Committee I on Expansion of Trade

DRAFT REPORT OF COMMITTEE I

1. The Committee met from 31 August to September 1959 and addressed itself to the tasks listed in COM.I/4.

I. RULES AND PROCEDURES FOR THE TARIFF CONFERENCE

2. The Committee recommends to the CONTRACTING PARTIES for their approval the draft Rules and Procedures annexed to this Report.

3. Early in its discussions, the Committee decided to adopt the 1956 rules with suitable modifications. The CONTRACTING PARTIES subsequently assigned to the Committee the task of examining the problem of the participation of agricultural exporting countries and the problems relating to the negotiability of fiscal duties and internal taxes and joint negotiation of products of common concern. Out of these problems arose a number of concrete proposals by the Australian and Indian Governments which were discussed by the Committee. In the case of some of these proposals regret was expressed by certain members of the Committee that Governments had not had more time to study them. The following paragraphs summarize the discussion of the Australian and Indian proposals.

4. A detailed discussion was held in respect of the Australian proposal that the level of import restrictions maintained under paragraph 2(c) of Article XI should be negotiable. The Committee recognized that the CONTRACTING PARTIES had never been faced with this problem before and that therefore no rulings or precedents existed.

The representative of Australia argued that the proposal of his Government as to the negotiability of import restrictions was strictly limited to those which are maintained under Article XI:2(c) and in no way affected import restrictions covered by other provisions of the General Agreement. The intention of his Government was that countries which so wished should be entitled to grant concessions on import restrictions maintained under Article XII:2(c). In the view of the Australian Government, the provisions of Article XI:2(c) and those of Article XIII:4 left some scope for consultation and negotiation.

Some members of the Committee pointed out that a distinction between import restrictions applied pursuant to Article XI:2(a) and those maintained under the other provisions of the General Agreement could not
easily be made. Some representatives expressed their fear, that even if such a distinction were feasible - which might become possible following the consultations of Committee II - the Australian proposal risked opening the door to the negotiation of import restrictions other than those provided for in Article XI:2(c). This in turn might lead to quantitative restrictions becoming an instrument of commercial policy.

It was questioned whether it would be at all possible from a logical point of view to authorize negotiations of the restrictions permitted by this paragraph. They were in fact only permitted to the extent that they were "necessary" to the enforcement of certain types of governmental measures. There could hardly be any question of negotiating these restrictions, since they were either "unnecessary" in which case they constituted a violation of the agreement, or they were "necessary" in which case there was no room for negotiation. In fact, for a contracting party to grant a concession in the form of a reduction of the level of restrictions would be equivalent to giving away something it was not entitled to possess.

The view of the Australian representative on this point was that the restrictions "necessary" in the circumstances were the protective core and that this should be made negotiable in the same way as other protective measures. Negotiation would not, of course, mean reducing the level of restrictions below what was necessary but causing the government granting the concession to modify the internal measure so as to reduce the level of "necessary" restriction.

Finally, some members were concerned about the fact that the administration of negotiated import quotas might be handled in a discriminatory way, especially if such quotas were established on a country basis. In this respect, the opinion of the Australian Government was that the results of such negotiations could take the form of global quotas or of country quotas in conformity with the provisions of Article XIII which also applied to tariff quotas which had often been subject to negotiations.

No agreement having been reached, the Committee decided, in the light of this discussion, to bring this question before the CONTRACTING PARTIES at their fifteenth session, who could then decide whether or not, and in what way, the Australian proposal might be accepted in the negotiating rules.

5.

[Subsidies: See separate paper.]
6. Both the Australian and the Indian Governments had proposed that internal taxes be listed in the negotiating rules as matters subject to negotiation. The representatives of these countries supported by others pointed to the serious restrictive effects on imports of such taxes which particularly affected agricultural commodities like tobacco, tea and coffee. These taxes were no less effective in reducing imports than customs duties and, where they were imposed on a product which was the subject of a tariff binding in the GATT, could render that binding meaningless. Moreover the Havana Charter in an Interpretative Note to Article 17 made provision for the negotiability of internal taxes where applied to products not produced domestically in substantial quantities and the Haberlor Report had recommended the incorporation in the negotiating rules of this Note. Other representatives, while indicating their sympathy with the proposal and the arguments put forward, referred to the difficult task of governments in search of revenue to finance over increasing demands of a social, economic and developmental character and considered that the general complexity of the problem required further consideration by the CONTRACTING PARTIES. Agreement could not be reached and the Committee therefore refers the proposal to the CONTRACTING PARTIES (see Draft Rules and Procedures II (3)(ii)) The Representative of Brazil wished to record his disappointment for the Committee's failure to adopt this proposal to which his Government attached the greatest importance and reaffirmed his desire to see the CONTRACTING PARTIES adopt the Haberlor proposal.

7. With respect to the proposal that contracting parties be allowed to negotiate jointly on products of common concern the Committee agreed that the traditional rule in this matter, which has been maintained in the draft rules annexed hereto (paragraph II (b)(i)) was designed to permit this type of negotiation. At the same time, the Tariff Negotiations Committee was instructed in the 1956 rules (VI(c)) to facilitate among others this very type of negotiation. The rule has been maintained and strengthened by an amendment proposed by the Swedish Government. Moreover there were examples of joint negotiation in the history of GATT tariff conferences.

8. The proposal that the CONTRACTING PARTIES lay down rules for the evaluation of concessions based on the relative importance of a commodity in the exporting country, rather than its relative importance to the trade of the importing country. This proposal could not be accepted in view of the traditional attitude of the CONTRACTING PARTIES, reaffirmed at the Review Session (BISD, Third Supplement, page 219, paragraph 38) that "governments participating in negotiations should retain complete freedom to adopt any method they might feel most appropriate for estimating the value of duty reductions and bindings".

9. To give less-developed countries the margin of flexibility they need for meeting essential developmental needs the Indian Government proposed that the Rules allow bindings at certain ceilings rather than at existing or reduced levels. It was pointed out this was expressly provided for in
the Rules (see annex VIII(a)) according to which a contracting party might "reduce the duty, bind it at its then existing level, or undertake not to raise it above a specified higher level".

10. The Indian Government with a view to allowing greater elasticity of movement to less-developed countries proposed that it be made possible for a contracting party to enter into commitments with respect to the average level of duties under a tariff heading or commodity group, while allowing free movement of the individual rates within that group. The Committee does not consider that commitments of this kind are ruled out by the Agreement.

11.

[Proposal contained in paragraph 8 of Indian Paper (CON.1/W.3) - see text in separate document.]

Drafting of legal texts

12. The Committee felt it was premature to discuss the form of the instrument or instruments which would embody the results of the conference. It is proposed that this task be assigned to the Tariff Negotiations Committee (see Draft Rules VI(g)).
II. TIMING OF THE EXAMINATION OF THE EEC COMMON TARIFF UNDER
   ARTICLES XXIV:5(a)

13. The Committee discussed the timing of the examination of the EEC
    common tariff in relation to the requirements of Article XXIV:5(a). It
    was recalled that most members of Sub-group A (Tariffs and Plan and
    Schedule; BISD, Sixth Supplement, page 72) believed that the CONTRACTING
    PARTIES should have an opportunity to examine jointly the common tariff.
    Some delegations suggested that this examination should begin as soon
    as practicable after the common tariff was made available. It was noted
    however that the exact nature of the common tariff would not be known
    until after the negotiations under Article XXIV:5 had been completed;
    a final collective judgment could not therefore take place before then.
    Accordingly it is recommended that the contracting parties which so
    wish be given an opportunity to make statements on the extent to which
    the criteria of paragraph 5(a) are met by the draft common tariff at the
    time of the Sixteenth Session. The Committee considered that the
    CONTRACTING PARTIES would be in the best position to decide
    whether, by which body, and in what way a preliminary joint examination
    should be carried out or whether they would wish to await the completion
    of negotiations under Article XXIV:6.

III. NEGOTIATIONS WITH THE EUROPEAN ECONOMIC COMMUNITY

14. The text of paragraph 6 of Article XXIV relates only to the
    compensation afforded by reductions in the tariffs applied to the same
    item; it does not refer expressly to compensation which may be afforded
    by reductions brought about in the duties applicable to other products.
    The Committee decided to approach this question from a practical point
    of view. It considered that the purpose of paragraph 6 and, in particular,
    of its reference to Article XXVIII, was to ensure that in the modification
    of bound duties "a general level of reciprocal and mutually advantageous
    concessions not less favourable to trade than that provided for in the
    present agreement" would be maintained. It therefore decided to
    recommend the following procedure:

   (i) The Community will submit by 1 May 1960 a list of the items
       bound under the GATT indicating the contracting party with which
       each item was initially negotiated. For each item the Community
       will give its views with respect to the adequacy of the "internal
       compensation" (i.e. the compensation referred to in paragraph 6 of
       Article XXIV as being "already afforded by the reductions brought
       about by the corresponding duty of the other constituents"). In
       other words, it will indicate opposite each item (a) whether it
considers the "internal compensation" to be adequate; (b) whether it considers the "internal compensation", if any, to be inadequate - in which case compensation will be offered to the affected parties -; or (c) whether it considers the "internal compensation" to exceed the compensation actually required - in which case the excess will be offered by the Community as compensation for modifications in other bound items.

(ii) The above list will have the purpose of preparing and facilitating the negotiations which will start on 1 September 1960 in that it will (a) set before the CONTRACTING PARTIES the full scope of the modifications envisaged by the Six; (b) give contracting parties the Community's views on the extent to which those modifications may be compensated by other modifications affecting the same item or affecting other items; and (c) eliminate, before the beginning of the conference, the need for negotiation of all those items in respect of which the affected party considers the Community's proposals satisfactory.

(iii) Contracting parties which so wish may submit to the Community for its guidance lists of items on which they would like to receive compensation.

(iv) At the opening of the conference the Community will make offers of compensation for all those modifications for which compensation was promised in the list submitted on 1 May. Contracting parties will examine these offers together with those contained in the Community's list mentioned in paragraph (i) above. If a contracting party finds the Community's offers satisfactory the negotiations under Article XXIV:6 between that contracting party and the Community will be considered as having been concluded. Any contracting party which is not satisfied with the offers made and which is entitled under paragraph 1 of Article XXVIII to enter into negotiations and/or consultations with the Community, shall notify to the Community its intention to enter into negotiations, in respect of the items of which it is the initial negotiator or considers itself to have a principal supplying interest, and into consultations in respect of the items in which it considers itself to have a substantial interest.

15. The Committee noted that the binding of a rate in the Community's schedule would take full effect only at the end of the transitional period. Article 23 of the Rome Treaty provided the framework within which each national rate would move during the transitional period towards the point at which it would coincide with the Common Tariff rate. Article 24 of the Treaty, however, gave Member States the freedom to modify those duties more rapidly than is provided for in Article 23. Concern was felt by the Committee lest a Member State should increase the duty on a bound item more rapidly than the other Member States decrease their duties on the same product. In this connexion, the Representative
of the Community, speaking on behalf of the Six, made the following statement:

"The Member States of the Community declare that in case one of them should wish to accelerate the process of alignment on the Common External Tariff, the Community would see to it that this be done in a synchronized and balanced manner, regard also being had to the general balance of the concessions. They further declare that they have no intention of using Article 24 or Article 26 in such a manner as to prejudice the interests of the other contracting parties."

The Committee took note of this statement and agreed that if a contracting party should feel that prejudice was caused to its interests as a result of accelerated adjustments of duties during the transitional period, that contracting parties could resort to the provisions of Articles XXII and XXIII of the Agreement.

16. The question of the associated Territories of the EEC was raised with respect to the possibility that they might also be engaged in the general round of negotiations. It was pointed out that the EEC would negotiate only in respect of its common tariff. It was open to the associated Territories or to the Member States which still have responsibility for the external commercial relations of these territories freely to decide whether they would wish to participate in the tariff conference.
The CONTRACTING PARTIES, wishing to hold at the same conference

(i) a general round of negotiations between contracting parties for new concessions;

(ii) negotiations for accession to the General Agreement of Cambodia, Israel and any other government invited by the CONTRACTING PARTIES;

(iii) re-negotiations by the Members of the European Economic Community under Article XXIV:6, in fulfilling the requirements of Article XXIV:5(a);

(iv) re-negotiations under Article XXVIII,

decided, at the Fourteenth Session

(i) to convene the Conference on 1 September 1960 and that the first part of the Conference will be devoted to the carrying out of re-negotiations under Article XXIV:6 with the European Economic Community with a view to concluding such re-negotiations by Christmas 1960, and thereby initiating the negotiations for new concessions in good time;

(ii) to urge all the participating governments to make the necessary arrangements and to give the necessary instructions to enable their delegations to conclude the re-negotiations under Article XXIV:6 by Christmas 1960;

(iii) taking into account what is said in paragraphs (i) and (ii) above, to set 2 January 1961 as a target date for the opening of negotiations for new concessions;

(iv) to agree that, for reasons of convenience, any re-negotiations which governments intend to undertake before the end of the three-year period of firm validity, should take place during the first part of the Tariff Conference, i.e. from 1 September 1960 to 24 December 1960; and that, to that effect, these governments be invited to submit any notifications under Article XXVIII as early as possible and not later than 15 July 1960;

(v) to give to Cambodia, and to any other government invited to negotiate with a view to accession at this time, an opportunity to carry out such negotiations during the second part of the Conference, i.e., during the early part of 1961.

The CONTRACTING PARTIES decided to invite Israel on 27 May 1959 (SR.14/10).
II. General Round of Negotiations

(a) **Aim of the Negotiations**

The Contracting Parties, recognizing that customs duties and other measures often constitute serious obstacles to trade, have decided to hold negotiations based on the principles of Article XXVIII bis of the General Agreement and conducted with due regard to the objectives of the General Agreement.

The negotiations shall be directed towards the reduction of the general level of tariffs and other charges on imports and, in particular, to the reduction of such high tariffs as discourage the importation of even minimum quantities and shall aim at the exchange of reciprocal and mutually advantageous concessions. Governments participating in the negotiations shall endeavour through common effort to ensure that the results of the negotiations are as great as practicable.

(b) **Scope of the Negotiations**

(i) Participating countries may request concessions on products of which they individually, or collectively, are, or are likely to be, the principal suppliers to the countries from which the concessions are asked. This rule shall not apply to prevent a country not a principal supplier from making a request, but the country concerned may invoke the principal supplier rule if the principal supplier of the product is not participating in the negotiations or is not a contracting party to the General Agreement.

(ii) Participating countries may also enter into negotiations in accordance with these rules in respect of the following matters:

- the protection afforded through the operation of import monopolies, as provided in Articles II and XVII (including the interpretative notes thereto);
- internal quantitative regulations as provided in paragraph 6 of Article III; (mixing regulations)
- the level of screen quotas as provided in Article IV;
- import restrictions as provided in paragraph 2(c) of Article XI;
- the level of a subsidy which operates directly or indirectly to reduce imports;
- internal taxes.

1 This paragraph gives expression to proposals made to the Committee by Australia and India. The Committee reached no conclusions and decided to refer the question to the Contracting Parties. For the discussion of these proposals, see paragraphs 4-10 of the Report. When and if the Contracting Parties agree to include in the negotiating rules any one of the measures listed, the present rule shall be amended to read:

"(ii) To the extent that contracting parties are able to negotiate mutually satisfactory concessions, negotiations may also be held on non-tariff barriers such as:...."
(c) **Multilateral Character of the Negotiations**

Participating governments agree to make a maximum effort towards achieving the objectives of the negotiations in accordance with Article XXVIII bis of the revised General Agreement and other relevant provisions; and to this end shall co-operate to further their multilateral character by making overall concessions commensurate with the overall concessions received.

**III. Accession to the General Agreement**

As mentioned above, Cambodia, Israel and any other government which may be invited by the CONTRACTING PARTIES will be given an opportunity to carry out negotiations with a view to acceding to the General Agreement. The procedural steps are the same as those for contracting parties. In granting tariff concessions, acceding governments will take into consideration the indirect benefits which they will receive from the concessions exchanged between contracting parties at earlier conferences and those which will result from new negotiations among contracting parties. Similarly, all the participating governments will be expected to take into consideration the indirect benefits which they will receive from the negotiations between the acceding governments themselves and between them and the contracting parties.

**IV. Negotiations under Article XXIV:6**

The time-table for these negotiations is contained in Sections II and VII.

**V. Re-negotiations under Article XXVIII**

The time-table for these negotiations is contained in Section II.

**VI. The Tariff Negotiations Committee**

With a view to facilitating the negotiations and ensuring the fullest possible multilateral effort to achieve their objectives, a Tariff Negotiations Committee, composed of all the governments which have submitted consolidated lists of offers, shall be established. The functions and terms of reference shall be established. The functions and terms of reference of the Committee shall be the following:

(a) The Committee shall exercise its good offices for the purpose of achieving the maximum practicable progress towards the objectives of the Conference.

(b) The Committee shall review the consolidated offers as soon as practicable after the opening of the negotiations, at any time deemed appropriate and useful during the Conference and again in the final phase of the negotiations; provided that the opening of negotiations bilaterally shall in no way be conditioned upon the carrying out of the initial review referred to above.

(c) The Committee should consider the possibilities of furthering the multilateral character of the negotiations, for example through examining the lists of requests before the opening of the second stage of the Conference. Furthermore, the Committee shall be at the disposal
of any country or group of countries to arrange for negotiations on a triangular or multilateral basis to improve the scope of concessions.

(d) The Committee shall follow closely the course of the re-negotiations under Article XXIV:6 and those under Article XXVIII, review their progress from time to time, and assist participating countries in eliminating difficulties which might be holding up their re-negotiations.

(e) Upon the request of any participating country, the Committee shall consider any problems that such country may believe are impeding or unduly delaying the successful conclusion of negotiations.

(f) The Committee may give advice and make recommendations on any of the foregoing matters and in so doing shall be guided by the principles of Article XXIX and any other relevant provisions.

(g) The Committee will draft the instrument or instruments, which will embody the results of the negotiations. The draft or drafts will be submitted, if necessary by postal ballot, to the CONTRACTING PARTIES for their approval.

Participating governments shall give full consideration to the advice and recommendations of the Tariff Negotiations Committee. Each country retains the right to determine for itself whether to accept such advice or recommendations and to decide on the basis of its own assessment whether to accept the results of the negotiations.

The Committee shall appoint a Tariff Negotiations Working Party to assist in the conduct of the negotiations and may appoint such other subsidiary bodies as may assist the Committee in carrying out its functions.

The Committee shall make arrangements to prevent the disclosure of confidential material.

VII. Methods of Negotiation

The negotiations shall be conducted in accordance with the following rules:

(a) The negotiations shall be conducted on a selective product-by-product basis which will afford adequate opportunity to take into account the needs of individual countries and individual industries. Participating governments will be free not to grant concessions on particular products and, in the granting of a concession they may reduce the duty, bind it at its then existing level, or undertake not to raise it above a specified higher level.

(b) No participating government shall be required to grant unilateral concessions, or to grant concessions to other governments without receiving adequate concessions in return.
(c) The binding against increase of low duties or of duty-free treatment shall, in principle, be recognized as a concession equivalent in value to the reduction of high duties. This rule takes account, inter alia, of the position of countries which, whilst maintaining low or moderate duties on all or most of the products imported from their principal suppliers, find their exports or potential exports generally impeded by high rates of duty.

(d) In so far as negotiations relate to preferences, the applicable provisions of the General Agreement shall be applied in accordance with the rules, as relevant, followed hitherto in negotiations sponsored by the CONTRACTING PARTIES.

(e) Participating governments will be expected to take into consideration the indirect benefits which they will receive from the negotiations between other governments.

The participating governments shall refrain from increases in tariffs and other protective measures inconsistent with the principles of the General Agreement and designed to improve their bargaining position in preparation for the negotiations.

VIII. Preparations for the Conference

In preparation for the negotiations the following time-table shall be observed:

A. General round of Negotiations

1. In order to facilitate the task of the United States authorities preliminary lists of products should be sent to the United States Government in August or September 1959. If a country should need more time the United States would still take into consideration lists received before 31 October 1959. Forty copies should be sent to the secretariat at least by 31 October 1959 for distribution to contracting parties.

2. Lists of requests with the indication of the rates requested would be submitted not later than 1 August 1960. Forty copies should be sent simultaneously to the secretariat for distribution to the contracting parties.

3. As early as possible, but at the latest simultaneously with the lists of requests, each participating government shall send to the Executive Secretary two copies of the latest edition of its Customs Tariff and of its foreign trade statistics for 1958 and 1959. The same information should be sent to any other contracting party which requests it, together with such additional information as may be requested and is readily available.

4. Consolidated lists of offers should be prepared in time for distribution on the day the general round of negotiations opens.

5. Models for the lists mentioned in paragraphs 1, 2 and 4 of Section A above are attached hereto.
B. Negotiations for Accession

Procedurally, acceding governments are required to submit the same kinds of lists and to follow the same time-table as contracting parties. Models for the lists mentioned in paragraphs 1, 2 and 4 of Section A above are attached hereto.

C. Negotiations on the Common Tariff of the European Economic Community under Article XXIV:6

1. The Commission of the EEC agreed to submit towards the end of 1959 its Common Tariff, including rates for the large part if not all of the products contained in List G annexed to the Rome Treaty.

2. The Community will submit, by 1 May 1960, a complete list of the items bound by the Six under the GATT, with an indication of the contracting party with which each item was initially negotiated. This list will also indicate the items on which the Community feels the "internal compensation" to be sufficient; those on which it will offer compensation, and those for which it will claim a "credit".

3. At the same time as the list of bound items the Community will furnish statistical information on imports into the territories of the Six as a whole for 1958; statistical information relating to 1959 might have to be sent at a later date. The Community would, of course, supply supplementary data on request in the course of the negotiations.

4. If any contracting party should wish to submit to the Community a list of suggestions of items on which it would like to receive compensation this would provide welcome guidance to the Community in the preparation of its offers.

5. At the opening of the Conference on 1 September 1960 the Community will submit its offers of compensation to the affected contracting parties.