Report on the negotiations concerning the establishment of a Free Trade Area (14 December 1958)

Caption: On 14 December 1958, the Organisation for European Economic Cooperation (OEEC) publishes a detailed report on progress in the negotiations for the establishment of a free-trade area in Europe.

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Report on the negotiations concerning the establishment of a Free Trade Area (14 December, 1958)

Chapter I — Preamble — Principles — Transitional Period

1. In May, 1957, Working Party No. 21 held preliminary discussions on a draft preamble proposed by the Secretariat. This draft dealt not only with the preamble itself, but also with the definition of the general objectives of the Area. The discussions of Working Party No. 21 on this preamble were not resumed in the Inter-Governmental Committee.

2. From the outset of its work, the Inter-Governmental Committee has approved the principle that the Area should be established progressively during a transitional period divided into three four-year stages.

3. It should be noted that the question of the transitional period to be applied to countries in the course of economic development is dealt with in Chapter X below.

4. In addition, the Inter-Governmental Committee instructed a Group of Experts to examine the economic arguments underlying the proposal by the Delegate for Portugal that his country should be subject to a longer transitional period than that defined in paragraph 2 above. This Group of Experts came to the conclusion that the proposal of the Portuguese Delegation was largely justified and they proposed that:

— during the transitional period generally applied by the other Member countries, Portugal should make tariff reductions at least half as large as those undertaken by the other countries;

— during the same period, any other Member country which might consider that an existing Portuguese industry was competing successfully and should be subject to the general regulations of the Area should be able to notify the Organisation and to request that the case of the industry concerned should be examined;

— during the year immediately preceding the end of the normal transitional period, the Organisation would review the situation of Portugal and the subsisting Customs duties with a view to determining the time limits for their abolition.

5. The question has arisen how the transitional period for the Area can be synchronised with that of the European Economic Community, particularly with regard to the starting date and the passage from one stage to another. In this connection, the Community has announced its attitude as follows:

— the date of coming into force of the “European Economic Association” (the name proposed by the Community instead of “Free Trade Area”) should coincide with the date on which the first steps are taken by the European Economic Community to dismantle tariffs and quotas (1st January, 1959);

— the length of the transitional period of the European Economic Association should in principle correspond to the length of the transitional period of the E.E.C. It could not exceed the latter by more than three years;

— the Association cannot develop at a faster pace than the Common Market; if passage from one stage to the next is delayed in the Community, the corresponding stage in the Association would have to be delayed too; on the other hand, the fact that the Community has moved on to the next stage would not preclude the prolongation of a stage in the Association.

With regard to the voting rules for the passage from one stage to another see paragraph 165 below.

Chapter II — The Free Movement of Goods

A. Elimination of Customs duties

(a) Methods

6. The Inter-Governmental Committee thought that a similar procedure to that of the Treaty of Rome could be adopted. This method is as follows:

— there would be a “standstill” as regards tariffs;

— there would be a first reduction of 10 per cent in the basic duty on every product;

— subsequent reductions would be made so that, on each reduction, total Customs receipts, calculated on the basis of 1956 imports, would diminish by 10 per cent, on the understanding that the reduction for each product must be equal to at least 5 per cent of the basic duty (10 per cent for products on which there is still a basic duty of more than 30 per cent). These reductions would be made respectively eighteen months and thirty months after the first reduction, and then one year, eighteen months and thirty months after the beginning of the second stage. Any reductions still to be made at the end of the second stage must be effected during the third stage, their timing being decided by the institutions. (Under the Treaty of Rome, it is the Council which decides this by a qualified majority on the proposal of the European Commission);

— the Member countries shall endeavour to ensure that the reduction made in the duty on each product shall amount to 25 per cent of the basic duty by the end of the first stage, and to 50 per cent by the end of the second stage;

— under the Treaty of Rome, the above provisions may be amended by a unanimous decision of the Council on the proposal of the European Commission and after consulting the Assembly;

— the Member countries declare their willingness to reduce their duties more rapidly than is provided above if their general economic situation and the situation of the sector concerned permit.

7. It should be noted that, in the Free Trade Area, these provisions would apply solely to products entitled to Area treatment.

8. In the negotiations within the Inter-Governmental Committee, a number of questions have, however, been left open, in particular:

— the proposal of the Swiss Delegation that duties below 10 per cent, or reduced below this figure during the first two stages, could be exempted from the process of tariff reduction until the end of the second stage;

— the proposal of the Portuguese Delegation whereby a country would be able, during the transitional period, to claim exemption from the “standstill” and institute tariff protection in the case of new industries: this question has been studied by the Group of Experts referred to in paragraph 4 above, who consider that

the proposal is largely justified so far as Portugal is concerned. They suggest that during the transitional period the Portuguese Government should have the right to introduce new customs duties in order to protect new and hitherto unprecedented industries provided that these duties do not at the outset exceed the normal level of protection then provided in Portugal for similar products, and that they are subsequently governed by the rules for tariff reduction applied by Portugal. It is also proposed that any other Member country who might consider that a new Portuguese industry could stand more rapid reduction of the protection accorded should be able to notify the Organisation and to request that the case of the industry concerned should be examined;

— the problem of the “basic duty”. It has been agreed in principle that for each product the basic duty to be successively reduced will be that applied on 1st January, 1957. Some countries, however, have requested exceptions from this principle, and a procedure has been adopted to examine these requests. Delegations have been invited to indicate the Customs items for which their governments wish to have a different basic duty from that applied on 1st January, 1957. Countries which oppose such requests, and which for the product in question are one of the main suppliers of the requesting country, may notify their objections. The matter will then be examined;

— the problem of calculating “total Customs receipts”. The question is whether the Six will calculate this on the basis of imports between themselves, as provided in the Treaty of Rome, or on the basis of their intra-European imports in the O.E.E.C. sense.

(b) Revenue duties

9. The Treaty of Rome provides for the abolition of revenue duties which must be reduced by at least 10 per cent at each round. The Member States may, however, replace them by an internal tax provided it has no direct or indirect protectionist incidence.

In the Free Trade Area, some countries would like to retain revenue duties on the understanding that they would eliminate any protective elements they may contain. An enquiry was therefore made to ascertain whether, and under what conditions, it would be technically possible to provide equality of treatment in the Free Trade Area between imported products and identical products of domestic origin if the former are subject, on importation, to revenue duties and if the latter are subject to internal taxes.

10. It was found that this would be possible, provided a number of technical problems were solved. The representatives of the Six, however, still prefer to abolish revenue duties and replace them by internal taxes levied equally on imported products and *identical* domestic products. A choice must therefore be made between the two systems, that of the Rome Treaty or that proposed by certain other countries, for adoption by the Area.

11. As regards the possibility of adopting, in the Area, rules to prevent the levying of revenue duties, internal taxes or other charges on imported goods with a view to providing indirect protection to other domestic products, see Section F of Chapter VI below.

B. Scope of duty-free treatment

(a) The definition of origin

12. The Treaty of Rome provides that the Six will establish a common external tariff but, since there will be

no such tariff in the Free Trade Area, it will be necessary to define the conditions under which goods may move duty-free within the Area. If no rules are established in this matter, the differences which would subsist between the tariffs that Area countries will apply to the outside world might lead to deflections of trade or of activity.

13. During a first stage, the negotiators tried to find a suitable definition of origin. Under such a system, only products deemed to "originate" in the Area would qualify for duty-free treatment when moving within the Area. Products not deemed to originate in the Area, under this definition, would continue to pay the full external duty of the importing country when they passed from one Area country to another.

14. Two criteria have been envisaged for defining origin. Firstly, the percentage rule, under which a product would be considered to originate in the Area if the value of the "materials" of non-Area origin contained in the product did not exceed a given percentage of the final value of the product. This rule would be supplemented by adopting a list of basic materials regarded as originating in the Area, regardless of their effective origin (inside or outside the Area), when calculating the amount of elements of Area origin included in products manufactured in the Area with these materials. Secondly, the process rule, under which specified processes carried out in a country of the Area would confer Area origin on the resulting product.

15. The system of the definition of origin raises a large number of problems, e.g., would the percentage be the same for all products or should there be a different percentage for different categories of goods? Where the process criterion was applicable, would the percentage rule be excluded or not? Agreement would have to be reached on the percentage(s), the list of basic materials, the list of processes, etc.

16. It was felt, however, that definition of origin alone was not an absolutely reliable way of preventing all deflections of trade and activity unless it was extremely restrictive, at any rate in certain sectors, thus limiting unduly the volume of products qualifying for Free Trade Area treatment.

17. The Member countries were divided both as to the degree of importance to be attached to such deflections and as to the ways of dealing with them.

Several Delegations considered that it was impossible to foresee exactly which deflections would not be settled by applying the general rules of origin, and that counter-measures could not therefore be taken in advance to cover every conceivable case. They considered that if the Area Convention contained general provisions ensuring that Member countries co-operated in a spirit of goodwill, a relatively liberal definition of origin could be adopted and there would be no need to study in detail every conceivable problem of deflection of trade. The origin rules could be amended in the light of experience to ensure that Area treatment would be given solely to products which could reasonably be considered to have originated in the Area. In addition, a code of good behaviour could be adopted under which governments would undertake not to apply measures likely to cause serious deflections of trade, otherwise the injured countries would be justified in taking certain protective measures.

Other Delegations considered that the Convention should contain specific provisions to avoid any foreseeable deflection of trade from the outset.

18. Finally, definition of origin would entail an effective system of certification and control and some countries feared that this in itself might constitute a barrier to the free flow of trade.

Although Member countries have not been able to reach agreement on the generalised application of the system of definition of origin based on the criteria indicated in paragraph 14, a Group of Customs Experts has drawn up, on the technical level, a series of provisions dealing with the practical procedure for administering such a system. Some of the Experts still have reservations about certain of these provisions and some Delegations still think that in certain cases the verification of origin would come up against insuperable difficulties. The rules drawn up by the Customs Experts, however, could be brought into effect in cases where agreement had been reached on a system of definition of origin, particularly one based on the processing criterion.

(b) The Carli plan

19. As a means of dealing with these difficulties, another scheme has been studied which was proposed by the Italian Minister for Foreign Trade. Mr. Carli. This is the Carli plan, the examination of which marks a second stage in the endeavour to solve the difficulties raised by the absence of a common external tariff around the Area. Mr. Carli proposed that goods should be allowed to move freely within the Area provided the external tariffs applied by countries to these goods were within a margin on either side of a norm. Countries would remain free to levy tariffs outside this margin, but a compensating charge would be levied on all products traded between two countries on which the external tariffs were not sufficiently harmonised.

20. Several countries consider that one of the advantages of the Carli plan is that it avoids the formalities of certifying and verifying origin, at least in the form which would be entailed by definition of origin.

21. In its original form, however, the Carli plan raises a number of problems, in particular:

— the fact that it tends to induce Members of the Area to harmonise their tariffs raises difficulties for certain countries;

— there is a danger that it may encourage harmonisation in the form of a general raising of the tariffs of Area countries;

— it does not provide a complete solution for the problem of deflections, particularly if important differences remain between the tariffs of Area countries on raw materials and semi-finished products;

— it involves the levying of duties on products entirely of Area origin.

22. In addition, the finalisation of the plan would imply negotiations on the spread and level of the band, and the procedure for calculating the compensating charge, etc.

23. Studies have been undertaken to improve the Carli plan and rid it of its major disadvantages, particularly some of those mentioned in paragraph 21 above, and to see how it could be applied in practice with a view to simplifying as far as possible the formalities involved in certifying and verifying origin. They have thrown new light on some elements of the Carli plan and have made it possible to define certain variants which eliminate, at least in part, some of the plan’s drawbacks in its original form. It has, however, not been possible to reach agreement on the general application of such formulae.

(c) New direction of studies on problems of origin and deflections of trade

24. At this stage the whole problem has been re-assessed with a view to working out formulae which would make it possible both:

— to determine the products which may benefit from tariff reductions made by the Member countries within the Area;

— to guard against the risks of deflections in trade and activity which may result from differences between the tariffs of Member countries vis-à-vis the outside world, such differences between tariffs corresponding in principle to differences of economic structure.

25. Having considered, from these two angles, the advantages of the various solutions so far envisaged from the point of view of global solutions, and the criticisms made by the different Committees or Groups of Experts which have had to examine them, the Inter-Governmental Committee reached the conclusion that no simple and universally applicable system could settle all the problems relating to trade as a whole within the Area.

26. In the light of these considerations the Inter-Governmental Committee gave a new direction to the work, in seeking to determine formulae appropriate to each category of products, depending on the particular nature of the problems to be solved in each of these sectors and the special nature of the risk of deflections of trade and activity within each of them.

27. Sector studies are in hand. They must take account of certain notions accepted by the Inter-Governmental Committee, namely:

(a) The real risks of deflections of trade and activity due to the abolition of national tariff protection in intra-European trade will be negligible during the first stage of the transitional period as appreciable tariff protection will be retained during this period. Rules should, however, be established from the outset both to determine those products which would be entitled to benefits from tariff reductions and to give Customs authorities and users an idea of how these problems will ultimately be solved. These rules should therefore be drawn up in advance, though it would not be necessary to embody in the Convention all the details regarding their application. These could be worked out during the first stage of the transitional period.

(b) Some arrangements for certification and verification will be necessary in any event, if only to prevent transit operations and simple re-exports.

(c) The principle that each country or Customs area remains free to fix its own duties in regard to third countries must be respected.

(d) If the gaps between the external tariffs of the Member countries, particularly in the case of primary materials, were reduced, this would be a sure way of partly avoiding the risk of deflection. Any efforts which Member countries make to narrow these gaps are, therefore, desirable. In this connection, it would be useful for the Member countries to confront their respective external tariffs on primary materials during the first years of the first stage to see to what extent they could reduce the present disparities without abandoning the fundamental aims of national policy. In this respect, it is clear that the tariffs which the countries of the European Economic Community decide to apply to the products on List G will be of paramount importance. Methods must be envisaged for dealing with a situation in which the tariff differences between Member countries persist, even in the case of primary materials, and are large enough to give rise to risks of deflection. Various means for remedying these difficulties are conceivable: either administrative (more or less strict origin rules) or fiscal (compensating charges).

(e) Care must be taken, however, that the action taken does not exceed what is necessary to avoid deflections of trade. By definition, trade barriers must in any event be less for products entitled to Area treatment than for others, otherwise the Area would be void of substance. There would thus have to be some institutional control of the measures taken by the Member countries.

(f) To limit the danger of deflections, and to make it easier to deal with such cases as may arise, the Member countries should undertake to observe a number of rules laid down in a “code of good conduct”.

(g) Whatever the rules ultimately adopted in accordance with the suggestions put forward above, unforeseeable difficulties may arise. Provision should therefore be made for a complaints procedure and for suitable escape clauses.

(h) Lastly, the future arrangements must take account of the need for satisfactory reciprocity between the Area countries.

28. The initial work on sector studies was carried out by the Steering Board for Trade. The Board has:

(a) drawn up a list of the main types of solution proposed for the problems arising out of differences in the tariff systems of the Member countries in relation to the outside world, distinguishing between

— solutions designed to reduce the effect of tariff disparities;

— solutions designed to reduce directly or indirectly the tariff disparities themselves;

(b) has made proposals for establishing a “Code of Good Conduct” designed to afford safeguards against deflections of trade or activities due to tariff disparities which experience showed were not covered by the rules adopted for sectors;

(c) has analysed the different circumstances which might justify subsequent changes in the rules of origin;

(d) has defined the procedures which should be laid down in respect of rules of origin and deflections of trade due to tariff disparities as follows:

(i) procedure for bilateral discussions between a Member country which is suffering from deflection of trade and those of its partners who are most concerned;

(ii) procedure for proposing, examining and deciding upon changes in the initial rules of origin, applicable generally to any particular products;

(iii) procedure for proposing, examining and deciding upon special adjustments to be applied by particular countries suffering from deflection of trade in cases where alteration of the general rules is not necessary or cannot be agreed upon;

(iv) provisions for action necessary to meet a real emergency by an individual country which suffers from deflection of trade while the procedures under (i), (ii) and (iii) are being gone through;

(v) arrangements for co-operation in everyday matters of Customs administration and provisions for dealing with unresolved disputes and complaints about the treatment of particular consignments.

29. One of the members of the Steering Board for Trade, who took the view that the whole problem of deflections of trade due to disparities between external tariffs could not be satisfactorily solved merely by rules of origin, the Code of Good Conduct and the various procedures envisaged above, proposed that Member countries should further agree to a standstill of external tariffs at the level they would freely fix at the time the Convention was signed. This standstill would mean that the Convention would include procedure with regard to changes made by Member countries in their external tariffs which might imply recourse to a majority vote. Other members of the Steering Board took the view that this suggestion conflicted with the principle of tariff freedom which in their view is fundamental in a Free Trade Area. These members of the Board nevertheless acknowledged that the Member countries should not be able to make arbitrary changes in their tariffs so as to cause disturbances in the Area; some of them have stressed that the way to avoid such dangers is to follow the suggestions referred to in sub-paragraphs (b) and (d) of paragraph 28 above.

30. With regard to the “sectors” themselves, the Alternates of the Steering Board for Trade have in consultation with experts of Member countries drawn up a list of the problems awaiting solution in each sector and indicated the types of measure which in their opinion could be employed to determine origin and provide adequate safeguards against serious deflections of trade and activity.

31. Finally, the Steering Board for Trade has made certain procedural proposals for further negotiations on the question of origin and deflections of trade. The Inter-Governmental Committee has subsequently set up a Committee on Origin consisting of Ministers and their Deputies to continue this work so that decisions on the problems of origin and related questions may be taken as soon as possible. The Inter-Governmental Committee has been informed that the European Commission was arranging consultations between experts within the Community whose conclusions would be communicated direct to the new Committee. The Community has also submitted proposals for the application of a system based on the Carli plan as follows:

(a) Where the external tariffs of the Member countries of the Association for a given product fall within the recognised permitted band, the product in question will circulate free of duty between Member countries of the Association.

(b) If the conditions set out under (a) are not fulfilled, a compensating charge will be applied.

(c) The levying of this charge should be automatic and compulsory unless, in accordance with a procedure to be worked out, exceptions are made for cases where there is no fear of deflection of trade or an abnormal transfer of activity.

(d) A compensating charge could also be levied on a product on which tariffs fall within the permitted band, if this product is made from a raw material or semi-manufacture on which the tariffs are outside the permitted band.

(e) Since the external tariff of the Community is sufficiently near the average level of tariffs of O.E.E.C. Member countries, it should be adopted as the norm on either side of which limits would be fixed within which the tariff of the importing and exporting country should fall if the product is to be entitled to circulate freely.

To negotiate a different norm, such as the average of the tariffs of the seventeen countries, would raise considerable practical difficulties.

(f) The spread of the permitted band should be negotiated sector by sector, taking into account the possibilities of trade deflections or transfers of activity in each sector.

(g) If the importing or exporting country or both accord different kinds of tariff treatment to the same product, a basic tariff should be negotiated with a view to establishing a “conventional” tariff that takes account of the various streams of trade which receive different tariff treatment.

(h) Compensating charges will be retained after the transitional period to the extent to which external tariffs have not been harmonised.

(d) Co-ordination of external trade and tariff policy

32. During the work on the definition of origin, questions were raised in connection with co-ordinating the external trade policies of countries of the Area. The Chairman of the Inter-Governmental Committee has submitted proposals designed to prevent Member countries of the Area from suffering harmful effects from the import policy applied by another Member in regard to the outside world. These proposals provide for bilateral consultations between the injured country and the country causing the injury. If these consultations fail, the injured country may appeal to the institutions of the Area; finally, if this appeal fails, the injured country may take protective measures.

33. In the view of the European Economic Community, it is essential that Member States of the Community should proceed to co-ordinate their trade policies in regard to third countries. The Community attaches the same importance to solving this problem as it attaches to solving problems due to disparities between external tariffs. The Community proposes two general objectives with regard to the co-ordination of trade policies:—

— to contribute, in conformity with the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of Customs barriers;

— to ensure that the import system applied by a Member country in its relations with a third country cannot distort competition between firms within the Association.

With this aim in view, the Community envisages:

— a flexible procedure for the exchange of information and for examination by the institutions of any changes made by Member countries in their import system and their policy in respect of anti-dumping duties in relation to third countries;

— a procedure for appeal to the institutions open to Member countries who consider that the import system applied by another Member country in relation to third countries is likely to distort the conditions of competition;

— the possibility for a Member country to invoke an escape clause.

The European Economic Community finally thinks that consideration should also be given to the special problem which would arise if a Member State of the Association were to conclude with one or more third countries an agreement which, by the scope of its clauses, the broadness of its aims, and its duration would

impede the attainment of the objectives of the Association. To meet such a case, they propose that Member States of the Association should consult together and that, where appropriate, the other Member States might be entitled to declare themselves released from any Treaty obligations with regard to this country.

34. After discussions on the proposals of the European Economic Community in the course of which the United Kingdom Delegation, in particular, put forward certain criticisms, the Chairman of the Inter-Governmental Committee suggested draft Articles on commercial policy. This draft deals with the first objective of the E.E.C. referred to in the last paragraph above (development of world trade, etc.) and adds a second objective, namely strengthening the economies of Member countries by means of closer relations between them. It further provides for a periodic review by the institutions of the development of the trade of Members, the progress made towards achieving these objectives, and the effects in this connection of the commercial policies pursued by Member countries. According to this draft, any Member country may bring forward at any time for examination by the institutions any aspect of the commercial policy of any other Member country; all Member countries must provide such information as the institutions may request to facilitate their work in carrying out this review. Finally, the draft contains a reference to provisions for dealing with deflection of trade, dumping resulting in injury to producers in other Member States, and provision for consultation and complaints.

35. As pointed out in paragraph 29 above, one of the Members of the Steering Board for Trade during the discussion on the definition of origin proposed that the freedom of Area countries to modify their Customs tariffs in relation to the outside world should be accompanied by certain limitations. The French representative on the Inter-Governmental Committee supported this proposal, indicating that liberty in this connection without supervision would not only have the result of making the rules of origin ineffective but would also be calculated at any moment to upset the balance between the reciprocal advantages which the Area countries had conceded to each other on the formation of the Area. The fact that one of the Area countries reduced its Customs tariff in relation to the outside world might deprive its Area partners of openings upon its market which they were entitled to expect and in return for which they had opened their own frontiers to exports from that country. Just as the European Economic Community was founded upon reciprocal and lasting tariff advantages which the Six had mutually conceded to each other, in the same way, in the French view, the association of the Seventeen should be founded upon reciprocal and lasting tariff advantages which the O.E.E.C. countries should concede to each other. Complete tariff freedom for the Area countries would be contrary to this conception.

36. For his part, the United Kingdom Representative thought that a Code of Good Conduct and various procedures for dealing with origin and deflections of trade (along the lines of the proposals of the Steering Board for Trade set out in paragraph 28 above) would provide all the necessary safeguards in the field of origin. With regard to the principle of tariff freedom, the United Kingdom Delegate thought that the objective of the Free Trade Area consisted in the fact that its Members mutually agreed to exchange free access to each other’s markets and not a preferential position within those markets. It was true that an effort to co-ordinate the external trade policies of Area countries would be necessary but this should not have the effect of restricting the liberty of Member countries to modify their external tariffs. In practice, moreover, tariff reduction in relation to third countries, which must involve reciprocity on the part of those countries in the form of tariff reductions from which all Area countries would benefit, could only happen when European industries were able to meet the competition of these third countries, with the result that the openings which European industries enjoyed on the Area market would not necessarily be affected.

37. Finally, the Inter-Governmental Committee agreed that it was not possible to reach conclusions on this subject until the work of the special Committee on Origin had been satisfactorily completed [paragraph 31 above].

(e) Preferential systems

38. The European Economic Community has called the attention of the United Kingdom to the problems which in their view are raised by the existence under the system of Imperial Preference of privileged

markets for that country. These privileged markets, in their view, created a risk of disequilibrium in the conditions of competition and might, in addition, lead to deflections of investment. The Community therefore thought that in certain specific cases appropriate solutions should be found for these problems.

39. The Inter-Governmental Committee has agreed that the questions arising in certain cases from the existence of preferential arrangements should be examined from time to time as they emerged during the study of origin made by the Inter-Governmental Committee on Origin [cf. paragraph 31 above].

C. Elimination of quantitative restrictions

(a) Quantitative import restrictions

40. The Inter-Governmental Committee thought that similar rules to those of the Treaty of Rome could be adopted, i.e.:

— total abolition of quantitative import restrictions by the end of the transitional period;

— a standstill will be established at the beginning of this period; however, this would apply only to the level of liberalisation reached in application of the O.E.E.C. Decisions of 14th January, 1955 (90 per cent level); there are, however, differences of interpretation in regard to this provision; some countries consider it entitles them to withdraw liberalisation over and above 90 per cent, others consider that it does not, but that liberalisation over 90 per cent is taken into account when calculating the successive increases in the remaining quotas;

— globalisation of quotas;

— percentage increases in quotas (20 per cent of their total with a minimum of 10 per cent for each quota) at regular intervals (in principle, once a year, with a maximum of four increases during the first stage);

— where the quota is negligible or non-existent, a basic quota will be established in terms of the national output of the product in question;

— by the end of the 10th year of the transitional period, quotas must be equal to at least 20 per cent of the national output;

— the Member countries declare their willingness to abolish these restrictions more rapidly if their circumstances permit; they will be obliged to abolish the quota on a product if this has not been taken up over two consecutive years;

— the institutions to take action to determine a basic quota when there is no national output; to decide on the liberalisation of a product if the quota on it has not been fully taken up during two consecutive years; where necessary to reduce below 10 per cent the compulsory annual increase in a quota whose amount exceeds a certain percentage of national output; to decide how products which have been liberalised independently will be taken into account when calculating the annual increase in quotas; to induce countries to abolish the quotas more rapidly; and, finally, where necessary, to amend the rules if they cannot ensure the progressive abolition of quotas.

41. A number of questions are still under discussion, notably:

— the date of the globalisation of quotas; whether this operation should be carried out between the 17 Area countries or whether the Six will apply two kinds of global quotas, one among themselves and the other in regard to the eleven countries;

— the rate of the basic percentage where quotas are negligible or non-existent. In the Treaty of Rome, this is 3 per cent. The French Delegation is not prepared to accept an increase in this figure and its opinion is shared by Austria and Denmark;

— the question whether special provisions should not be provided for reducing the rate of increase in quotas on products for which tariffs are below a certain minimum. This point was raised by the Danish Delegation, in particular;

— finally, the question whether the origin rules for determining Free Trade Area tariff treatment will also apply to the removal of quantitative restrictions or whether more liberal rules should be adopted. It is technically possible to apply different rules for tariffs and for liberalisation and most Delegations consider that the rules to be provided for the administration of quotas should be more comprehensive than those applied to Customs duties.

Finally, the European Economic Community announced that they reserved their position on these problems and that they would subsequently submit proposals regarding them.

(b) Quantitative export restrictions

42. The Inter-Governmental Committee thought that similar rules to those of the Treaty of Rome could be adopted, i.e.:

— prohibition of export restrictions, those existing at the start of the transitional period must be abolished by the end of the first stage at the latest;

— the Member countries declare their willingness to abolish these restrictions more rapidly if their general economic situation and the situation of the sector concerned permit.

43. A number of other rules have, however, been suggested for the Area.

44. One is the principle that restrictions which are maintained must be applied on a non-discriminatory basis. There is a general provision in the Treaty of Rome to this effect. The question is whether there should be an identical general provision in the Area Convention or whether there should be a specific provision on export restrictions.

45. In addition, the possibility has been considered of prolonging exceptionally in the Area the time limit for abolishing export restrictions, for strengthening existing restrictions and for introducing new ones.

There are no specific provisions on this subject in the Treaty of Rome but such cases could be covered by Article 226, which concerns the measures of safeguard a Member State might be authorised to take to deal with serious difficulties in an economic sector, or by Article 103, which relates to supply difficulties for

certain products.

Some countries in the Area, especially those of the European Economic Community, consider that similar provisions would suffice to meet the problems raised.

Other countries, particularly those of the European Economic Community, prefer more specific rules stipulating on what grounds a country might claim to maintain, strengthen or re-introduce restrictions, the procedure for investigation and justification and for the administration of these restrictions. In the event of this solution being adopted, appropriate provisions have been drafted.

Lastly, there are other countries which consider that any extension of the time limit for abolishing restrictions should rather be covered not by general rules in the Convention but rather in protocols annexed to it which would determine, from the outset, the specific cases in which exceptions might be granted.

46. Another result of the current work on export restrictions has been the elaboration of a complaints procedure for countries which consider themselves to be prejudiced by the export restrictions of another Area country. There is no such procedure as regards export restrictions in the Treaty of Rome.

47. Finally, the European Economic Community has proposed that countries which place restrictions on certain exports to non-Area countries should be able to exercise some control over exports of such products to Area countries in order to prevent their being re-exported to the third countries to which these restrictions are applied.

(c) Permanent exceptions

48. There is an agreement to embody in the Area Convention the exceptions permitted by the Treaty of Rome. These exceptions are justified on the grounds of public morals, public policy, public safety, the protection of human and animal life and the preservation of plant life, the protection of national treasures of artistic, historic or archaeological value and the protection of industrial and commercial property.

On the other hand, opinions differ as to the advisability of including in the Area Convention other exceptions which appear in the G.A.T.T. but not in the Treaty of Rome: these restrictions are justified on grounds of the conservation of exhaustible natural resources (if such restrictions are applied in conjunction with restrictions on national production and consumption), the application of standards or regulations for the classification, grading or marketing of commodities in international trade, or relate to goods manufactured in prisons.

Requests for exceptions from the rule prohibiting quantitative restrictions, justified on grounds of commercial policy or national defence, will also have to be examined.

Chapter III — Agriculture and Fisheries

49. The initial work done by Working Party No. 22 of the Council on agriculture and fisheries was influenced on the one hand by the declaration of the United Kingdom to the effect that agricultural and food products should be excluded from the Free Trade Area, and, on the other, by the necessity to determine forms of association with the European Economic Community which would prevent discrimination between the countries of the Area. Ways and means were discussed of extending the special agricultural provisions of the Rome Treaty to the wider context of the Area. No conclusions were reached, but certain solutions were outlined, in particular concerning the aims of a concerted agricultural policy, minimum price schemes, etc.

50. The first discussions in the Inter-Governmental Committee on agriculture were based on a draft agreement submitted by the United Kingdom, the main points of which were as follows:

(a) the agricultural policies of the Member countries would be progressively co-ordinated in order to

increase productivity and to develop production in a rational manner, to ensure an adequate standard of living for persons engaged in agriculture and fisheries, and to secure a reasonable degree of market stability;

(b) to do this, the Member countries would co-operate to bring about a freer and increased trade in agricultural products between themselves, they would take into consideration traditional channels of trade, including trade with third countries, and apply protective practices in such a way as to make domestic production progressively more economic and reduce distortion of competition; they would co-operate in seeking to avoid excessive fluctuations of production and trade.

51. A number of practical suggestions were made in this document:

— there should be an annual review of prices and trade;

— policies should be confronted so that governments could receive guidance on the development of production programmes and the co-ordination of policies;

— Member countries should apply quantitative restrictions in a fair and equitable manner and draw up a plan for eliminating them;

—Member countries would be free to make special bilateral or multilateral arrangements in respect of products, and these arrangements would be examined at the request of any country which considered them prejudicial to its interests; there would be a complaints panel to deal with difficulties;

— any subsidy which resulted in the sale of a product for export at a price lower than the domestic price, or which enabled a country to obtain more than a equitable share of the export trade in that product, would be prohibited;

— there should be a procedure for modifying legislation in regard to taxes, trade regulations, etc., insofar as would be necessary to prevent such legislation affording protection to domestic agricultural products;

— there should be a complaints procedure in respect of any measure (duties, quotas, subsidies, minimum price schemes, State monopolies, internal and health regulations) which prejudices the interests of another country;

— finally, institutional arrangements should be made.

52. The United Kingdom document made no proposal for abolishing import duties, and left it to countries favouring such a course to submit suggestions, on the understanding that the United Kingdom, for its part, would ask to be exempted from this procedure.

53. It has not been possible from the discussion of this document in the Inter-Governmental Committee to clarify the points of agreement and divergence, but countries have had an opportunity to specify their attitude towards the agricultural problem.

54. The Swiss Delegation subsequently submitted a memorandum to the Inter-Governmental Committee. This document notes that, in view of the positions adopted during the preceding discussions:

— the agreement on agriculture in the Free Trade Area must not impede the implementation of the Rome Treaty;

— there must be no discrimination between the Six and the other countries of the O.E.E.C.

55. It therefore suggests an interim arrangement valid, for example, during the first stage of the transitional period. During this stage, rules for dismantling tariffs and quotas based on those of the Rome Treaty would be applied in the Area, so as to avoid any discrimination, and the rules of the Rome Treaty would remain applicable to the Six. Negotiations would take place at the end of this stage to conclude a definitive arrangement.

56. The European Economic Community made known at the end of July, 1958, the position of the Six in regard to the problems raised by the inclusion of agriculture in a “Treaty of European Economic Association”. In broad outline their position is as follows:

— the Six would like to see the arrangements for agriculture incorporated in a general agreement, but they would not be opposed to the conclusion of two separate agreements provided they were inter-dependent and linked together at every stage; in particular, the length of the transitional period should be the same, and the passage from one stage to the next should take place simultaneously;

— the agreement or agreements under negotiation should be such as in no way to prejudice the content and implementation of the Rome Treaty, and more especially the implementation of the common agricultural policy of the Community. However, the Six have acknowledged that provision should be made for the agricultural policies of all Member countries to be confronted within the Association so that they will influence one another reciprocally;

— as regards its general content, an agricultural agreement should include, on the one hand, general principles and objectives valid throughput the whole life of the Treaty, and on the other hand certain specific obligations for the first stage. Specific commitments covering the subsequent stages would be determined before the end of the first stage.

57. The general objectives of an agricultural agreement would be the same as those embodied in Article 39 of the Rome Treaty. The following should, however, be added:

“To free and promote trade between the Member countries of the Association in order gradually to ensure a rational utilisation of the factors of agricultural production.”

58. The memorandum submitted by the European Economic Community also contains concrete proposals concerning in particular the rules to be applicable from the outset.

— a systematic examination and confrontation of national agricultural policies, which would be achieved by issuing directives to the contracting parties according to rules to be determined, and supplemented by a complaints and arbitration procedure;

— maintaining the *status quo* as regards tariffs, lowering certain very high Customs duties and granting certain Tariff quotas with degressive or nil rates of duty;

— a standstill in quotas, followed by the conclusion of bilateral or multilateral agreements giving exporting countries a guarantee of a reasonable volume of exports;

— the establishment of a programme for the abolition of all quantitative restrictions still in force, as part of the implementation of a concerted agricultural policy;

— a periodical review, in connection with the confrontation of agricultural policies, of the amount of certain production subsidies;

— the institution of a complaints procedure concerning export aids;

— the possibility of promoting trade expansion by the conclusion of long-term agreements or contracts for those products in respect of which provisions exist for guaranteeing a market for national production and for which there are import requirements;

— before the end of the first stage, the laying down of rules to secure, in harmony with the development of a concerted agricultural policy (which might include co-ordination of national marketing organisations), the abolition of Customs duties and the elimination of quantitative restrictions and production or export subsidies.

59. Finally, at its October session, the Inter-Governmental Committee had a further document before it in the form of a Joint Memorandum from the Danish, Norwegian and Swedish Delegations, commenting on the position of the European Economic Community as expressed in July.

In this Memorandum the Delegations of the Scandinavian countries, while regretting that it was not at present possible to reach a multilateral agricultural arrangement based largely on the principles laid down in the Treaty of Rome, thought it possible to develop a satisfactory solution on the basis of a mixed multilateral and bilateral arrangement and considered that the proposal of the European Economic Community might constitute a basis for negotiations. Further clarification and amplification, however, seemed to them to be necessary.

60. The position taken up by the Scandinavian countries is, in essence, as follows:

— close links should be provided between the arrangements which will be established for the industrial and agricultural sectors respectively, particularly with regard to the date of coming into force and the passage from one stage to the next;

— the range of commodities to be covered by the agricultural arrangement could be the object of negotiations on the basis of the commodities listed in Annex II of the Treaty of Rome (specifically excluding fish and other marine products). Subsequent changes in the commodity list could be made by decision of the Council of the Association;

— the general principles for the progressive co-ordination of agricultural policies and for the removal of trade barriers should be included in the Convention; in particular, the short-term objective of expanding trade in agricultural products should be linked with the long-term objective of removing quantitative import

restrictions and tariffs;

— the agreement should provide safeguards relating to the maintenance of the traditional trade between Member countries and its gradual increase;

— during the first stage bilateral agreements should provide for the grant of import quotas and tariff quotas as required to implement the general principle set out above. The multilateral agreement should lay down rules governing the conclusion of such bilateral agreements; import quotas for non-liberalised goods should be based on the average volume imported during a recent period. Quotas should be revised periodically so that exporting countries may obtain a share in increased domestic consumption in the importing country. For non-liberalised as well as liberalised products importing countries should grant tariff quotas within which the duties would be progressively reduced according to the provisions of the Treaty of Rome;

— it would be desirable to introduce effective machinery for prior notification of production subsidies with a view to consultation;

— Member countries should undertake not to apply any export subsidy in a manner which would result in an increase of exports compared with a previous representative period. Before the end of the first stage a programme should be established for the abolition of export subsidies;

— an effective institutional system should be established.

61. After a further exchange of views on the proposals submitted to it with special reference to those of the European Economic Community and the Scandinavian countries, the Inter-Governmental Committee instructed Working Party No. 22 to establish the points of agreement and to specify the points upon which differences remain.

62. In addition, the Norwegian and Icelandic Delegations have each submitted a memorandum asking that fish and fishery products should receive a different and more liberal treatment than agricultural products. These Delegations subsequently expressed the intention of submitting a further memorandum clarifying their position. This memorandum is to be examined by the special Working Party appointed in March, 1958, to make proposals for expanding trade in fish and sea products by establishing the greatest possible freedom of trade in these products in the Area.

Chapter IV — The Free Movement of Persons, Services and Capital

A. Workers

63. As regards the free movement of manpower, and the right for immigrant workers to settle after a certain time in the importing country, the Italian Delegation, supported by the Greek Delegation, has indicated that unless the principle of such a right were adopted, they would be unable to join the Free Trade Area. The Austrian, Danish, Norwegian and Swiss Delegations have pointed out the difficulties which this principle would raise for certain countries.

64. The Inter-Governmental Committee has asked the Chairman to consult the Delegations concerned and to suggest ways of carrying out a study of manpower problems. The Committee subsequently decided that the consultations which had been started on this question should be resumed under the guidance of the Delegate for Italy.

B. Right of establishment

65. The Treaty of Rome provides for the progressive abolition in the course of the transitional period of restrictions on the freedom of establishment, including the right to engage in and carry on non-wage-earning activities and to set up and manage enterprises and particularly companies within the definition established by the Treaty. A standstill on new restrictions, a general programme for the abolition of restrictions and certain derogations are also provided for.

66. The Inter-Governmental Committee has set up a Working Party with the following mandate:

“to consider what provisions regarding establishment should be adopted by Member States of the Free Trade Area to enable companies and nationals of any other Member State to carry on those branches of economic activity for which restrictions on the free circulation of goods and services are to be removed between Member States”.

67. In general, the mandate has been interpreted as follows: with regard to trade, the production of goods, and the performance of services, restrictions on the freedom of establishment should be progressively abolished during the transitional period in cases where the Convention has provided for the elimination of restrictions on freedom of trade between Member countries. Member countries should not apply in connection with the right of establishment any restriction of such a nature as to afford direct or indirect protection to national undertakings carrying out these activities. The conditions of establishment in a Member country should not be less favourable than those enjoyed by nationals of that country.

68. The Working Party’s proposals to the Inter-Governmental Committee — still subject on some points to reservations by a few Delegations — specify the activities to which freedom of establishment shall be granted. Subject to the fulfilment of certain conditions, the right of establishment should be granted to physical persons, companies and other associations of persons formed for gainful purposes. The Working Party’s proposals do not cover access to employment for wage-earners. However, there is nothing in the proposals to prevent access by wage-earners to non-salaried employment.

69. An appeals procedure is proposed for cases where, owing to disparities in national legislation, one country considers that the balance of benefits which might be expected from the provisions regarding freedom of establishment is significantly disturbed to the detriment of its own nationals. Under certain conditions, such a country might then refrain from according to the nationals of the countries concerned more favourable treatment than that enjoyed by its own nationals in the territory of those countries.

70. The adoption of a “standstill” clause, the establishment of a programme before the end of the first stage of the transitional period, and derogations on the ground of public policy, security and public health are also proposed.

Lastly, special derogations are provided for maintaining restrictions, to the extent necessary to prevent:

— the acquisition by foreign nationals of real property representing economic resources vital for the national economy;

— the monopolisation by foreign nationals of resources or markets in certain sectors of the national economy or in certain regions of the national territory;

— a serious imbalance in the social and demographic structure of the country.

However, any country invoking these derogations should submit to strict supervision by the institutions

which retain powers of decision in the matter.

71. In the course of examination by the Inter-Governmental Committee of the draft Articles submitted by the Working Party, the Member States of the European Economic Community asked:

— that specific recognition should be given to the possibility for a wage-earner of any one of the Member States employed on the territory of another Member State to remain on that territory to undertake non-wage-earning activities;

— that a special complaints procedure be instituted for the purpose of settling any differences in the interpretation of the draft Articles; and

— that the provisions should be reconsidered at the changeover from the first to the second stage of the transitional period.

They also proposed various amendments to the draft Articles, particularly the suppression of the derogation provided in connection with the acquisition of immovable property representing economic resources vital for the national economy.

C. Services

72. The Treaty of Rome states that restrictions on the free rendering of services shall be progressively abolished during the transitional period in respect of nationals of Member countries established in the Community. This provision may be extended to nationals of non-Member countries established within the Community. The basic criterion is thus a combination of nationality and residence. The treatment of banking and insurance services connected with movements of capital shall be in harmony with the progressive liberalisation of capital movements. A standstill is imposed on new restrictions and a general programme shall be adopted before the end of the first phase giving priority to services which directly affect production costs or facilitate the exchange of goods. In the absence of a programme, the Council may act by issuing directives in accordance with the procedures of the Community.

73. The Inter-Governmental Committee has reached the following agreement for the Free Trade Area:

(a) Current invisible transactions should be freed by the end of the transitional period.

(b) Transfers arising from current transactions should be freed *pari passu* with the transactions.

(c) Current transfers not directly linked with transactions should be freed by the end of the transitional period.

(d) Commercial credits of duration not longer than one year shall be regarded as current operations.

(e) Current transactions and transfers not freed at any time should be treated as liberally as possible.

74. Residents of one Member country should be free:

(a) to offer their services to residents of any other Member country in either of the two countries concerned or elsewhere;

(b) to engage the services of residents of any other Member country in either of the two countries concerned or elsewhere;

(c) to make transfers across the exchanges to residents of other Member countries in connection with any claims that arise under (a) and (b) or, if the item so requires, to transfer funds to another Member country for their own use.

75. The application of these principles to current transactions and transfers should be based on a comprehensive list; in fact, the O.E.E.C. list, without certain capital items and restrictive clauses. The items already free under the O.E.E.C. Code, 38 in number, would be so confirmed by the Convention from the start of the transitional period, and reservations on them hitherto maintained by individual countries would be withdrawn under the possible cover of a derogation procedure.

76. Seven current items not yet freed under the O.E.E.C. Code and which present special difficulties (films, various types of insurance, tourism) would not be freed at the start of the transitional period. Programmes of liberalisation would be prepared by the appropriate body under the Convention and the items in question should be free by the end of the transitional period.

77. Decisions should be taken on certain aspects of maritime transport and on air transport, at present under study by the European Civil Aviation Conference.

78. The principle of a standstill has been accepted. The reference date has still to be determined. Non-discrimination, derogation, appeals and reservations will be examined when more is known about the corresponding rules on trade. The significance of the right of establishment for the liberalisation of current transactions and transfers will also be examined.

D. Capital movements

79. The Treaty of Rome states that restrictions on the movement of capital belonging to persons resident in Member countries shall be progressively abolished to the extent necessary for the proper functioning of the Common Market. Discrimination on grounds of nationality or place of residence of the parties or the place of the investment shall be similarly abolished. There shall be progressive harmonisation of policies in regard to capital movements between Members and third countries. The Council shall issue directives for the execution of these provisions in accordance with the procedures of the Community. Current payments connected with movements of capital shall be freed not later than the end of the first phase. Members shall endeavour to avoid introducing new restrictions on capital movements and current transfers related to such movements.

80. The Inter-Governmental Committee has reached the following agreement for the Free Trade Area:

(a) Capital transactions and transfers should be freed to the extent necessary at any time to ensure the effective operation of the Free Trade Area.

(b) Capital transactions and transfers for long-term direct investment should be free from the start of the transitional period unless, in exceptional circumstances, the Member country concerned considers the transaction or transfer detrimental to its interests.

(c) Repatriation of capital transferred for authorised direct investment after 6th December, 1957, should be free from the start of the transitional period including any capital appreciation.

(d) Repatriation of capital transferred for authorised direct investment after 1st July, 1950, should be free from the start of the transitional period including any capital appreciation.

(e) All capital transactions and transfers not freed at any time should be treated as liberally as possible.

Further consideration would be given to the progress to be achieved during the transitional period in the treatment of direct capital investment [(b) above] and to the repatriation of capital [(c) and (d) above].

81. The application of these principles to capital movements would call for periodical review in order to ensure that transactions and transfers should be free to the extent necessary at any time to ensure the effective operation of the Free Trade Area. A programme would be required for the removal of restrictions on the repatriation of capital transferred for authorised direct investment after 1st July, 1950.

82. The principle of a standstill is accepted to the extent that Member Governments should endeavour not to increase the severity of the restrictions on capital movements in force at the start of the transitional period.

83. A report has been prepared which, on the basis of the principles accepted by the Inter-Governmental Committee, puts forward draft Articles concerning not only invisible transactions and current transfers [cf. Section C above] but also capital transactions and transfers related thereto.

Chapter V — Transport

84. The Treaty of Rome provides for a common transport policy involving common rules for international transport between Members and for transit traffic. Conditions for the admission of non-resident carriers to national transport services within a Member State will also be laid down. Common rules and conditions will be established during the transitional period. A standstill is imposed on the system of preference accorded to national carriers. Discrimination in rates and conditions for comparable services on grounds of nationality is abolished; rates and conditions must not be such as to protect enterprises or industries. Safeguards are envisaged for the standard of living and level of employment in certain regions and for the utilisation of transport equipment.

85. For the Free Trade Area, a special study has been made of inland transport which has led to some preliminary proposals.

Although it was not considered necessary to establish a common transport policy, it was thought that certain common rules concerning international transport by water, road and rail should be elaborated and supervised by the Free Trade Area institutions. Progress towards liberalisation would depend on such rules and on the solution of various connected problems. Harmony should be maintained between these rules and those of the Common Market.

Overall agreement was reached on the following points:

(a) discrimination based on the country of origin or destination and involving different rates and conditions for transporting the same goods on the same routes in the Area shall be abolished before the end of the second stage;

(b) rates and conditions supporting or protecting enterprises or industries shall be abolished at the start of the second phase unless authorised by the appropriate bodies of the Free Trade Area. The appropriate bodies of the Free Trade Area would on their own initiative or at the request of a Member country examine these rates and conditions, taking particular account on the one hand of the requirements of a suitable regional economic policy, of the needs of under-developed regions and the problem of regions seriously affected by

political circumstances, and on the other hand of the effects of such rates and conditions on competition between the different means of transport;

(c) aids which meet the needs of transport co-ordination or which constitute reimbursement for certain obligations inherent in the concept of a pubic utility should be deemed to be compatible with the Convention;

(d) charges and fees other than transport charges collected by a carrier for crossing frontiers should be reasonable having regard to the actual costs involved. Member countries should endeavour progressively to reduce such costs;

(e) rules and conditions established under the Convention should take account of the economic situation of the carrier.

86. The Inter-Governmental Committee has asked for continued study of the requirements of the territories having a peripheral position or unfavourable traffic structure, for geographical or political reasons.

Chapter VI — Problems of Competition

A. Rules applying to enterprises

(a) Restrictive business practices

87. The Treaty of Rome lays down that certain specified types of agreements, practices etc., are incompatible with the Common Market and shall be prohibited. Prohibited agreements shall be null and void. Nevertheless, in certain defined circumstances, the prohibition may be raised by the competent organs of the Community. There are similar provisions for monopolies.

88. A Working Party of the Inter-Governmental Committee has based its discussion in regard to the Free Trade Area on the proposal that the problem should be tackled in two phases: an experimental period during the first stage of the transitional period of the Free Trade Area leading to a review of policy and procedure in the light of experience gained and in close co-operation with the European Economic Community. During this first stage, the Working Party envisages recognition that certain restrictive business practices, including action by monopolies, are incompatible with the Free Trade Area Convention insofar as they may frustrate the benefits expected on the removal or absence of tariffs or quantitative restrictions, or otherwise frustrate the objectives of the Free Trade Area Countries believing their interests to be damaged by such infringements will have the right to appeal to the Free Trade Area organisation, which would institute an enquiry and if necessary formulate recommendations to bring the infringement and damage to an end. If the infringement and damage continue, the country appealing would be entitled, either by obtaining permission from the institutions, or, failing a decision by the institutions on the subject within two months, to take countervailing or preventive action. Should the institutions later disapprove of these measures, the country appealing should suspend or modify them in accordance with this decision.

89. It is proposed that the review to be made at the end of the first stage of the transitional period with a view to revising the provisions adopted should include, among others, the following matters:

— specification of the restrictive business practices or dominant enterprises with which the institutions should be concerned;

— methods of securing information about restrictive business practices or dominant enterprises;

— procedure for investigations;

— whether the right to initiate enquiries shall be conferred on the institutions. Similar reviews might be held later.

90. The Inter-Governmental Committee approved in principle the draft Articles submitted by the Working Party, subject to certain minor modifications and to review at a later stage when the question of institutions had been decided.

(b) Public undertakings and monopolies of a commercial nature

91. The Inter-Governmental Committee has agreed that the Convention should contain rules governing the activities of public undertakings; such rules would, in principle, be similar to those of Articles 37 and 90 of the Treaty of Rome.

92. Article 37 provides in particular that State monopolies of a commercial character shall be progressively adapted so that at the expiry of the transitional period there will be no discrimination between the nationals of Member States in the conditions of supply or marketing of goods. In addition, the Member States agree not to take any new measures which are contrary to the principle of non-discrimination or which restrict the scope of the Articles relating to the abolition of Customs duties and quantitative restrictions.

93. Article 90 of the Treaty of Rome provides that Member States, in respect of public enterprises and enterprises to which they grant special or exclusive rights, shall not exact or maintain in force any measure contrary to the rules of the Treaty, and, in particular, the rule prohibiting discrimination on grounds of nationality, and the rules of competition. However, the application of these rules must not prevent the public services and revenue monopolies from carrying out the special tasks allotted to them.

94. The Inter-Governmental Committee has not yet considered whether these provisions could be embodied as they stand in the Area Convention or whether changes, and if so what changes, should be made.

B. Dumping

95. The Inter-Governmental Committee has agreed that the Area Convention should contain rules on dumping.

Article 91 of the Treaty of Rome, which deals with this subject, empowers the European Commission to make appropriate recommendations to the originators of dumping which it finds to exist. They may authorise counter-measures if these recommendations have no effect. Furthermore, in order to discourage dumping, the Treaty of Rome stipulates that products exported from one Member State to another may be re-imported into the exporting State free of all duties or restrictions.

96. Different opinions have been expressed in the Inter-Governmental Committee concerning:

— the definition of dumping (no definition is given in the Treaty of Rome). The point was raised whether the G.A.T.T. definition should be used or a new definition found;

— the question whether, as in the Treaty of Rome, the prior permission of the Area institutions should be required before a country may take anti-dumping measures, or whether subsequent approval could be envisaged.

On this last point, the Delegates for Greece, the United Kingdom and Ireland considered that a country should be entitled to take anti-dumping measures immediately and to justify its action to the Area institutions subsequently. The Delegate for Germany considered that prior permission should be given by an impartial body.

97. The Inter-Governmental Committee has agreed to re-examine this question later.

C. Government assistance

98. An agreement of principle has been reached on the adoption of general rules for the Area, which are somewhat similar to those of the Treaty of Rome, i.e.:

— the principle that any aid granted by a State which distorts or threatens to distort competition will be deemed incompatible with the Area;

— a list of measures which would be compatible with the Area;

— a list of measures which might be considered as being compatible with the Area;

— the Area institutions would keep under permanent review all existing systems of aid and would propose to the Member countries appropriate measures necessitated by the progressive development and functioning of the Area;

— the right of the institutions to decide that a form of aid which is considered as being incompatible with the Area, or which is improperly applied, should be abolished;

— prior agreement would have to be obtained from the institutions before new forms of aid could be introduced.

99. A number of additional suggestions have been made:

— first, certain additions to the list of “compatible measures”, such as aid granted direct to firms engaged in defence production; some Delegates consider this question should be settled by a general provision as in the Treaty of Rome (Article 223), and aid to promote the development of countries in the process of economic development is another example; some Delegates think this point should be examined by Working Party No 23 (cf. Chapter X below);

— second, it has been suggested that there should also be a list of measures which could not be considered as being compatible with the Area: such a list, amended where necessary, exists in the Annex to the O.E.E.C. Decision C(55)6 on aids to exporters. Some Delegations consider, however, that this list of incompatible measures is unnecessary provided that Decision C(55)6 can be kept outside the Area Convention; while remaining valid if the Council consolidated it.

— notification of all forms of aid; all the Delegates have accepted this clause;

— finally, a complaints procedure would be established under which a country considering that one of its

partners was supplying aid detrimental to its interests could appeal to the Area institutions; Delegations differ as to the value of such a procedure.

100. It should be noted that the application of these rules raises complex institutional problems which have not yet been examined.

D. Harmonisation of legislation

101. The Rome Treaty contains specific provisions on this subject in Articles 119 and 120 and in paragraph 1 of Section II of the Protocol relating to certain provisions of concern to France. Each Member State must ensure, during the first stage, and subsequently maintain, equal remuneration for equal work as between men and women workers. The Member States must also endeavour to maintain the existing equivalence of paid-holiday schemes. Finally there are provisions to ensure that France will not be handicapped by its “40-hour week” if, by the end of the first stage, the other States have not introduced comparable overtime rates for hours worked in excess of forty per week.

102. As regards the Free Trade Area, the Chairman of the Inter-Governmental Committee has proposed that provisions on the same specific points should be adopted. According to these provisions, if the interests of a Member country were prejudiced because another country did not apply an equivalent scheme for paid holidays or ensure equal pay for men and women, the Area institutions could make recommendations to the countries concerned. If these recommendations had no effect, they would authorise the injured country to take compensatory action. In addition, France would be authorised to take safeguarding measures similar to these envisaged in the Rome Treaty if equivalence as regards the payment of overtime was not ensured.

103. When these proposals were discussed in the Inter-Governmental Committee, certain countries (particularly Norway, Portugal, Sweden and Switzerland) felt it would be difficult for them to go farther than the Chairman’s proposals. The Delegate for France, however, considered that these proposals were clearly insufficient.

104. During the discussion, the Delegate for France emphasised that the problems which were involved in the harmonisation of legislation were not merely the specific problems covered by the Chairman’s proposals but also those connected with the general problem of harmonisation, as settled in Articles 100–102 of the Rome Treaty. These are the general provisions of this Treaty on harmonisation.

105. Articles 100–102, which constitute the chapter entitled “Approximation of Laws”, set out the conditions for approximating the legislative, statutory and administrative provisions which have a direct incidence on the establishment or functioning of the Common Market, particularly when a disparity between them distorts the conditions of competition.

106. The European Economic Community later made known its position with regard to the harmonisation of social conditions and rapprochement of legislation.

It proposed that:

— Article 119 of the Treaty of Rome should be adopted as it stands (equal pay for male and female workers);

—Article 120 should be adopted as it stands (maintenance of equivalence of paid-holiday schemes); a special obligation should be envisaged for countries where paid holidays are shorter.

—The provisions of Section 2 of the Protocol relating to certain provisions of concern to France (payment of overtime) should be inserted in the Treaty of Association. The decision of the Commission with regard to

measures of safeguard would be replaced by Government action, subject to subsequent control by the Council of Ministers.

— The Treaty of Association should contain equivalent provisions to those in Articles 100 to 102 of the Treaty of Rome (harmonisation of laws). The procedure should be adapted to the institutional structure of the Association.

107. Several Delegates to the Inter-Governmental Committee said they found it difficult to accept the Community's proposals, while the Delegate for France stressed their importance for his own Government. The Committee invited the European Economic Community to reconsider them, bearing in mind the proposals made earlier by the Chairman of the Inter-Governmental Committee [cf. paragraph 102 above] before any further discussion of these questions.

E. Specific problems of competition in the Area

108. In the course of the work both on the definition of origin and on the Carli plan, certain Delegations, and in particular the French Delegation, emphasised the marked differences between the natural conditions of competition in certain sectors. Other Delegations, particularly those of Norway, Sweden and Switzerland, considered that, in the Free Trade Area, there was no need to extend to certain sectors special protection against internal competition.

109 The discussions showed that the main problem was one of free and equal access to the basic materials. If this could be achieved, there would be no need to give certain industries special protection in some countries, except if serious economic difficulties arose. The latter eventuality could be covered by the escape clauses. Whilst accepting these general principles, the French Delegation maintained that special measures might be necessary for certain sectors.

110. The European Economic Community recently emphasised that the problem of equal access to raw materials was particularly acute in certain sectors, where appropriate solutions would have to be found. In the Community's opinion the problem would be most acute in the event of a shortage affecting all Member countries of the Association. It thought that the Convention should provide that, in such an eventuality, the institutions would establish in certain sectors a system for allocating equitably the quantities available, with provisions concerning the terms on which this would be done. The existence of a shortage should be established by a unanimous decision of the institutions.

111. The Inter-Governmental Committee thought it would be necessary to provide for equality of access to raw materials and that the problems arising from this principle should be discussed by the Inter-Governmental Committee on Origin [cf. paragraph 31 above] in the course of its sector studies.

F. Fiscal provisions

112. Article 95 of the Rome Treaty lays down the principle that a Member State shall not impose, directly or indirectly, on the products of other Member State any internal charges of such a nature as to afford indirect protection to other products.

113. As indicated in paragraph 11 above, the problem of indirect fiscal protection has been raised in connection with revenue duties. The Inter-Governmental Committee requested that a study should be made of the indirect protection which duties of this kind might allow and of the possibility of applying rules in the Free Trade Area similar to those of the Rome Treaty.

114. The experts who examined this problem gave an affirmative reply; they consider that provisions comparable to those of the Rome Treaty could and should exist in the Area if the normal play of competition

were to be assured.

Chapter VII — Co-ordination of Economic Policies, Balance of Payments and Payments Arrangements

115. The Treaty of Rome states that policies dealing with the trade cycle are matters of common interest to Members. It calls for the co-ordination of economic policies in the context of the balance of payments, makes provision for review of the monetary and financial situation of Members and envisages the granting of mutual assistance in the event of balance of payments difficulties.

116. Working Party No. 17 of the O.E.E.C. Council recognised in its report published in January, 1957, that "the economies of the countries of the Area would become increasingly inter-dependent as trade barriers were removed. It would, therefore, be necessary to co-ordinate their economic and financial policies more closely, so that difficulties may be avoided both in the progressive establishment of the Area and in its subsequent operation".

117. The Inter-Governmental Committee has agreed that close co-operation in economic and financial matters between Member countries of the Area would be necessary, and that institutional arrangements to that effect would be essential; it has also agreed that the existing arrangements within the O.E.E.C. could serve as a basis of study in this connection.

118. The Inter-Governmental Committee has further noted the position of the European Economic Community with regard to the confrontation of economic and financial policies; it consisted in seeking to secure, within the Area, a progressive rapprochement of those policies, through their continuous confrontation. The aims of such confrontation would be:

— to establish arrangements that ensure that competition is not distorted within the Association;

— to promote in each country overall economic expansion, development of employment, improvement of working conditions, a rising standard of living, price stability and a stable balance of payments, and to encourage a harmonious division of activities taking account of the particular potentialities of each Member country.

119. The Managing Board of the European Payments Union remarked in January, 1958, in its interim report on the implications for the intra-European payments system of the setting up of a Common Market and a Free Trade Area, that:

(a) The successful operation of the Common Market and the Free Trade Area would require a satisfactory multilateral payments system.

(b) There would be a greater risk of balance of payments disequilibria resulting from the increased freedom which will be given to trade and payments. It would be more difficult for Member countries to counteract balance of payments disequilibria by taking administrative measures such as increases in quantitative restrictions and tariffs; the economy of each Member country would be more sensitive to changes in the policies of other Member countries; monetary and financial policies would be of fundamental importance in correcting imbalances.

(c) Co-ordination between Member countries, and recognition by individual countries of the general interests of others, would therefore be essential.

The Inter-Governmental Committee has agreed in general terms with these observations of the Managing Board.

120. In continuing its study of these questions the Managing Board has received certain proposals from the United Kingdom member, the essential features of which are as follows:

(a) The E.P.U. should be developed so as to provide both limited automatic short-term credit and non-automatic medium-term credit, to be given at the discretion of the Organisation.

(b) These credit facilities should not be available to Members who, without the consent of the Organisation, had failed to carry out their obligations under the Free Trade Area Convention.

(c) No change would be made in the present arrangements for the introduction of E.M.A.; when E.M.A. was introduced the provision for automatic credit would come to an end.

121. A further report by the Managing Board of the European Payments Union was submitted to the Inter-Governmental Committee. The Managing Board's study showed that there were two possible approaches as to the procedure for adapting the present European payments system to the possible needs of the Free Trade Area.

122. One approach is based on the premise that it is idle and inappropriate to attempt to elaborate in advance detailed arrangements for payments and credit suitable for all possible contingencies of a Free Trade Area. These details would have to take account of the actual requirements, which themselves depend on the factual developments in the field of trade, invisible transactions and capital movements and on the special circumstances of the economic development within the group of countries forming this new association. Payments and credit arrangements, as existing at the beginning of the Free Trade Area exercise, should thus be adapted gradually as requirements become known. In the past, the E.P.U. has shown flexibility in facing new situations and specific problems; there is no reason to believe that it would lose this dynamic attribute in a Free Trade Area. The payments provisions of a Free Trade Area Convention should thus be couched in general terms on the lines of those in the Treaty of Rome. They might include the commitment by the contracting parties to ensure that payments connected with the free exchange of goods, services and capital can be carried through in an orderly and effective manner, and they might record the readiness, in principle, of the contracting parties to grant mutual assistance in the case of serious balance of payments difficulties in a Member country (compare Articles 106 and 108 of the Treaty of Rome). The continuing, indeed enhanced, need for the co-ordination of policies is recognised. It would be left to the competent bodies of the Free Trade Area however to decide in the light of circumstances how far changes to the institutional arrangements in the payments field will be necessary.

123. The other approach corresponds in conception to the proposals mentioned in paragraph 120 above. It is based on the consideration that such a flexible system does not take sufficient account of the fact that the Free Trade Area involves far-reaching commitments for Member countries, increased danger of balance of payments difficulties, less scope for corrective action by administrative means and an enhanced need for co-ordination of policies. There is the fear that it may not always be possible to tackle emergencies quickly enough by ad hoc measures and without firm institutional arrangements. These considerations lead to the conclusion that a Free Trade Area Convention needs, as an indispensable corollary to the far-reaching commitments of Member countries in the field of trade and services, a clearly defined system of mutual assistance. The central feature of such a system would be a European Fund available for the granting of medium-term ad hoc credits to Members in balance of payments difficulties. The payments mechanism conceived in this way would serve, at the same time, as a means of inducing and assisting Member countries to co-ordinate their economic policies, to follow increasingly sound principles in conducting their economy

and to comply with the general obligations of the Convention. The system would thus be more than a technical arrangement for the conduct of international payments; it would be one of the main features of the new economic union and a decisive element in its practical administration. Thus, it is argued that this system should be elaborated in advance, at least in broad outline, and should form a part of the Convention.

124. The Managing Board, in its report, pointed to some of the consequences of the two approaches for the present European payments system. It has also examined proposals submitted by the Greek Delegation.

125. The Inter-Governmental Committee took note of the further report of the Managing Board of the European Payments Union. It also took note of the position of the European Economic Community with regard to that report: the Community considered that the proposals summarised in paragraph 122 above should be adopted as a working basis.

Chapter VIII — Escape Clauses

126. The Inter-Governmental Committee has not examined in detail the escape clauses that should be included in the Area Convention. It considers it would first be necessary to give a broad definition of the future obligations of the Area countries.

127. The question was, however, discussed at length by Working Parties Nos. 17 and 21, which considered that the Area Convention should, like the Treaty of Rome, include two kinds of escape clauses:

— one based on balance of payments difficulties;

— the other based on difficulties in a particular sector.

128. Under the Treaty of Rome, the institutions will take the steps they think appropriate to remedy difficulties a country may encounter. The Treaty lays down rules of procedure in this respect, but leaves it to the institutions to assess the difficulties of the countries concerned and to determine what action should be taken by them or their partners.

129. Without prejudging the functions and powers of the Area institutions, both Working Party No. 21 and Working Party No. 17 endeavoured to define more precisely the procedure for using escape clauses in the Area: kind of difficulties which countries might have to face, nature of the examinations they would have to undergo, criteria justifying invocation of the clauses, kind of action the countries might take, period of validity of the reference, intervals at which the institutions would examine the situation and procedure for such examination, forms of co-operation between countries (mutual assistance), protective measures that might be taken, when necessary, by injured countries, etc.

130. As regards the escape clause based on balance of payments difficulties, there was a large measure of agreement in Working Party No. 21 on the rules to be laid down for the Area. Broadly speaking, these rules were not very dissimilar from the Treaty of Rome (importance of prior examination, mutual assistance, etc.), except for:

— the fact that it seemed unilateral action would have to be admitted more easily than in the Treaty of Rome;

— differences in procedure, having regard to the respective powers of the institutions in the European Economic Community and in the Area.

The whole problem was, of course, dependent on what payments arrangements would apply in the Area.

131. As regards the escape clause based on difficulties in a particular sector, there was also fairly general agreement on more precise rules than in the Treaty of Rome, but there remained some divergence on the question whether escape clauses could be applied unilaterally or not, and on the role of the institutions.

The Inter-Governmental Committee has on different occasions broached the question of escape clauses; it seems, however, that, as regards the clause based on difficulties in a particular sector it is moving gradually towards a formula somewhat similar to that in the Treaty of Rome (Article 226).

132. It appeared that the examination of the escape clauses in the Inter-Governmental Committee would be closely linked with that of the institutional machinery of the Area. In this connection, the Committee will also have to consider how the Area escape clauses are to be co-ordinated with those of the Treaty of Rome. Working Party No. 21 had already stressed that when both sets of rules come into operation delicate problems would be raised which could not be solved unless some permanent form of co-operation was established between the countries and the institutions, if it was wished to avoid the emergence of disparities of treatment. Such disparities, which it is hoped to limit by associating the other O.E.E.C. countries with the European Economic Community, could doubtless be reduced when the rules for eliminating obstacles to trade within the Area are normally applied. But, if appropriate solutions are not found, they might reappear when the escape clauses are invoked. Working Party No. 21 observed that, even if the fundamental provisions of both Treaties were identical, they might, when applied, involve different solutions owing to the different composition of the two Groups. Working Party No. 21 therefore concluded that it would not only be necessary, when drafting the rules on escape clauses for the Area Convention, to avoid disparities with the Treaty of Rome; it would also be essential to co-ordinate their execution by applying adequate means for co-operation.

133. The European Economic Community made known in October, 1958, its position with regard to the cases where escape clauses should, in its view, be envisaged. It suggested escape clauses for:

— balance of payments difficulties; the Area clauses should correspond to those contained in Articles 108 and 109 of the Treaty of Rome: to avoid as far as possible any recourse to such clauses, provision should also be made for mutual assistance;

— disturbances in particular sectors; the Convention should contain an escape clause covering the cases referred to in Article 226 of the Treaty of Rome;

— dumping; an escape clause should be included to meet cases of dumping within the Area;

— other cases; there should also be an escape clause to cover deflections of trade and activities, and, in particular, difficulties arising out of disparities in the trade and tariff policies of Member countries of the Association [cf. paragraph 33 above].

134. The question of the voting rules to be applied in the procedure for recourse to an escape clause is dealt with under the institutional questions in Chapter XII below.

Chapter IX — Social Fund and Investment Bank

135. The Treaty of Rome established a European Social Fund whose purpose is to promote employment facilities and the geographical and occupational mobility of workers within the Community. It also established a European Investment Bank whose purpose is to contribute towards the smooth and balanced development of the Common Market in the interests of the Community.

136. As no Delegation has proposed, during discussion of the general rules for the Area, that institutions of this kind should be established, the Inter-Governmental Committee has decided to leave this question entirely open and to reconsider it later.

137. Some proposals of this kind, however, have been studied in connection with the work on countries in the process of economic development (see Chapter X below).

Chapter X — Countries in the Process of Economic Development

138. Certain countries have stated that their level of economic development prevents them from assuming from the outset all the general obligations which membership of a Free Trade Area will probably imply. Working Party No. 23 of the Council was set up in March, 1957, to examine the conditions under which these countries could take part in or be associated with the Free Trade Area. Four countries, Greece, Iceland, Ireland and Turkey, asked to have their cases considered by the Working Party.

139. The requests made by these countries may conveniently be classified as follows:

(a) these countries would be granted derogations from the general obligations for reducing protective measures affecting trade;

(b) financial assistance should be made available to them to help them develop their economies and adapt them to the situation created by the establishment of the Free Trade Area;

(c) satisfactory arrangements should be made to increase trade in agricultural products.

140. The Inter-Governmental Committee recognised that some special measures would be necessary to help the less-developed countries in the Free Trade Area and, in particular, agreed in principle that less-developed countries should be able to maintain a greater degree of protection for a longer period than other Members of the Free Trade Area. The Committee accordingly confirmed and specified the Working Party's terms of reference, instructing it: (a) to consider the nature, duration and procedure of derogations from the general obligations concerning Customs duties, quantitative restrictions and invisible transactions; and (b) to examine the proposals made concerning financial assistance, etc.

141. The Inter-Governmental Committee further instructed Working Party No. 23 to study, in consultation with Working Party No. 22, the problem of trade in agricultural products, which is of special importance for economically less-developed countries.

142. The Working Party, in the summer and autumn of 1957, made a detailed examination of the individual position of each of the four countries. The four countries later made joint proposals for the creation of a European Development and Readaptation Authority and for an Investment Bank. Three (Greece, Ireland and Turkey) also put forward a joint proposal concerning derogations; the Icelandic Government did not join in this proposal as its final attitude towards reducing protection will depend on what arrangements are made for trade in fish. Lastly, at the Working Party's request, the Greek and Turkish Delegations submitted a joint memorandum concerning the special rules to be applied by the other countries in the Area in respect of certain agricultural products.

A. Financial aspects

143. The four countries' joint note proposes the creation of two distinct institutions, viz.:

(a) *A European Development and Readaptation Authority* should be set up to support and encourage an

accelerated economic growth in the countries in the process of economic development, in order to create as rapidly as possible higher incomes and conditions of full employment, conditions which these countries regard as essential if they are to assume the full obligations of the Free Trade Area. The Authority would make loans to governments on exceptional non-commercial terms (20-year loans at an interest of 2 to 3 per cent) to finance programmes of infrastructure investment as well as agricultural and industrial projects of national importance. The Authority would also make grants to governments for occupational retraining and resettlement of workers, and to industries so as to assist them in adapting themselves. The main source of the Authority's funds would be subscriptions by governments of the more developed countries, but the Authority could also have temporary recourse to short-term borrowing on the market.

(b) *An Investment Bank* would be established to provide public and private industry, particularly in the less-developed countries, with medium- and long-term loans and guarantees on a commercial but non-profit-making basis. The Bank would be endowed with adequate capital resources; it could also borrow from the market and call on the subscribing governments for loans.

144. The Greek Delegation has also asked that the governments of the more highly developed countries should adopt certain fiscal and other measures, including guarantees, to encourage the export of private capital to the less-developed countries.

145. The question of financial assistance for less-developed countries to facilitate their membership of the Free Trade Area has been under study since the beginning of the year by a Group of Experts (Mr. Philippe Lamour, Mr. Viniero Marsan, Mr. Paul Rossy and Mr. Matthias Schmitt) appointed by the Chairman in consultation with the Managing Board of the E.P.U.

146. In its report, the Group of Experts reviewed the problems with which less-developed countries would have to contend in the Free Trade Area, and reached the conclusion that Area membership would entail increased demands for capital formation which spontaneous movements of capital could not be expected to meet. After stressing the importance of efforts by the countries themselves, and of adequate utilisation of the resources of existing international institutions, the report concluded that financial assistance would be needed by such countries. This financial assistance should be used to help the less-developed countries to implement projects that might be classified in three categories:

(a) public investments or the like, in infrastructure of deferred profitability;

(b) directly productive investments;

(c) readaptation of firms and labour.

The Group of Experts proposed the establishment of a single institution for administering these projects or supplying the necessary financial aid for their implementation; it should have a considerable measure of administrative and financial autonomy, and would operate under the supervision of the highest political authority of the Area. Its capital would be subscribed by Member countries, probably one-third being actually paid up during the first few years of the functioning of the Area. The Experts did not consider themselves qualified to determine the amount of capital required but considered that it should be determined in the light of the requirements for a 5-year period. The means adopted by the institution for speeding up economic development in countries covered by the scheme should be adapted in every case to suit the nature of the projects. In the case of investments in infrastructure, the institution would mainly act by offering long-term loans on favourable terms from the point of view of interest rates, period of amortisation and conditions

of repayment. In the case of directly productive investments, the institution would endeavour not so much to provide funds directly but to facilitate the international financing of such projects by acting as a guarantor and intermediary between European and world financial markets and the less-developed countries. In this field, the institution might make use of various techniques such as intervening, in co-operation with existing national specialised institutions, in the field of export credit guarantees, rediscounting operations, loans on collateral security, etc., rebates of interest, taking over the cost of servicing the loan for a period of grace, and capital participation. The institution would only co-operate in the implementation of projects submitted by less-developed countries after detailed scrutiny of the projects and verification that they conformed with the general development programme of the country concerned.

147. The Inter-Governmental Committee has been informed of the Experts' proposals, and the Chairman of the Working Party has reported to it on the progress of discussions on the subject. It has noted that these proposals provide a valuable basis for further studies, and has requested the Working Party to pursue its studies of the problems of financial assistance to less-developed countries and of the detailed institutional arrangements which such assistance would imply.

148. It was later found that there was a considerable measure of agreement within the Working Party on the principle of financial assistance to less-developed countries to help them assume the full obligations of the Free Trade Area. However, it emerged that some Delegations considered that this assistance might be provided within a different framework and under different conditions from those mentioned in the Experts' report. One Delegation formulated more detailed proposals. A number of Delegations felt that these proposals might constitute a suitable approach to the problem; certain Delegations, on the other hand, preferred the approach of the Experts. The alternative proposals referred to can be summarised as follows:

(a) all countries participating in the Area would make an effort to assist the less-developed countries; the amount of financial assistance for a given period would be defined in the Convention; Government contributions, fixed according to a system of quotas prescribed in advance in the Convention, would provide the source from which assistance would be drawn; lastly, the Convention would specify the countries entitled to assistance and the general conditions under which it would be given;

(b) the individual projects for which assistance might be given would include investments in infrastructure and directly productive investments, as well as social infrastructure, but not aid with a view to readaptation of firms within the meaning of the Social Fund of the E.E.C. Terms for interest and amortisation would be fixed in each particular case;

(c) the appraisal of projects, and determination of conditions for aid in respect of each, would be the responsibility of a Steering Committee, composed of national representatives, within the framework of the institutions of the Free Trade Area. The agents for the execution and administration of financial operations would be the national banks or other existing institutions; there would therefore be no need to establish a new institution as a legal entity;

(d) furthermore, over and above this financial assistance, Member countries might facilitate access by less-developed countries to the international capital markets by offering guarantees in respect of which the Steering Committee might act as intermediary.

B. Derogations

149. There has been some discussion in the Working Party on the derogations jointly requested by the Greek, Irish and Turkish Delegations. The joint proposal as submitted at the beginning of 1958 can be summarised as follows:

(a) All Customs duties would be eliminated by the end of the 30th year from the commencement of the Free Trade Area. During the first 10 years, the countries concerned would be free from any automatic obligations for the reduction of tariffs, except that, in the first year and in the eighth year, tariffs of an *ad valorem* rate above 50 per cent would be reduced to 5 per cent of the rate in force at the time. During the next 20 years, tariffs would be reduced either by 5 per cent a year or 5 per cent every two years for the first ten years and 15 per cent every two years for the remaining ten years.

(b) During this extended transitional period of 30 years, the countries concerned would be permitted, without prior consultation with their partners, to impose new tariffs or increase existing tariffs for the purpose of establishing new industries or maintaining and expanding existing industries. In any such case, the new or increased tariff could not exceed 50 per cent *ad valorem* or the highest tariff applied in any other Member country (excluding the three countries concerned) if the latter exceeded 50 per cent. Any such new or increased tariff would not be subject to automatic reductions until it had been in force for ten years, but by the end of the 30th year from the beginning of the Free Trade Area *all* tariffs would be abolished.

(c) The countries concerned would retain the right to maintain export controls during the 30-year period and there would be suitable provisions to enable them to apply such controls thereafter in the event, for instance, of shortage of raw materials.

(d) The countries concerned would be able to take anti-dumping measures without prior consultation.

(e) No proposal is made concerning quantitative restrictions on imports pending the adoption of general rules in the matter.

150. Discussion of the tariff aspects of the joint proposal presented by the Delegations for Greece, Ireland and Turkey showed that members of the Working Party were, in general, willing to accept special rules in favour of less-developed countries, but that they regarded the joint proposal as unduly exigent, more especially with regard to the length of the transitional period of 30 years, the length of the initial ten-year period of grace, and the unilateral right to impose new tariffs or raise existing duties. Following this discussion, the Chairman of the Working Party submitted a series of proposals with a view to reconciling the divergent opinions expressed.

151. These proposals may be summarised as follows:

(a) For the less-developed countries, the transitional period would be twice as long as for the other countries; it would be divided into three stages; the first stage would be twice as long as for the developed countries, up to a maximum of ten years; the remainder of the transitional period would be divided into two equal stages.

(b) During the first stage, two reductions of Customs duties would be made, one at the end of the first year and the other at the end of the sixth year, so that at each reduction total Customs receipts would be reduced by 5 per cent; at each reduction, all tariffs of over 50 per cent would be reduced by at least 5 per cent. During the second and third stages, all tariffs would be reduced at the end of each year by equal instalments in such a way that they would be wholly abolished by the end of the third stage. Revenue duties would be subject to the general rules of the Convention.

(c) During the transitional period, no new duties might be introduced nor any existing duties raised, except

where such action was clearly necessary to promote the development of a specific industry; new or increased duties would not exceed 50 per cent *ad valorem* or the highest duty applied at the time by a developed Member country where this rate exceeds 50 per cent *ad valorem*. Such measures might be taken unilaterally during the first stage, after notification to the Organisation during the second stage, and with prior approval from the Organisation during the third stage. In every case, compensating reductions would be made in other duties so that there should be no increase in Customs receipts.

(d) The situation of less-developed countries would be periodically reviewed in the middle year of each stage, with a view to the possibility of speeding up the process of reducing barriers to trade. The recommendations of the Organisation on the occasion of these reviews should be accepted by the countries concerned.

152. These proposals have been submitted by the Chairman of the Working Party to the Inter-Governmental Committee, which has held an exchange of views on the subject. After expressing general agreement with the proposals, the Committee requested the Working Party to pursue its study of them and to endeavour to reach precise proposals, although the Committee acknowledged that the final form given to the proposals would, of necessity, depend upon the general arrangements adopted for Area problems as a whole.

153. In accordance with these instructions, the Working Party proceeded to consider its Chairman's proposals. Discussion revealed that the original gap between the conflicting views had been substantially narrowed but it had not been possible to reach agreement on all points. Further proposals were made notably with a view to assigning a definite duration of 30 years to the transitional period, reducing the first stage to 5 years with a possible extension after investigation by the institutions, making heavier reductions during the first phase, subjecting the possibility to impose new duties or raise existing duties to stricter rules and, in particular, ensuring that there should in no case be any unilateral action by the countries concerned. The Delegations of the less-developed countries considered these proposals unacceptable (except that referring to a definite period of 30 years for the transitional period) and submitted counter-proposals. The Working Party noted that no further progress could be made, more especially owing to uncertainty as to the general Area rules and the problems still pending with regard to financial assistance.

154. As to quantitative restrictions on imports, the Working Party has so far only had a very preliminary exchange of views. The Joint Memorandum by the Greek, Irish and Turkish Delegations suggested certain general rules: the globalisation of all existing quotas; the right to increase quantitative restrictions; the complete abolition of import quotas at the end of the extended transitional period. The Irish Delegation, however, in a memorandum not yet considered by the Working Party, has expressed its willingness to agree to the following principles as applicable during the extended transitional period:

(a) From the beginning, a standstill on imposition of new quotas and a globalisation of existing quotas.

(b) In the first and second extended stages, the right to reduce the size of existing quotas.

(c) By the end of the second extended stage, each quota would be at least 10 per cent of national production and would thereafter be raised by a set percentage each year.

(d) By the end of the extended transitional period, all quotas would have been abolished, but with no automatic obligations in the first two stages. Insofar as quantitative restrictions were abolished in the first two stages, an unrestricted right to impose new tariffs would be opened.

The Turkish Delegation submitted certain specific proposals, in view of Turkey's particular position and special obligations towards the O.E.E.C. The Greek Delegation said that its Government could not accept the consolidation of the liberalisation measures now being applied by Greece. Lastly, the Icelandic Delegation stated that it found it impossible to draw up a timetable forthwith for the abolition of quantitative restrictions, and that, consequently, the derogations should be valid for an indefinite period.

155. The less-developed countries had from the outset requested derogations from the general Area rules in a number of fields other than Customs duties and quantitative restrictions. These requests were discussed by the Working Party during the spring and summer of 1957 and the results of the discussions were summarised in two reports by the Chairman of the Working Party to the Chairman of the Council. Subsequently, the Inter-Governmental Committee requested the Working Party to study the nature, duration and conditions of application of derogations from the general obligations to be offered to the less-developed countries.

156. The Working Party subsequently resumed its study of the matter on the basis of a note by the Secretariat summarising the requests of the countries concerned and giving a general progress report on the establishment of the Free Trade Area. The Working Party's discussions showed that some Delegations considered that, apart from the problem of tariff reductions and the removal of quantitative import restrictions, there was *a priori* no justification for derogations from the general rules in favour of the less-developed countries. However, these Delegations stated that they were willing to consider each individual request by such countries in the light of their economic situation. The procedure envisaged at present is that less-developed countries should submit to the Working Party requests for derogations where they consider them necessary, at the same time presenting justifications for their requests. A memorandum on the liberalisation of invisible transactions, the abolition of quantitative restrictions and freedom of establishment has already been submitted by the Turkish Delegation on these lines. The Irish Delegation has also submitted memoranda requesting, so far as invisible transactions are concerned, certain derogations in respect of insurance and seeking special treatment in respect of the granting of the right of establishment. The Secretariat has prepared a paper summarising all the requests made in this connection by countries in the course of development, either in the form of memoranda or at meetings of the Working Party.

157. The countries concerned have stated that their proposals concerning financial arrangements, derogations and trade in agricultural products should be considered as a whole and that none of these questions can be the subject of a separate agreement.

Chapter XI — Associated Territories

158. The Treaty of Rome contains a convention on the association of Overseas Countries and Territories with the European Economic Community. The question has arisen whether the Area should or should not include the Overseas Territories associated with certain countries of the Area.

159. Some countries have proposed that they should be excluded from the Area. No country has so far asked that they should be included, but the Inter-Governmental Committee came to the conclusion that this point could not be decided until certain questions had been studied. It will, for example, be necessary to consider the institutional problems which will arise in the case of Portugal. It is also possible that certain Territories may have to be included in the Area because of their particularly close economic connections with the countries with which they are associated.

160. The Committee therefore agreed not to take any *a priori* decision on the inclusion or exclusion of Associated Territories but to study the question.

Chapter XII — Institutions

161. In the course of an initial general discussion on the question of institutions for the Free Trade Area, fairly general agreement on the following principles seemed to emerge:

— the institutions of the Area would be established within the framework of the O.E.E.C.;

— the supreme body would be a Council of Ministers, assisted by a Council of Deputies;

— a Managing Body of senior officials would be responsible for the day-to-day management of the Area and for preparing decisions of the Council;

— in certain specific cases, expressly defined in the Convention, the Council might take majority decisions.

162. A large number of questions remain open, including, for example:

(a) Composition and jurisdiction of the managing body: would it consist of independent members with an international status, as is the case for the European Commission of the European Economic Community, or of senior officials appointed in a personal capacity, like members of the present Managing Board of the E.P.U. or Steering Board for Trade? How many members would there be? What system of rotation should be adopted? Would this body have certain specific powers of decision or would all decisions be taken by the Council? On this point, some Delegations feel that all the Area countries should be able to take part in making decisions.

(b) Could provisions be inserted in the Convention whereby the number of cases in which the majority rule prevailed would be gradually increased as the Area established itself and the cohesion of its Members increased?

163. The Treaty of Rome has established a jurisdictional body, an Economic and Social Committee, a Monetary Committee and a Parliamentary Assembly. Should similar institutions be envisaged for the Area? These questions have not yet been discussed by the Inter-Governmental Committee but some Delegations have already said that in their opinion a juridical body should be established.

164. Finally, it would be necessary to consider how the institutions of the Area will be co-ordinated with those of the European Community.

165. The European Economic Community subsequently made known its position with regard to these institutional problems:

(a) *Institutions*. The Community considers that the institutions of the European Economic Association could be analogous to those already existing in the O.E.E.C. Provision should be made for:

— a Council, meeting either at Ministerial level or at Permanent Representative level, and assisted by a Secretariat;

— the Commission of the European Economic Community should be represented at the Council, and similar arrangements should be made for the High Authority of the E.C.S.C. and the Euratom Commission;

— one or more Boards which should be objective and independent bodies responsible for giving considered opinions and taking decisions only when specifically instructed to do so.

The question whether a Court of Justice will be necessary cannot be decided until the terms of the Convention are finally settled.

(b) *Procedure for taking decisions*. As regards the procedure for taking decisions in the Council, the Community considers that for practical reasons it will be necessary at the outset to adopt the unanimity rule. The question whether and how far provision should be made for majority decisions in the future will be considered during the transitional period, and particularly on passing from the first to the second stage.

(c) *Action by E.E.C. countries within the institutions*. The Community intends to act as a unit within the Association. The attitude of its Members towards Association matters will be determined within the Community by an internal procedure based on the provisions of the Treaty of Rome.

166. The unanimous vote rule proposed by the European Economic Community [cf. paragraph 165 (b) above] would also apply to the escape clauses which, in the Community's opinion, Member States should be able to invoke unilaterally. There would, however, be provision for subsequent control by the Council of the Association, which would decide by a unanimous vote whether safeguarding action taken by a Member State were justified, unless the procedure for taking a decision on the escape clause concerned had been changed in the course of the transitional period.

167. The Inter-Governmental Committee approved, in general, the Community's proposals with regard to institutions [cf. paragraph 165 (a) above]. With regard to the proposed procedure for taking decisions, the Committee agreed that decisions should be reached unanimously whenever important questions were involved, such as the assumption of new obligations. However, there was some divergence of views with regard to the advisability of prescribing a unanimous voting procedure for recourse to an escape clause. The United Kingdom Delegation, in particular, thought it essential that a qualified majority vote should be adopted. Similar differences of opinion subsist as to whether safeguarding action could be unilaterally taken by a Member country, with the subsequent approval of the institutions, or whether prior approval would generally be necessary for such action to be taken. The United Kingdom Delegation was strongly in favour of the latter solution.

With regard to safeguarding action arising out of balance of payments difficulties, the Inter-Governmental Committee agreed that, generally speaking, a Member country could take such action and subsequently apply to the institutions for approval.

168. The Inter-Governmental Committee decided to resume later on its study of the institutional problems remaining in abeyance.

Chapter XIII — Rules for Coal and Steel

169. The Rome Treaty does not settle questions relating to coal and steel since, for the Six, these are governed by the Treaty instituting the European Coal and Steel Community.

170. As regards the Free Trade Area, the Inter-Governmental Committee has agreed that coal and steel will be included in the Area, though special rules will be necessary in view of the special problems which arise in this sector and the existence of the E.C.S.C. On this last point, it must be borne in mind that the Community has already been in existence for several years, that it has completed its transitional period and that its institutional rules present special characteristics.

171. A Working Party on which the High Authority is also represented has considered what arrangements

should be made for coal and steel in the Free Trade Area. It has, in particular, considered rules for the removal of obstacles to trade (tariffs, quantitative restrictions), rules of competition (dual pricing), access to supplies (cases of shortage or surplus, export or import restrictions, etc.), government aid, price fixing and control systems, transport questions, etc.

172. The work has reached a stage at which the Working Party has decided to draft a report to the Inter-Governmental Committee and consider it at its next meetings. On the basis of the general ideas put forward by the various bodies responsible for the preparatory work on the Free Trade Area, the report is to make concrete proposals on the specific rules to be applied in the coal and steel sector.

173. The Working Party could, in principle, choose between two solutions providing for association between the Member countries of the E.C.S.C. and the other Member countries of the Area:

(a) application, pure and simple, of the E.C.S.C. rules throughout the Area;

(b) drawing up rules for such association, taking account so far as possible of the fact that the E.C.S.C. is an autonomous entity.

174. The Working Party unanimously recognised the impossibility of adopting the first solution. With regard to the second, certain countries voiced their preference for the application, as far as possible, of the general rules of the Free Trade Area, with the minimum of special rules. Other countries, on the other hand, thought that supplementary rules should be worked out, ensuring equal advantages for consumers and producers by means of clauses directly aimed at the elimination of any price discrimination and the diminution of market fluctuations.

175. A draft Protocol on Coal and Steel has been prepared. It contains alternative texts, corresponding to the two views expressed in the previous paragraph. The Working Party has not yet had an opportunity of giving an opinion on the matter.

Chapter XIV — Rules for Nuclear Materials and Equipment

176. Trade between the Six in nuclear materials and equipment is in principle covered by the rules of the European Economic Community unless special rules are laid down in accordance with Articles 92 to 100 of the Euratom Treaty. These special rules aim at removing obstacles to trade more rapidly in this sector than is provided for in the Common Market Treaty.

177. The Inter-Governmental Committee has agreed that nuclear materials and equipment should be included in the Free Trade Area and that the lifting of obstacles to intra-European trade in these products should be, if possible, more rapid than under the general rules of the Area.

178. In July, 1956, the Council of the O.E.E.C had already:

— ordered a “standstill” on obstacles to trade in nuclear materials and equipment (quantitative restrictions on imports and exports, Customs tariffs, etc.);

— decided to study all possible ways and means of freeing intra-European trade in these products as fully as possible.

179. The work on this last question did not yield any positive conclusions. It has been resumed, having regard to the new decisions of principle taken by the Inter-Governmental Committee, by a Joint Working

Party of the Steering Board for Trade and the Steering Committee for Nuclear Energy.

180. After considering the Working Party's report, the Steering Board for Trade submitted to the Inter-Governmental Committee the following proposals for each of the three categories of nuclear materials and equipment:

(a) Ores, source materials and special fissionable materials (List A1)

— Abolition of Customs duties between Member countries from 1st January, 1959.

— Recommendation that Member countries should mutually refrain from applying quantitative import and export restrictions (the prerogatives of the Euratom Supply Agency being regarded as a form of State trading).

(b) Other materials and equipment specific to nuclear energy (List A2)

— Abolition of Customs duties between Member countries from 1st January, 1959, subject to the elaboration and adoption of an appropriate system for avoiding any deflections of trade resulting from disparities in the tariffs applied to third countries.

— Removal of quantitative import and export restrictions from 1st January, 1959.

(c) Products used in producing nuclear energy as well as for other purposes (List B)

— Undertaking by the Six to consult their O.E.E.C. partners whenever they envisage the earlier application of a common external tariff in respect of a given product, and therefore a mutual abolition of tariffs. To secure simultaneous abolition of tariffs among the Seventeen, the countries which are not members of Euratom should endeavour to devise a system whereby deflections of trade could be avoided.

— Revision of List B to exclude products for which some countries are at present unable to envisage the removal of quantitative import and export restrictions; for other products, elimination of such restrictions from 1st January, 1959.

— Recommendation to make, in co-operation with Euratom, every effort to remove as soon as possible all trade restrictions on the greatest possible number of products in Category B.

181. At the same time, the Steering Committee for Nuclear Energy transmitted to the Inter-Governmental Committee, with its opinion, the report of the Working Party [cf. paragraph 179 above].

182. The Inter-Governmental Committee noted that most of the countries which were not Members of the European Economic Community were in general agreement with the proposals of the Steering Board for Trade [cf. paragraph 180 above]. It decided to resume its study of the question as soon as the Community had taken up a position with regard to those proposals.