I. INTRODUCTION

1. The Sub-Group examined the provisions of the Rome Treaty relating to the establishment of a common tariff and the elimination of import and export duties among the members. It examined also the arrangements which would be necessary for the application of the provisions of paragraph 6 of Article XXIV concerning the modification of bound items as a result of the introduction of the Common Tariff and whether the Rome Treaty contained a Plan and Schedule for the complete establishment of a customs union in the sense of Article XXIV.

2. There was extensive discussion in the Sub-Group as to the significance to be placed upon paragraph 4 in the examination of the tariff provisions of the Rome Treaty. The representatives of the governments of the Member States of the European Economic Community stated:

   The terms of paragraph 4 on the one hand, and paragraphs 5 to 9 on the other hand must be interpreted interdependently. Paragraph 5 of Article XXIV starts with the word "accordingly" which indicates beyond doubt the relationship which exists between these two sets of provisions. The conditions laid down in paragraphs 5 to 9 have the purpose of ensuring that Customs Unions or the Free Trade Areas are in conformity with the general principle laid down in the second sentence of paragraph 4. In other words, a customs union or a free trade area which fulfil the requirements of the provisions of paragraphs 5 to 9 of Article XXIV would automatically and necessarily satisfy the requirements of paragraph 4 since paragraphs 5 to 9 merely spell out the implications of paragraph 4. This interpretation is confirmed by the records of the preparatory work related to the adoption of the text of the present Article XXIV (cf. document W.12/18).

   The view expressed by certain contracting parties that the terms of paragraph 4 of Article XXIV require the Six to take into consideration the situation of each contracting party is furthermore in contradiction with the provisions of paragraph 5 et seq., particularly with those of paragraphs 5(a) and (b) which deal with the general incidence of tariff rates and commercial regulations.
The objective of paragraph 6 is furthermore the maintenance of the rights of the contracting parties acquired by concessions granted to them, a fact which should take care to a large extent of the problem of the countries the trade of which depends on one or on a few products.

3. Most members of the Sub-Group were not prepared to accept this interpretation. They believed that paragraph 4 establishes the basic principles which a customs union should apply to be consistent with the objectives of the GATT. Where questions arise as to the application of the provisions of paragraphs 5 to 9 in particular cases, such questions should be resolved in a manner consistent with the principles embodied in paragraph 4. Some members of the Sub-Group felt, furthermore, that the CONTRACTING PARTIES would have to verify whether the application of paragraphs 5 to 9 is consistent with the aims of a customs union as defined in paragraph 4. One member of the Sub-Group pointed out that this problem might prove in actual practice, so far as the Rome Treaty was concerned, to be minimal in view of paragraph 6 of Article XXIV.

II. COMMON TARIFF

4. The Sub-Group considered whether, on the basis of the Rome Treaty and the additional material submitted to the CONTRACTING PARTIES by the Interim Committee, the future Common Tariff of the European-Community could be considered at this time as being likely to conform with the provisions of paragraph 8(a)(ii) of Article XXIV. It noted that under the Rome Treaty Member States would not be authorized to depart from the Common Tariff but would have to apply substantially the same duties to other countries once the Customs Union is fully established.

5. The Sub-Group examined the provisions of the Rome Treaty dealing with the Common Tariff in the light of the terms of paragraph 5(a) of Article XXIV. Since the rates of duty are not yet known for a large part of the Common Tariff, the Sub-Group came to the conclusion that it was not possible at this time to determine whether the Common Tariff would be consistent with the provisions of paragraph 5(a) of Article XXIV.

6. In considering the basis on which the CONTRACTING PARTIES could best make a judgment with regard to the Common Tariff in the light of provisions of paragraph 5(a) of Article XXIV, most of the members of the Sub-Group felt that an automatic application of a formula, whether arithmetic average or otherwise, could not be accepted, and agreed that the matter should be approached by examining individual commodities on a country by country basis. Attention was also drawn to the drafting history of paragraph 5(a) of Article XXIV, according to which the term "general incidence of the duties" was used with the intention "that this phrase should not require a mathematical average of customs duties but should permit greater flexibility so that the volume of trade may be taken into account" (W.12/18).
7. The representatives of the Member States drew attention to the fact that the provisions of Article XXIV do not exclude any method of calculation for the preparation of a common tariff, provided however that the duty rates applied as a result of the establishment of a customs union are not on the whole higher than the general incidence of the duties which they replace.

The Member States base their calculation on the arithmetical average method which is strictly in conformity with the provisions of paragraph 5 of Article XXIV. For arriving at a still lower tariff level the Member States furthermore in their calculation use the rates actually applied on 1 January 1957, subject to the exceptions as provided for in Article 19 of the Treaty, and not the legal and contractual rates which the Member States, in their view, would have the right to apply under the provisions of paragraph 5 of Article XXIV. To the same effect the Member States provided ceiling rates for a great number of products which have to be applied even in instances where the arithmetical average would lead to higher rates.

The Member States therefore consider that they have gone further than requested by the obligations since the application of their rules will lead to a common tariff, the level of which will be lower than that authorized under the provisions of paragraph 5 of Article XXIV. Further, the Member States do not see the advantage of a product-by-product study which could lead to nothing but the confirmation that the duties of the common tariff are, as shown by the study submitted to the CONTRACTING PARTIES, on the whole, of a general incidence which is not higher than the incidence of the rates which they replace. Finally, the Member States are not in a position to accept a country-by-country study for the reasons stated above (paragraph 2) given in connexion with the interpretation of paragraph 4 of Article XXIV.

8. Most members of the Sub-Group believed that the CONTRACTING PARTIES should have an opportunity to make a thorough and detailed analysis of the proposed Common Tariff on the basis described in paragraph 6 above, at the earliest practicable date. It was envisaged that, in the first instance, this examination would be carried out by each contracting party. Following the completion of this step the CONTRACTING PARTIES should have an opportunity to examine jointly the Common Tariff. Such joint consideration should take account of the trading interests of contracting parties, including those whose exports to the Community are made up of a small number of products.

9. Members of the Sub-Group stressed the importance of fixing low rates of duty for the items in List G. They noted that the items in this list account for approximately 20 per cent of the imports of the Members of the Community and an equal or larger percentage of the exports of some contracting parties to the Community. They also noted that the list includes several raw and industrial materials which normally bear low rates of duty. The representatives of the Member States pointed out that List G contains inter alia industrial products which in most countries normally do not bear low rates.
10. The representatives of the Member States explained that the rates laid down in Lists B, C, D and E are ceiling rates in the sense that, if the calculation of the arithmetic average between the rates of the Member States would lead to a lower figure, the lower figure would be inserted in the Common Tariff, and that the adoption of the rates of the items listed in List G would be consistent with the obligation to maintain the general tariff incidence within the limits fixed by paragraph 5(a) of Article XXIV.

11. The representatives of the Members of the Community stated that they would do everything in their power to communicate as soon as practicable the rates of the Common Tariff including those of List G, as well as any other information which the Six believe would expedite the examination of the Common Tariff by the CONTRACTING PARTIES. To this end the Member States will, as far as practicable, transmit to the contracting parties as soon as possible a table comparing the four national tariffs and the Common Tariff and a "Key" showing how the duties bound under Schedules II, XI, XXVII and XXXIII were incorporated into the Common Tariff. In view of the time-consuming work involved in the actual preparation of the Common Tariff and the Key, it would not be possible to accept a definite timetable at this time. One Member suggested that, if possible, sections of the Common Tariff should be transmitted as they are completed. The representatives of the Six pointed out that this suggestion could not be accepted since the Common Tariff has to be judged as an entirety but they undertook to transmit this suggestion to the Commission of the European Economic Community.

III. ARRANGEMENTS FOR THE APPLICATION OF PARAGRAPH 6 OF ARTICLE XXIV

12. The Sub-Group confirmed unanimously that paragraph 6 provides that if the Common Tariff would involve in its implementation the raising of any duty rate above that specified in the schedules, negotiations should take place under the procedure provided for in Article XXVIII. The Sub-Group agreed that the provisions of paragraphs 1, 2 and 3 of Article XXVIII apply; any modification of the procedures that might be required will be made by the CONTRACTING PARTIES when they make arrangements for the negotiations. However, the representative of the Six declared that they could not commit themselves to such negotiations without prior consultations as to the methods of the application of paragraph 6 of Article XXIV.

The Sub-Group noted that the Treaty provided the possibility for the institutions of the Community to enter into tariff negotiations on the duties of the external tariff which would be fixed for the products enumerated in List G and those presently not bound under the General Agreement.

13. The Sub-Group, subject to a reservation by the representative of the Six that they are not in a position to commit the institutions of the Community, recognized that the negotiations required under paragraph 6 should be completed before Members of the Community took the first step toward achieving a common tariff at the beginning of 1962. It also agreed that any suggestion made on the precise timing of these negotiations should be reviewed by the appropriate intersessional machinery or at the Thirteenth Session, in the light of progress.
made by Members of the Community during the next few months towards completing their common tariff. On this basis it was suggested that the Members of the Community be requested to submit their Common Tariff rate to the CONTRACTING PARTIES not later than 1 July 1959. It was envisaged that the CONTRACTING PARTIES would then require from twelve to eighteen months to examine the tariff and prepare for the negotiations. A tariff negotiating conference might be convened during the latter part of 1960 or early in 1961. Some members of the Sub-Group believed that it might be convenient for the joint examination of the Common Tariff envisaged in paragraph 8 above, to take place at the same time as the negotiations required under paragraph 6 of Article XXIV. The representatives of the Member States declared that they could not undertake a firm commitment concerning the suggested time-table but would endeavour to submit the Common Tariff to the CONTRACTING PARTIES with the shortest possible delay. At the same time they indicated that the examination of the incidence of the Common Tariff should precede the negotiations envisaged in paragraph 6 of Article XXIV.

14. The question was raised whether the negotiations under paragraph 6 of Article XXIV would be conducted by the individual Member States or by the Community as a whole. The representatives of the Member States quoted the provisions of the Rome Treaty which state that the Commission, duly authorized by the Council, would be responsible for conducting tariff negotiations with third countries concerning the Common Tariff.

15. The Sub-Group took note of a statement made by the Japanese Member of the Sub-Group reproduced in document W.12/58.

IV. ELIMINATION OF THE IMPORT AND EXPORT DUTIES AMONG THE MEMBERS

16. The Sub-Group noted the provisions of Articles 12 to 17 of the Rome Treaty which provide for the elimination of customs duties between Member States. In this connexion it noted in particular that according to Article 110 the aim of the commercial policy of the Community is, inter alia, to contribute to the lowering of customs barriers and to take into account the favourable incidence which the abolition of customs duties as between Member States may have on the increase of the competitive strength of the enterprises in those States.

V. PLAN AND SCHEDULE FOR THE COMPLETE FORMATION OF A CUSTOMS UNION

17. Most Members of the Sub-Group felt that the Rome Treaty contained a fairly detailed Plan and Schedule for the elimination of tariff barriers among the Member States. The Sub-Group did not examine the Plan and Schedule from the viewpoint of the elimination of non-tariff barriers in respect to trade among the Member States since these matters had been considered by other Sub-Groups. In regard to the tariff barriers, however, some delegations felt that no such detailed plan was yet forthcoming for the last stage of the operation. The representatives of the Member States agreed that the Plan and Schedule were not as detailed for the latter part of the operation as for the first two stages but pointed out that the Member States were committed to complete the Customs Union within a period which would in no case exceed fifteen years.
Attention was also called to the provisions in the Treaty of Rome which allowed for a delay in the transition from the first to the second stage, and it was suggested that the CONTRACTING PARTIES should recommend under paragraph 7(b) of Article XXIV that the Community should inform them in the event of recourse to those provisions. The representatives of the Six, however, indicated that they were not in a position to accept this recommendation. The possible prolongation of the first stage cannot be considered to be a modification of the Plan and Schedule since the Plan itself provides for this prolongation; paragraph 7 of Article XXIV cannot therefore be invoked.

18. The Sub-Group noted that, under paragraph 7(c) of Article XXIV, any substantial change in the Plan or Schedule should be communicated to the CONTRACTING PARTIES which would be free to ask the Six to consult with them if the change appeared likely to jeopardize or delay unduly the formation of the Customs Union.

VI. FINAL REMARKS

19. The Sub-Group draws the attention of the Committee to the fact that it has not reached conclusions on some points which should be resolved before the CONTRACTING PARTIES examine the Common Tariff to determine if it is consistent with the provisions of paragraph 5(a) or enter into tariff negotiations envisaged under paragraph 6 of Article XXIV. For example, paragraph 14 of this Report suggests that the proposed time-table for the negotiations of bound rates should be reviewed in the light of the progress the Community Members make in preparing the Common Tariff. Furthermore, it will be necessary to prepare negotiating rules and procedures before the opening of such negotiations. It might also be desirable to consult with the Commission of the European Economic Community about the explanatory material which the Member States might provide for the CONTRACTING PARTIES. The Sub-Group, therefore, suggests that these matters be referred to an appropriate intersessional machinery for further consideration.