progressive formation of a free-trade area. The administrative agreements provided for in the Treaty, the first of which constitutes Annex I to the Treaty, have no other object but to solve problems outside the competence of the CONTRACTING PARTIES, such as investments which by their very nature must take account of the rhythm of the economic development in the countries and territories considered, and secondly, in connexion with the system of exchanges, to review and to define the provisions of the Treaty applicable during the period covered by each agreement.

As to the suppression of customs duties and quantitative restrictions in the European territories of the Member States, the time allowed for the establishment of a free-trade area with the overseas territories is fixed without ambiguity by the Treaty. 1

On the contrary, however, the time in which the obligations imposed on countries and territories by the formation of the free-trade area must be fulfilled appears to be less clear.

1 cf. supra No. 9.
But as has been seen, the absence of precision in the Treaty on this point is more apparent than real, because the area will in fact be formed for most of the exchanges by the end of the period envisaged for the integration of the European territories of the Member States.\footnote{cf. supra No. 12 and No. 15.}

This parallelism between the time-limits for the realization of the integration of the European territories of Member States and the system of association of overseas countries and territories results from the actual nature of obligations undertaken in connexion with exchanges between Member States and associated overseas countries and territories and from the small part of such exchanges affected by customs duties the levying of which by the overseas countries and territories is authorized by Article 133.