CONSULTATION UNDER ARTICLE XXII

Consultation with the European Economic Community on Tea

DRAFT AGREED MINUTE

1. The consultation on tea under Article XXII of the General Agreement with the European Economic Community, which was held at the request of the Government of India, and which opened in Geneva on 31 October 1958, was resumed in Geneva on 16, 18 and 19 February 1959.

2. The European Economic Community was represented by delegates from Member States and from the Community Institutions. Other contracting parties participating in the consultation were India, Ceylon, Indonesia, Japan, Pakistan and the United Kingdom. The Chair was taken at the opening meeting by the delegate for the United Kingdom and at the later meetings by a representative of the European Economic Community.

3. The consultation was carried out in the light of previous discussion within the framework of the General Agreement on the association of the overseas territories of the Six, and of discussion at the previous consultation under Article XXII.

COMMON EXTERNAL TARIFF

(a) Implementation of the Common Tariff

4. The representative of the Community stated in reply to questions about the present level of duties on tea in the Member Countries that the reductions in duty of 10 per cent which had been introduced on 1 January 1959, had been applied in the case of tea, to non-Member Countries only by the Federal Republic of Germany. The present tariff position on tea in the Member Countries was:

Spec(59)21
(a) **Federal Republic of Germany** - The reduction in the specific duty of DM. 350 per 100 net kgs. to DM 235 per 100 net kgs. had been extended to all GATT countries. The ad valorem incidence of this specific duty corresponded to the duty of 35 per cent, which it was expected would be the level of the common external tariff; there would, therefore, be no further reductions towards third countries.

(b) **Benelux** - Under the terms of the Treaty of Rome, Benelux was not required to increase the duty on tea until the end of the first transitional period. There had, therefore, been no alteration in the rate of duty applied to third countries (Fl. 50 per net kg.) but the rate of duty for imports from Community countries had been reduced by 10 per cent to Fl. 45.

(c) **Italy** - The duty applied to third countries remained unaltered at Lire 500 per net kg., but the duty applied to Members of the Community had been reduced by 10 per cent to Lire 450 per 100 net kgs.

(d) **France** - The rate of duty towards third countries remained unaltered at 30 per cent for black tea and 20 per cent for green tea. Duties applied within the Community had been reduced by 10 per cent to 27 per cent for black tea and 18 per cent for green tea.

(b) **Assessment of the Common Tariff**

5. The representatives of the Six stated that the final level of the common tariff had not yet been agreed as it was possible that certain Member Countries might wish to invoke the provisions of Article 14(2) of the Treaty of Rome in respect of the fiscal element in the duties applied to tea. It was expected however, that the figure which would finally be agreed would be 35 per cent ad valorem. This figure had been worked out on the basis of the arithmetical average of the rates in the Member States on 1 January 1957.

6. The representatives of participating governments other than the Six pointed out that this rate of 35 per cent which represented an increase of 250 per cent over the rate previously applied in the Netherlands, by far the
largest tea consumer among the Six, was exceedingly high. They disputed the argument of the representative of the Six that legal rates could have been used for the calculation of the arithmetical average which would thus have resulted in a duty of 44 per cent being chosen for the common tariff and recalled that no agreement had been reached in earlier discussion on whether or not legal rates should be used in calculating the arithmetical average.

7. Representatives of participating countries other than the Six, suggested that a more acceptable method for the establishment of the common tariff would be the use of a weighted average. This would reflect more clearly the relationship between tea and other competitive beverages and would result in a fairer duty being applied since tea consumption in the three high tariff countries was low but high in the low tariff country. The representatives of the Six stated that in their view the use of an arithmetical average was more in accordance with the provisions of Article XXIV of the General Agreement and that in any case the use of a weighted average would give rise to considerable complication as there was more than one way to calculate this average and it would be difficult to arrive at a satisfactory figure.

(c) Fiscal Element

8. The representatives of participating countries other than the Six noted that no final decision had yet been taken on the level of the Common Tariff because members of the Community might wish to notify the Common Market Commission in accordance with Article 17(2) of the Treaty of Rome that they considered that a fiscal element was included in the duties applied on 1 January 1957. They expressed the view that duties applied in the Federal Republic, France and Italy had been largely of a fiscal nature and that this fiscal element should be excluded in the calculation of the common tariff on tea, as provided for in Article 22 of the Treaty of Rome. No loss of revenue need be suffered by the governments concerned as the possibility existed for them to compensate for a reduction in the level of the common tariff by the imposition of non-discriminatory internal taxes.
9. Participating countries other than the Six further pointed out in this connexion that the reduction on 1 January 1959 of the duty on tea in the Federal Republic had been offset by an increase in internal fiscal duties and that as the position stood at present this meant that there could be no question of increases in duty in certain countries being compensated, as representatives of the Six had argued at the previous consultation on tea, by corresponding reductions in others.

10. Representatives of the Six stated that they were not yet in a position to indicate what might be the final decision of members of the Community on this point, though it was recognized, at least in the case of Italy, that there had been a fiscal element in the tariff applied on 1 January 1957. They considered, however, that this was an internal decision which could only be taken by the Member governments concerned and that it would not be appropriate to embark, during the consultation, upon examination of this problem. Since fiscal duties were applied by many countries, other than the Six, on a number of commodities, they suggested that any examination of fiscality should be conducted within the framework of the GATT and should cover all fiscal duties applied by contracting parties.

11. So far as the increase by the Federal Republic of Germany of the internal tax on tea was concerned, it was pointed out that this had been a non-discriminatory budgetary measure which had no connexion with the provisions of the Treaty of Rome.

DEVELOPMENTS IN ASSOCIATED OVERSEAS TERRITORIES

12. The representatives of participating countries other than the Six pointed out that since 1 January 1959 producers in the Associated Overseas Territories had had access to the French, Italian and Benelux markets at a rate of duty 10 per cent below that applied to producers in third countries. They were of the opinion that, as an importer faced with several possible sources of supply would normally choose the cheapest source even if the difference in price were slight, the prospects for increased production
within the associated overseas territories were greater than they had been during the previous consultation in 1957. Statistics indicated that production within the Belgian Congo had increased during 1956/1957 even without the incentive of an applied tariff preference, so further increases in production might be expected now that the tariff preference had begun to take effect and reports of plans for expanded production in the Belgian Congo within the next four years had in fact been received by other producing countries.

13. Representatives of the Six stated that the 1956/1957 increase in production and exports in the Belgian Congo had resulted from an improvement in the quality of tea produced there and not from the incentive of a future tariff preference within the Community. As any further increases in production would be limited by climatic conditions and the availability of suitable land and investment, serious difficulties for third countries were unlikely to arise particularly as farmers in the Belgian Congo did not wish to be dependent on one main crop only and so were equally interested in expanding production of other items such as coffee and palm-oil.

14. Representatives of participating countries other than the Six disagreed with this view and pointed out that even though the preference at present in effect might be slight the discrimination in favour of producers in the associated overseas territories, which would greatly increase over the next few years, would be almost bound to result in expanded production and consequently in a gradual diminution in the share of third countries in the markets of the Community.
POTENTIAL DAMAGE TO THIRD COUNTRIES

I. Black Tea

(a) Diversion of Trade

15. In the view of participating countries other than the Six the incentive of a tariff preference, possibly as high as 35 per cent ad valorem, would be bound to cause diversion of trade and to result in expansion of production within the associated overseas territories. As tea exports from those territories to the Community gradually increased, tea from other producing territories, which would not be able to compete under such tariff discrimination, would be steadily forced more and more out of the markets of the Six. The threat of damage was imminent since a 10 per cent difference in the duties in favour of the AOT's had already been introduced as from 1 January 1959 in the case of France, Italy and Benelux. That the provisions of the Treaty of Rome would inevitably lead to a change in buying habits within the Community was indicated by the psychological effect which signature of the Treaty had had in 1957, when imports from the AOT's had increased and imports from other areas had declined before the existence of the preferential margin.

16. As representatives of the Community held the view, for the reasons given in paragraph 12', that any expansion of production in the associated overseas territories would be very limited, they could not agree with the other participating countries that a serious diversion of trade might result.

(b) Substitution

17. Representatives of the Six rejected the argument of other participating countries that the introduction of a high tariff in the Netherlands, the main tea consumer in the Community, would result in a decrease in consumption and pointed out that it had been indicated in the case of items such as petrol and wine that the introduction of high duties or taxes did not discourage consumption.

18. The representatives of participating countries other than the Six held the view, however, that while there was no direct substitute for the items quoted by the Six, other non-alcoholic beverages were directly substitutable for tea. There was also in their opinion a wide measure of discrimination in the proposed common tariff rates for coffee (16 per cent ad valorem), cocoa (9 per cent) and tea (35 per cent), which might encourage a swing in consumer taste away from tea towards these other beverages.
19. No agreement was reached during the Consultation on the question of how damage to third countries could be assessed at this stage. Representatives of the Six stated that there was no proof that other producers were suffering actual damage already, and that while they recognized the apprehensions of the other producing countries about the future position, they did not believe that they would prove to have been justified. They could not accept the argument of the other participating countries that while it was not possible to provide statistical evidence of concrete damage at present, the indications were that import trends within the Community were already changing and that serious damage would inevitably be suffered by third countries unless action were taken now to prevent it.

20. The participating countries other than the Six urged the Community to reconsider their case which was based on production and trade trends since signature of the Treaty of Rome and not to insist on statistical proof of damage, since by the time such evidence became available serious damage would have been suffered by other producers.

II. Green Tea

21. The representative of Japan reminded the representatives of the Six that while Japan exported a certain quantity of black tea, his country was mainly concerned about the possible harmful effects on trade with Morocco, Tunisia and Algeria of the introduction of a common tariff of 33 per cent on green tea. The representative of the Community stated that as Morocco was an independent country with no tariff link with France, there was no possibility that the Common Tariff of the Six would be applied by that country. The position of Tunisia, which was also an independent territory, was rather more complicated, since it was linked to France by a customs union. Tunisia was not, however, associated with the European Economic Community, so the provisions of the Treaty of Rome did not apply within that country either. Algeria was therefore the only important Japanese market which would be affected by the introduction of the common tariff of 33 per cent on green tea.

22. The representative of Japan pointed out that since the bulk of green tea imports into the Community went to Algeria, where the standard of living was low, it was feared that the introduction of a 33 per cent duty, though it might be based on the arithmetical average of tea duties in each member country, in place
of the former French duty of 20 per cent would have a serious effect on his
country's trade, particularly as the French duty was virtually the only one to
be applied in practice since the other member countries of the Six did not import
green tea. The representatives of the Six undertook to report the concern of the
Japanese Government to the Common Market Institutions.

CONCLUSIONS

A. Views of Participating Countries other than the Six

23. Representatives of participating countries other than the Six stated that
the export of tea was of vital importance to their continued economic development
and to their balance-of-payments position. They recalled the arguments which
they had put forward in the Working Party on the Association of Overseas
Territories with the European Economic Community (Report circulated as L/805)
and during the previous Consultation under Article XXII, and urged the Community
to bear these in mind in determining the level of the common tariff on tea.

24. The representatives of the Community were reminded that no reply had been
received to the memorandum submitted by the Governments of Ceylon, India,
Indonesia and Pakistan and with which the Government of the United Kingdom had
associated itself, and were asked to give further consideration to the proposals
in the memorandum:

(i) that the level of import duty in the Community should not be
raised above that applied in the Netherlands prior to 1 January
1959; and

(ii) that the incidence of taxes other than import duty should be
borne in mind in determining the common tariff.

25. Representatives of participating countries other than the Six recalled the
statement of the Representative of the Council of Ministers at the Thirteenth
Session (L/936) that a basis for fruitful discussion lay between mere apprehen­sion as to possible damage and actual damage. They expressed their
disappointment that representatives of the Community had not been able to agree
that their case, which was based on facts and logical arguments arising from
these facts, that damage was imminent, provided this basis for discussion.
They further expressed their disappointment that no practical solution which
would remove this imminent danger had yet been evolved and that they must again
report to their Governments that no progress had been made.
B. Views of the Six

26. Representatives of the Community said that in the Consultation they could deal only with specific points which might arise. Nothing new could be said on the question of discrimination which would arise from the introduction of a common tariff or of the common external policy of the Six. They recognized the grave concern of the other participating countries about the future of their tea exports, but they did not believe that damage had yet been suffered by third countries or that in fact it would be suffered. If damage did result it would appear gradually from trade statistics and steps could be taken to prevent it continuing. They undertook to provide a written reply to the memorandum submitted by Ceylon, India, Indonesia and Pakistan within the next two or three weeks.

27. Representatives of the Community said that they were not disappointed in the discussion though they had hoped that the other participating countries would bring forward more concrete facts to support their arguments. They felt however that the examination of the present position and of the reasons for the apprehensions of the other participating countries had been useful and would enable them to report back to their authorities in Brussels. This clarification of views was, they felt, the basis for discussions which had been referred to at the Thirteenth Session by the representative of the Council of Ministers and until concrete facts were brought forward nothing apart from further discussion to clarify the views of both sides could be considered.