CONSULTATION UNDER ARTICLE XXII

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

DRAFT AGREED MINUTE

1. The consultations on tea 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 India and which opened in Geneva on 31 October 1958 were resumed in Geneva on 16, 18 and 19 February 1959. This minute relates to the February consultation only.

2. In addition to the Member States of the EEC the following other contracting parties participated in the consultation: India, Ceylon, Indonesia, Japan, Pakistan and the United Kingdom. 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 3 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 by the Governments of Ceylon, India, Indonesia and Pakistan, (attached herewith as Annex II) and the reply of the Six which will be supplied as soon as possible and will be annexed to this document.)

COMMON EXTERNAL TARIFF

(a) Implementation of the Common Tariff

4. The representatives of the Six in reply to questions about the present level of duties on tea in the Member Countries indicated the measures taken by the Six in the tariff field since the October consultations, and recalled the decision of 3 December 1958 by the members of the Community to reduce tariffs by 10 per cent, reported in document L/954.

Spec(59)21/Rev.1
The present tariff position on tea in the member Countries was:

(a) Federal Republic of Germany - The former specific duty of DM.350 per 100 net kgs. had been reduced to DM.235 per 100 net kgs. as from 1 January 1959 and this reduction applied to all imports. The ad valorem incidence of this duty corresponded to a rate of 35 per cent, the level at which the common external tariff would probably be fixed. The decision taken by the Six to reduce their tariffs by 10 per cent for imports from a considerable number of countries and therefore in particular GATT members had no relevance in the case of Germany which, since 1 January 1959, had been applying in respect of all countries a duty equivalent to the rate provided for in the common external tariff.

(b) Benelux - Under the terms of the Treaty of Rome, Benelux was not required to increase the duty on tea until 1 January 1962. There had, therefore, been no alteration in the rate of duty applied to third countries (Fl.50 or 658 Belgian francs per 100 net kgs.). The rate of duty for imports from Community countries, including the AOT's, had been reduced by 10 per cent to Fl.45 or 592.20 Belgian francs per 100 net kgs. The decision of 3 December did not therefore apply in the case of Benelux where the duty previously applied was lower than the rate provided for in the future common external tariff.

(c) Italy - The duty of Lire 500 per net kg. which had been applied prior to 1 January 1959 to imports of tea from all sources had been reduced by 10 per cent from that date for imports from Community countries which pay therefore only Lire 450 per net kg. The decision of 3 December did not apply in the case of Italy where imports of tea, an agricultural product, had been fully liberalized.

(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. Within the Community, including the overseas territories, the duties applied
since 1 January 1959 had been 27 per cent for black tea and 18 per cent for green tea. The decision of 3 December did not affect France since the duty prior to 1 January had already been lower than the common external tariff.

(b) Assessment of the Common Tariff

5. The representatives of the Six stated that the rates of the common external tariff which had been fixed were not, however, final for all items as certain Member States might invoke the provisions of Article XVII:2 of the Treaty of Rome. As regards the level of the duty the representatives of the Member States stated that it had been worked out on the basis of the arithmetical average of the rates applied on 1 January 1957.

6. The representatives of participating countries other than the Six duly noted that the tariff of 35 per cent had not been finally determined because of the fiscal element involved. They pointed out, however, 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 could be used in calculating the arithmetical average. 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 attention of the Six was drawn to paragraph 322 of the Haberler Report and also to the footnote on page 116 of that Report.

7. The representatives of the Six recalled once again that the rate of 35 per cent was only the arithmetical average of the duties applied on 1 January 1957 and argued that it was open to them under the GATT rules to take as a basis the
average of legal duties, which would have resulted in a rate of 44 per cent. The reason why they had used the first method was precisely because they wished to take account of the interests of third countries. Concerning the use of the weighted average the representatives of the Member States recalled that there had been lengthy discussions during the twelfth session on the problems of the relative merits of the weighted average and the arithmetical average, neither of which gave full satisfaction to the contracting parties. However, taking India as an example, it was clear that the rate of duty on imports from India had been 39 per cent in 1956 and 49 per cent in 1957 and that therefore a duty of 35 per cent was unquestionably more favourable. In the case of Ceylon, it was clear, from the customs levies on imports of Ceylon tea into the Six, that the average amount of duty effectively paid had been 34.4 per cent.

8. The representatives of the participating countries other than the Six could not accept the method of calculation advanced by the Six, as such calculation based on the performance of individual exporters would cut across the principle that the Common Tariff should not be higher than the general incidence of the tariffs applicable in the constituent territories of the Six. Calculations should therefore be based on total imports from all third country suppliers of the commodity concerned. While not admitting the arrangements of the Six it was noted with interest that even according to the calculations made by the Six themselves, the "incidence" in the case of Indonesia (the principal supplier of tea to the Six) would only be 18.5 per cent on the basis of 1956 figures and 10 per cent (1956) in the case of the dependent overseas territories of the United Kingdom.

(c) Fiscal Element

9. During the discussions some of the representatives of the Six, e.g., Italy, conceded that the existing duty on tea included a fiscal element. 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 XVII(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 XXII of the Treaty of Rome.

10. 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.

11. The representatives of the Six stated that they were not in a position to indicate what final decision the Six might take in this field. While admitting that the fiscal element could influence consumption levels, they observed that any such influence would be likely to vary depending upon other circumstances, and in any case, this was a source of revenue on which all governments frequently relied. The representatives of the Six expressed doubt as to the usefulness for participating countries of a debate on the problem of fiscal levies and their repercussions on consumption. They were of the opinion that a study of this kind which was of interest to many third countries where fiscal duties were levied on many consumer goods should be conducted within the framework of the General Agreement, and should cover all such duties applied by contracting parties. The representatives of the Six further recognized that in the case of Italy the duty applied on 1 January 1957 included a fiscal element. They stressed that the decision of the Federal Republic of Germany to raise internal taxes on tea by an amount equal to the amount of the reduction in customs duty was of a purely internal and budgetary nature and did not involve any discrimination.
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 1958. 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. The representatives of the Six stated that the increase in production and exports of tea in the Belgian Congo had taken place in 1956-1957 and that therefore the increase noted could not be attributed to the tariff preference arising from the provisions of the Treaty of Rome. They further added that increases in exports had been made possible as a result of an improvement in the quality of tea production which had been given considerable attention in the past few years. With regard to the possibility of future increases in tea production in the Belgian Congo, the representatives of the Six recalled the views that they had expressed on previous occasions and in particular their contention that such expansion would necessarily be limited by certain factors such as the availability of suitable land and the magnitude of the necessary investments.

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.
ACTUAL DAMAGE

15. The representatives of the Six noted that third countries were not at this stage in a position to submit evidence of actual damage. They noted that third countries entertained certain fears as to the possible effects of the Rome Treaty on their trade with the Six. The representatives of the Member States of the Community noted in particular that such fears concerned their future exports to the Member States and the fact that such exports would decline to the advantage of exports from tea-producing associated territories. The representatives of the Six noted, however, that such fears were purely psychological and could not at present be substantiated by facts. They wished to stress that imports into the Member States of the Community were considerably lower than those of a country like the United Kingdom, which in 1956 had imported over 230,000 tons of tea, while imports into the Six had not exceeded 20,000 tons, of which a very small amount (11 tons) had come from the Belgian Congo. The fact that exports from the Belgian Congo had increased in 1957 could not be used to demonstrate that the Rome Treaty had already brought about trade diversions. It was difficult to see how tea growers whose crops had been picked in 1957 could have foreseen, at the time when their plantations had been established, that the Rome Treaty would then have entered into force.

16. The other participating countries pointed out that as the discriminatory provisions have been introduced only with effect from 1 January 1959, it would be unreasonable to expect 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. They also stated that they could not agree that the scope of the consultations should be narrowly limited to actual damage. The representatives of the Six then declared that obviously on this question of the scope of the consultations, the two sides held differing views.
17. 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 seek to limit the scope of the consultations to actual damage, since by the time such evidence became available serious damage would have been suffered by other producers.

POTENTIAL DAMAGE TO THIRD COUNTRIES

(a) Diversion of Trade

18. In the view of the 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 even before the existence of the preferential margin.

19. The representatives of the Six replied that there was nothing in the data at present available which could substantiate the fears expressed by representatives of certain third countries, and they recalled in this connexion that exports from the Belgian Congo, the only associated territory where tea plantations existed, remained extremely modest (4 tons in 1956). Not only was it difficult to imagine, even over the long term, the trade diversions which some representatives feared, but above all it seemed odd to the Six that the Rome Treaty, which had been signed in March 1957 should be held responsible for certain trade trends which had occurred in the same year.
(b) Substitution

20. The representatives of the Six noted the relationship which representatives of certain third countries had established between the tariff level and the consumption level, leading them to the conclusion that as the tariff level increased consumption would decline. They were doubtful as to the effective impact which tariffs could have on consumption and recalled that the tariff element represented only a part, and sometimes a very small proportion, of the charges to which a product is subject. In their opinion consumption came under the influence of many factors and the tariff aspect was after all only one element in the problem. Experience in France tended to demonstrate that this was the case, since, despite considerable increases in taxes on petrol and wines, consumption had in fact been maintained.

21. On the other hand, the representatives of the participating countries other than the Six held the view that while there was no direct substitute for the items quoted by the Six, other non-alcoholic beverages were directly substitutable for tea and that, therefore, the preceding argument based on petrol and wine was not sustainable. 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 would definitely encourage a swing in consumer taste away from tea towards these other beverages. It was also pointed out that plans for expansion of coffee production in the Associated Overseas Territories have been developed to quite a significant extent and that this development was bound to affect the consumption of tea in the Community.

GREEN TEA

22. 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 with the possible harmful results on trade with Morocco, Tunisia and Algeria of the introduction of a common tariff of 33 per cent on green tea. The representative of France stated that Morocco was an independent country whose tariff bore no connexion to the French tariff and which did not have to
apply the common external tariff as it was not a member of the European Economic Community. The position of Tunisia was more complex on account of the existence of the 1955 Customs Convention, but Tunisia like Morocco was not a member of the EEC and the provisions of the Rome Treaty were not applicable to the trade relations between the Member States and Tunisia. Algeria was therefore the only Japanese market which could be affected by the introduction of the common tariff of 33 per cent on green tea.

23. 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 imported negligible quantities, if any, of green tea. The representatives of the Six undertook to report the concern of the Japanese Government to the competent authorities.

CONCLUSIONS

A. Views of Participating Countries other than the Six

24. 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 representatives of the Six to bear these in mind in determining the level of the common tariff on tea. It was also stressed that unless third countries were able to sell their export commodities to the Member States of the Community unhampered by artificial trade barriers, they would not be able to buy from the Community.
25. The representatives of the Six 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.

26. 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 potential damage and actual damage. They expressed their disappointment that representatives of the Six 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

27. The representatives of the Six took note of the apprehensions expressed by representatives of the third countries which had participated in the consultation and undertook to convey this information to the competent authorities. They also undertook to provide a written reply to the memorandum submitted by Ceylon, India, Indonesia and Pakistan within the next two or three weeks. They noted that even in the opinion of the representatives of third countries, it was still too early to produce evidence of concrete damage and were therefore
surprised at the disappointment expressed by representatives of third countries about the result of the consultation. Although they themselves were not disappointed in the discussions which, after all, had made it possible to clear up a number of points and to exchange useful information, they had expected new information to be forthcoming in addition to that provided during the previous year, either during the discussions of the Working Party on the AOT's, or during the October 1958 consultation or included in the memorandum submitted during that consultation.

28. The representatives of the Six, while assuring the representatives of third countries that in accordance with their request they would receive a written answer to this memorandum, had hoped for further discussion on facts and figures in order that the discussion could have gone beyond the mere confronting of different contentions. The representatives of the Six were however, of the opinion that the examination of the present situation and of the reasons for the apprehensions of other participating countries had been very useful and would make it possible, upon their return, to submit a substantial report to the competent authorities.