CONSULTATIONS UNDER ARTICLE XXII

Consultation with the Member States of the European Economic Community on Cocoa

DRAFT AGREED MINUTE

1. The consultations on cocoa under Article XXII of the General Agreement with the Member States of the European Economic Community, which were held at the request of the Government of the United Kingdom, and which opened in Geneva on 12 and 18 November 1958, were resumed in Geneva on 18, 23 and 24 February 1959. This minute relates to the February consultation only.

2. In addition to Member States of the EEC, the following other contracting parties participated in the consultations: the United Kingdom, Brazil, the Dominican Republic, Ghana, Indonesia and the United States of America. The Chair was taken alternately by a representative of participating countries other than the Six and by a representative of the Six.

3. The discussions were carried out in the light of data and discussion to be found in Addendum 1 to L/805, the statistics furnished by the GATT secretariat (attached herewith as Annex I), the discussions which had taken place in the previous consultation under Article XXII, and various memoranda (i.e. the memorandum submitted jointly by the Governments of Brazil, Ghana, Indonesia and the United Kingdom (attached herewith as Annex II) and the reply prepared by representatives of the Six (attached herewith as Annex III)).

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1 With reference to the status of the United States see paragraph 4 of the report on bananas (document Spec(59)66) and its annexed declaration by the Six.

Spec(59)75
COMMON EXTERNAL TARIFF

(a) Implementation of the Common Tariff

4. Representatives of the Six provided the following information about steps taken by the Member States of the European Economic Community in the field of customs tariffs since the previous consultations:

(i) Import duty on cocoa beans prior to 1 January 1959:

<table>
<thead>
<tr>
<th>Country</th>
<th>Legal Duty</th>
<th>Duty Applied</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>25</td>
<td>0</td>
</tr>
<tr>
<td>Fed. Rep. of Germany</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Italy</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Benelux</td>
<td>10</td>
<td>0</td>
</tr>
</tbody>
</table>

(ii) Under the Rome Treaty the situation as of 1 January was to be:

<table>
<thead>
<tr>
<th>Country</th>
<th>Duty effectively applied</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>on imports from ACT's</td>
</tr>
<tr>
<td>France</td>
<td>0</td>
</tr>
<tr>
<td>Fed. Rep. of Germany</td>
<td>9</td>
</tr>
<tr>
<td>Italy</td>
<td>0</td>
</tr>
<tr>
<td>Benelux</td>
<td>0</td>
</tr>
</tbody>
</table>

In other words, a 1 per cent preference in favour of the ACT's was to obtain in the German market as of 1 January 1959.

(iii) At the end of 1958, that is before the entry into force of this preference, the German Government decided to apply, with effect from 1 January 1959, the common external tariff rate of 9 per cent in respect of all imports of cocoa beans. This decision resulted in the nullification of the 1 per cent preference in favour of the ACT's. The decision taken on 3 December 1958 by the Member States of the European Economic Community had the same end in view. The CONTRACTING PARTIES were informed of this decision in document L/954 of 13 January 1959 distributed by the GATT secretariat. It will be noted that since the last consultation France has liberalized imports of cocoa beans from all sources.
5. Representatives of participating countries other than the Six expressed their concern about the uncertainty attached to further action by the Community to implement the 9 per cent tariff, especially the possibility that the introduction of the common tariff and the reduction of internal barriers might be speeded up, and asked that notice be given of future tariff measures.

(b) Assessment of the Common Tariff

6. Representatives of participating countries other than the Six expressed their concern about the effect on their trade in cocoa of the future introduction of a discriminatory tariff of 9 per cent in France, Italy and Benelux, whose imports had previously been admitted free of duty, and stated that the use of a weighted or of an arithmetical average based on rates applied on 1 January 1957 would have resulted in a much lower figure. While they noted with satisfaction that the reduction of duty on 1 January 1959 by the Federal Republic had been applied non-discriminatorily, they pointed out that this reduction had been offset by an increase in the internal tax on cocoa and that if this increase remained, there could be no suggestion that the reduction in the German tariff might compensate for the increase in the other tariffs. They pointed out that the use of an arithmetical average in calculating the common tariff was likely to lead to increased barriers to trade, contrary to the principles laid down in paragraph 4 of Article XXIV.

7. The representatives of the Six recalled that the common tariff of 9 per cent had been agreed in negotiations between the Member States and had not been calculated on a weighted or arithmetical average of the applied or legal tariffs. They pointed out, however, that if the legal tariffs had been used, as Member States had the right to do, the figure of 12.5 would have been obtained by taking the arithmetical average of those tariffs. They recalled, however, that the experts who had been asked at the twelfth session to consider the question of the common external tariff had come to the conclusion that none of those methods would give satisfactory results. They emphasized that the legal rates had been bound against increase as a result of negotiations under the General Agreement, and that third countries had agreed to grant tariff concessions in return for those tariff bindings.
8. With regard to the raising by the Federal Republic of Germany of the internal duty on cocoa, the representatives of the Six pointed out that this was an internal fiscal measure and they did not feel that discussion of such a matter would help to expedite discussions within the framework of the consultation. They added that Member States would certainly not object to participate, if the CONTRACTING PARTIES so desired, in studies of a general character which might be undertaken with a view to a more thorough survey of the problem of fiscality.

DEVELOPMENTS IN PRODUCTION IN THE ASSOCIATED OVERSEAS TERRITORIES

9. The representatives of participating countries other than the Six noted that as yet no preference had been granted to cocoa from the associated overseas territories in the markets of the Community. They expressed the view, however, that the tariff preference which would be introduced must act as a stimulus to increased production in those territories both by increasing prices for producers and by giving an assurance of a market, and that producers there would already be taking action to enable them to benefit fully from the 9 per cent margin of preference when it finally took effect. Their views on the scope for increasing production in the AOT's had already been fully set out in the report of the Working Party (L/805/Add.1). They believed that there would in time be a substantially greater production of cocoa in the AOT's than there would have been had those territories not been given a privileged position in the markets of the Six, and they considered that this view was borne out by the statement of the Six that the 9 per cent preference was intended to be of advantage to their AOT's.

10. The representatives of the Six replied that if the situation of the cocoa trade was causing concern, it was certainly not due to the Treaty of Rome, but to that product's special position in the world economy. They recalled that for some years production had been at a somewhat low level, and that consumption had tended to decline because of the high prices resulting from inadequate supplies.

This view is confirmed by exports, as the following extract from No. 113 of the Cocoa Market Report of December 1958, published by Gill and Duffus Ltd., shows:
"... with production in Ghana and the French Ivory Coast in particular running at what seems to be extremely low levels. This gives cause for concern not only for the current supply position but indeed for the future of cocoa in West Africa... Consumption is continuing its steady decline which set in about the beginning of this year. Cocoa at over £300 a ton has always led to a steady decline in consumption in the long term and there is no reason to suppose that it is not happening at the present time..."

In the associated overseas territories the problem arises of replacing old plantations with a low output, but it is doubtful whether the producer, who is interested only in the immediate profit, would be guided in his actions by the prospect of the long-term advantages he might derive from preferential tariffs. The representatives of the Six pointed out that these questions had already been discussed by the AOT Working Party and more particularly that according to the views of third countries which had participated in that work—views expressed in the Working Party's report:

"... at a most conservative estimate... this would lead within the next fifteen or twenty years to additional annual exports from the AOT's of at least 50,000 tons above what would otherwise have come forward."

Although exports in the authorized circles dealing with these problems are somewhat guarded as to the actual possibilities of increasing production, the Six were of the opinion that such an increase in production—an increase which is not confirmed by facts at present—would perhaps have the effect, if it did occur, of reducing the pressure at present exercised on prices, and would thus contribute to a revival of consumption. In the view of representatives of the Six the tariff preference would only influence production in the AOT's towards the end of the transitional period, and even then it was not expected that the increase would be unreasonable.
ACTUAL DAMAGE TO THIRD COUNTRIES

a) Problem of determining damage

11. The representatives of participating countries other than the Six considered that the approach to the problem of determining damage by the examination of statistics as proposed by the Six was entirely wrong. They considered that the case they had presented proving that damage must arise in the future should be examined as the basis of the consultation. Their case was a very reasonable and logical one, likely to be accepted by any unbiased observer. The representatives of the non-Six understood that the representatives of the Six had agreed that the duty would affect prices to an appreciable extent, and that production would grow. Baron Snoy, speaking on behalf of the Six at the thirteenth session, had indicated that the Six wished to avoid actual damage. But actual damage could not be avoided by the post hoc examination of statistics, but only by a consideration of an a priori case such as that now presented by them. If, therefore, the Six genuinely wished to avoid damage, they must be prepared to weigh the case put to them by the non-Six. Representatives of participating countries other than the Six asked what the Six would do if, in a few years time, third countries came forward with an irrefutable case showing many millions of pounds' worth of damage. Would the Six then make payment to third countries in compensation of this damage? The representative of the Six said that that was not a matter for present discussion. If damage was proved, then the Six would consider their attitude to the question.

\[1\] Vide SR.13/19, page 200.
12. The representatives of the Six first quoted in full the following paragraph from the statement made by Baron Snécy during the thirteenth session:

"The question today is whether, on the basis of the impartial summary by the Chairman of the CONTRACTING PARTIES, it could not be noted that, between mere apprehension as to possible damage which the Six cannot accept as constituting adequate justification and the actual damage which we would all wish to avoid, there is a considerable margin wherein there must be somewhere a basis for fruitful conversations."

The representatives of the Six regretted that the representatives of third countries had not furnished statistical information, so as to bring the discussion from the hypothetical onto the practical level. In that connexion, they recalled that the statistics on which the Working Party on the AOT's had based its work, and which the representatives of third countries had stated were still valid, dated from 1956 and could no doubt have been supplemented with more recent data. Since the representatives of certain third countries had questioned the usefulness of statistics and had said that it would be too late once any damage could be proved by figures, the representatives of the Six pointed out that statistics had gained fairly general recognition as an appropriate working basis; they said that in any case, the work done by the various official bodies responsible for studying problems relating to cocoa and for preparing estimates of production and consumption for future years was generally appreciated by specialists; those studies, however, indicated no such events as had been referred to during the consultations.

(b) Actual damage

13. Representatives of participating countries other than the Six said that while it was not yet possible to provide statistical evidence of actual damage, they held the view that on the psychological plane at least it was already occurring, as their producers, who were already faced with other problems, were being further discouraged by the prospect of being forced out of their markets in the Community. Moreover, the prospect of
cheaper supplies from AOT sources was already encouraging importers in the Community to examine the possibility of drawing more of their supplies from these sources. They also expressed the opinion that their case that increased production within the associated overseas territories, stimulated by a guaranteed market within the Community at prices above the world price, coupled with the decline in consumption which might result from this increased price, would harm their trade, was a reasonable estimate of the position which would gradually appear and they urged the representatives of the Community not to insist that damage must take place before they would consider a practical solution to the problem.

14. Representatives of the Six held the view that no actual damage was being suffered by other producers as a result of implementation of the Treaty of Rome and that because of the many factors influencing trade in cocoa it was not possible to forecast the effects which the provisions of the Treaty of Rome might have twelve or fifteen years hence. The representative of the Six recalled that the representatives of third countries participating in the consultation had themselves admitted that it was impossible at the present juncture to prove any damage, and that for the time being one could only make a number of assumptions as to the future developments. With regard to the psychological damage to which some representatives had referred, the representatives of the Six stated that they were not in a position to make any assessment of it, but that during the first consultation in November 1958, some producing countries had stated that because of the Treaty of Rome they had been obliged to revise their production programmes. The representatives of the Six recalled that at the time they had asked for information concerning these programmes and the way in which they had been revised, but had received no response to that request.

POTENTIAL DAMAGE TO THIRD COUNTRIES

(a) Decline in consumption

15. Representatives of participating countries other than the Six expressed the opinion that the introduction of a 9 per cent tariff in countries where imports had previously been admitted duty-free would result, at the end of the transitional period, in prices within the Community being higher than the world price, by a substantial part of the 9 per cent tariff. This differential would occur no matter how the world price itself might move due to world-wide market conditions.
16. It was suggested by representatives of third countries that this would lead to a reduction in demand for cocoa beans below what it would have been had there been no duty and to a decrease in consumption of finished products. Information had been received which indicated that manufacturers within the Netherlands, an important cocoa market in the Community, had already made representations to their Government about the possible effects of the 9 per cent tariff on their industry, and this concern of manufacturers within the Community appeared to confirm the views held by third countries about the possible effects of the common tariff. The recent decline in consumption in a number of countries due to high prices supported this general view.

17. Representatives of the Six pointed out that it was rare for an increase in import duty to be reflected fully in price levels. They recognized that the imposition of a 9 per cent duty on imports which had previously been admitted duty-free would ceteris paribus raise prices by an appreciable part of the 9 per cent duty, but they could not foresee precisely by how much, since price levels depend also on market conditions and other factors.

18. The representatives of the Six did not agree that a decline in consumption would result from an increase in prices. They held the view that the price level at which consumption might be discouraged was well above that which would result from the 9 per cent tariff, and stated that in any case they would not examine the effects on trade which the imposition of the full rate of 9 per cent might have as it was not possible to estimate developments in the cocoa trade so far ahead. They believed, though they could not be certain, that with rising living standards in the Community consumption of cocoa would rise very substantially.

19. Representatives of participating countries other than the Six asked whether third countries were entitled to a fair share of the market of the Community. Representatives of the Six replied that members of the GATT are entitled to whatever rights there are defined in the Agreement's provisions. Furthermore, there were many references in the Treaty of Rome to the desire of the Six to take due account of traditional channels of trade.
(b) **Diversion of Trade**

20. Representatives of participating countries other than the Six held the view that the higher price obtainable in the Community for their cocoa would encourage AOT producers to sell their total output in that market, thus displacing part of the sales of third countries. This diversion of trade would grow, as production in the AOT's increased. Since consumption within the Community was unlikely to increase much beyond its present level, increased imports from the AOT's would result in producers from third countries getting a much smaller market for their cocoa in the Community than they would have got it if there had been no duty. No tariff discrimination was yet in effect, and it would take a few years for expansion of production to affect exports, so that it might be some time before statistics proving diversion of trade could be obtained, but by that time it would be extremely difficult to avoid permanent damage to the trade of third countries. The Haberler Report had said that the preference on cocoa would be trade-diverting rather than trade-creating.

21. The representative of the Six stated that cocoa producers like most agricultural producers throughout the world were not so much attracted by the uncertain prospects of remote advantages which they could not fully appreciate as by the prices which could be obtained from day to day. Increasing returns incited producers to extend or improve plantations while diminishing remunerations resulted in a loss of interest on their part. In this connexion, the case of Brazilian coffee growers appeared to be particularly significant. Under the incentive of high prices in 1954 Brazilian coffee plantations had been over-expanded. The behaviour of Brazilian growers had clearly shown that they had been prompted not by speculations as to future returns but merely by short term considerations. There was nothing that could substantiate the view that consumption in the Community would not expand in the next few years and studies on this question while making due allowance for the unavoidable unknown factors, generally led to opposite conclusions. In fact consumption tended to lose level off as prices reached high levels as was the case at present.
CONCLUSIONS

(a) Views of the non-Six

22. Representatives of participating countries other than the Six recalled that trade in cocoa was of great importance to their continued economic development. They recalled the arguments which they had put forward in earlier discussion on this subject, and noted that discussions on the present occasion had lead to acceptance by the Six of some of their basic arguments, (such as the effects of duty on prices, the tendency for higher prices to decrease consumption, and the advantages of preference to the AOT's), though not the deductions from them. They believed, however, that those deductions were logically inescapable and that the Six would eventually realise this. They expressed their disappointment that the representatives of the Community had not been able to give any assurance to third countries that they would be allowed a fair share in the markets of the Community, nor to say what would be done if damage were proved. While no actual damage could yet be statistically proved, damage of a psychological nature was already occurring, and would steadily increase in the future. Far from being satisfied by the arguments of the Six, their Governments were becoming increasingly alarmed at the dangers. They felt that it was for the Six to show that the action they proposed under the Treaty of Rome would not be harmful to third countries, and if they could not do so, to amend their proposals.

23. They further expressed their disappointment that there was still no indication that the Six were considering practical action to forestall damage to third countries but seemed rather to prefer to await concrete evidence that damage had been suffered, by which time it might be too late for fully effective remedial action.

24. They would have to report to their Governments this failure of the consultations to yield fruitful results and their Governments would have to consider how best to continue their pressure for a practical solution to this problem of preventing damage to their trade.
(b) Views of the Six

25. The representatives of the Six pointed out in conclusion that the debates during the two meetings of the consultation had related exclusively, on the one hand, to the level of the tariff, and, on the other, to the effects which that tariff would inevitably have in future. They noted that, in the actual opinion of the representatives of third countries, all that could at present be done was to make assumptions but they emphasized that, whereas the Six did not rate their own assumptions higher than mere forecasts, the representatives of third countries maintained that their assumptions must necessarily turn out to be true.

26. The representatives of the Six added, with regard to the problem of proof raised by certain countries, that they could not accept the view that Member States of the European Economic Community would have to prove that no losses would be sustained. According to well-founded GATT precedents, countries which asked for a consultation had to furnish proof of what they claimed to be facts.

27. Turning next to the question raised by certain countries as to the intentions of the Six in case losses were proved, the representatives of the Six pointed out that the question certainly did not arise at present, but should it do so, they would certainly give it their full attention and consider what attitude should be adopted. They said they were ready to give the competent authorities a true report on the apprehension which had been voiced.