25. As regards the harmonization of duties, the Working Party took note of the assurance given by the representative of the Member States that harmonized external duties will be applied as from 10 February 1958. Some members of the Working Party expressed their disappointment at the fact that the Report of the Member States did not contain more definite indications as to the rate to be applied. The representative of the Member States, while stressing that the Waiver did not contain any obligation to communicate the harmonized tariff before it entered into force and that, moreover, the details had not yet all been worked out, gave some information of a general nature about the progress made in the preparation for harmonization of the tariffs of the Six Members. The basis for harmonization would in principle be the Benelux duties increased by two points. However, the rate would not be exactly the same in the three other Member States, as there was a need for taking account of "geographical protection"; in accordance with Section 15 of the Convention on Transitional Provisions, minor variations of duties would be applied in order to ensure that protection would be the same whether imports were made directly or through the territory of any other Member States. The Working Party was also informed that France and Italy had requested, in accordance with the provisions of Section 15, paragraph 6 of the Convention, an exception from the harmonized tariff for two years but this request affected only a small number of steel products.

26. Several questions were asked relating to the principle of harmonization and the justification of "geographical protection". The representative of the Member States stated that harmonization should be taken to mean the bringing together of various duties to a level which should be lower than the tariffs applicable before and that the Waiver did not imply that all the countries concerned should apply exactly the same duties. The principle of harmonization of duties enables the adoption of different tariffs according to country, to the extent necessary to prevent diversion of trade to the detriment of countries with higher duties by way of other Community countries with lower duties. The duties which each country may establish vary according to the differences in costs of transport for goods originating in third countries, as between direct imports on the one hand and indirect imports over the territory of another Community country on the other. The geographical protection which certain countries may enjoy is made up of the difference between the transport costs in the two cases mentioned. It was further stated that the new harmonized tariff will be lower not only than the duties in existing legal tariffs, but also than
the duties at present applied, and that, although detailed calculations were not yet available, the general incidence of the harmonized tariff in each Member State other than Benelux will certainly be lower than before. The reason why full resort has been had to the provisions regarding harmonization was the large difference that remained between the Benelux duties and those of the other three countries before the Community was set up.

27. The representatives of Austria and Sweden stated, that in their opinion, the method of harmonization sketched out by the representative of the Member States did not appear to be consistent with the terms of the Decision of 10 November 1952. The Swedish representative stated that the Decision was based on the assumption that the Member States would harmonize their customs duties upon a basis which should be lower than the duties then applicable. Moreover, the Benelux countries were authorized, under paragraph 4 of the Decision, to raise certain bound duties by not more than 2 per cent ad valorem "for the purpose specified in Section 15 paragraph 7 of the Convention on Transitional Provisions, and under the circumstances specified in that paragraph." As regards the first point, the representatives of Austria and Sweden suggested that, as soon as the proposed duties are available, the secretariat should compare them with the duties applicable in 1952 and submit the results of the comparison to the CONTRACTING PARTIES. As regards the proposed harmonization on the basis of higher rates in the Benelux countries, the representatives of Austria and Sweden considered that such a measure would not be consistent with the terms of paragraph 4 of the Decision. Paragraph 6 of Section 15 of the Convention contemplates that some countries may maintain higher rates of duty than the countries having the lowest duties and to that extent a certain variation in the rates is permissible, but it is contended that this probably would be met if the Benelux tariffs would remain at their present level. The other members of the Community would have this possibility which was contemplated in paragraph 6 of Section 15, but there would not be any need for any increase in the Benelux duties. The purposes which are defined in the Decision taken by the CONTRACTING PARTIES refer specifically to paragraph 6 of Section 15, and it seems clear that, unless a harmonization is a complete one, the Benelux countries are not authorized under the terms of the Waiver to raise the level of their bound duties. Finally the representatives of Austria and Sweden stressed that even if the provisions of paragraph 6 of Section 15 in conjunction with Section 29 provide for certain deviation from the general rule for harmonization, no legal basis has been shown to justify the geographical protection claimed by the Member States.

28. The representatives of the Community considered that the arguments drawn from paragraph 6 of Section 15 of the Convention, which were put forward in support of the thesis developed by the Austrian and Swedish delegations to the effect that the harmonization of customs duties was not in conformity with the Decision of 10 November 1952, were based on an erroneous analysis of the section. In point of fact, paragraph 6 of Section 15, far from defining the conditions for harmonization, on the contrary establishes a procedure allowing the latter to be deferred for two years. As expressly indicated in Section 4 of the Decision of 10 November 1952, the question is whether the increase by two points authorized in paragraph 7 of Section 15 of the Convention, in order to facilitate the harmonization of customs duties, does in fact allow of such harmonization, and whether the conditions laid down in paragraph 7 of Article 15
are fulfilled. With regard to the first point, harmonization will be effective on 10 February 1958. Even if the Treaty does not expressly define the concept of harmonization, this is implicitly defined in Section 15 itself, the purpose of which is to establish provisional procedures for avoiding disturbances in the Common Market due to the very different tariff levels in the various countries of the Community when the Treaty is brought into force (the Benelux quotas under paragraphs 2 to 5 of Section 15, and the measures of unilateral protection under paragraph 6 of that Section). The harmonization of duties consists in bringing the tariffs closer together on the basis of the lowest tariff in the Community, increased by two points if necessary, to an extent which makes it possible to abolish the safeguard procedures constituting an obstacle to the steel trade which are provided in Section 15. The representatives of the Community recalled in this connexion that this definition of harmonization was already contained in a report of the French Government on the Treaty establishing the European Coal and Steel Community, published in October 1951 - that is to say, before the ratification of the Treaty by the national parliaments. With regard to the second point, the conditions laid down in paragraph 7 of Section 15 will be fulfilled. The Benelux tariff quotas will be abolished on 10 February 1958, and one of the countries which are neighbours of Benelux will not have recourse to the provisions of paragraph 6 of Section 15. The representatives of the Community do not see how, under these conditions, it can be reproached with not having fully respected the undertakings contained in the Decision of 10 November 1952.

29. The Working Party recommended that the secretariat should undertake the comparison which was asked for by the representatives of Austria and Sweden, and confirmed that the increase in the level of bound duties was only authorized for the purposes specified in paragraph 4. It wishes to quote in this connexion an extract of the report of the 1952 Working Party:

"It was felt that this insertion was necessary to guarantee that the authorized increase in the Benelux duties on tariff items bound under the General Agreement would only take place if the Member States gave effect to their intention of harmonizing their customs duties and of bringing them down to a level which would be lower than the general level of their present duties on coal and steel products."

The representative for Austria also pointed out that the proposed method of harmonization would impair the value of certain concessions which were granted by the Six in the course of the 1956 Tariff Negotiations. The representative of the Member States did not share the opinion of the Austrian delegation. In fact, the harmonization will lead to a reduction of the duties of all positions in the tariffs of Germany, France and Italy irrespective of their having been the subject of negotiations in 1956 or not. The Working Party was of the opinion that, if the Austrian Government felt that the introduction of the harmonized tariff would have that effect, it would be free to resort to the procedures of Article XXIII of the General Agreement. This right was clearly recognized by the CONTRACTING PARTIES when they approved the waiver in 1952.

1 See Basic Instruments and Selected Documents, First Supplement, page 88.

Finally, the representative of Austria indicated that, in view of the importance of this matter, the Six should enter into consultation with the CONTRACTING PARTIES or any interested party before the new rates entered into force. The Working Party felt that it was unnecessary to provide for special consultations since the new text of Article XXII of the General Agreement was broad enough to enable the Austrian Government to request that such consultations be held, either between the Six and Austria or, if such consultations did not bring about satisfactory results, between the Six and the CONTRACTING PARTIES. Moreover, the Working Party agreed to recommend, as is stated in paragraph 31 below, that the next report of the Community should be considered by the Intersessional Committee as soon as practicable after it has been received by the Executive Secretary.