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GENERAL AGREEMENT ON TARIFFS AND TRADE

Working Party on the Accession of Portugal and Spain to the European Communities

MEETING OF 8 JULY 1986

Note by the Secretariat

1. The Working Party on the Accession of Portugal and Spain to the European Communities held its first meeting on 8 July 1986 under the Chairmanship of Ambassador F. Jaramillo (Colombia). The terms of reference and composition of the Working Party are set out in L/5994/Rev.1. It had available copies of the Accession Treaty of Portugal and Spain to the Communities, of Council Regulation No. 3330/85 of 5 December 1985, amending the Common Customs Tariff of the EC, and replies given by the Communities to a first list of questions which had been put by contracting parties (L/5984 and Corr.1).[1] After a general debate, the Working Party began its examination of the questions and replies.

I. GENERAL

2. The representative of the European Communities recalled that he had made a statement at an informal meeting on 26 May 1986 and he requested that it be annexed to the present report (Annex 1). After summarizing the main elements he went on to explain that the general view of the parties to the Accession Treaty was that the enlargement provisions were fully consistent with Article XXIV of the General Agreement and with paragraph 5(a) thereof in particular. In general terms, the import régimes which had been in force in the two new member States prior to accession had given substantial protection. The tariffs had on average been at a level much higher than in the Community. In addition, the two countries had had relatively few tariff bindings. In many cases, the regulations of commerce were not totally transparent and their effects were sometimes uncertain or even restrictive because one of those countries had been under a régime of balance-of-payments problems. The conclusion that had to be drawn was that, at the end of the transition period, the general incidence of duties and other regulations of commerce in the two countries would be lower and less restrictive than before. If this conclusion were not shared by other contracting parties, then it would be hard to imagine any customs union or enlargement of a customs union which could be acceptable. This would mean that Article XXIV was so imprecise as to be hardly operational. This was not the conclusion that the Community would draw.

[1] Replies to a further list of questions have subsequently been circulated in L/5984/Add.1.

3. In view of some of the questions from contracting parties, the representative of the European Communities stated the limits which, in his view, should apply to the work of the Working Party. Article XXIV:5 only required an examination on the broadest possible basis. The task was general, namely to reach a view on whether the general incidence of customs duties and regulations after enlargement were on the whole more or less restrictive than before. Certain consequences derived from this. First, when points were made by individual contracting parties on the impact of enlargement on their particular interests, one had to see whether the effects were the same for contracting parties taken as a whole. Even if a negative incidence were shown to be the case for certain items, such as when duties were increased or replaced by variable levies, one had to consider whether these effects were not balanced by the effects of other changes in the tariff sector taken as a whole. A second consequence was that an overall appreciation of effects of changes in tariffs and regulations of commerce had to be made. Against this background, the Parties to the Accession Treaty were confident that the conclusions of the Working Party could not but be positive. Lastly, in assessing general incidence, one had to avoid too static an analysis. The Working Party was essentially looking at a picture of what would result from the application of the Treaty at the end of the transitional period and one could not make a true assessment of general incidence without taking into account the trade creating effects of the establishment or enlargement of a customs union. When a customs duty was raised on a specific item, new regulations were being introduced and certain products made subject to new restrictions, this had to be put in its general context. One had to avoid too much discussion of specific cases and oversimplified conclusions on points which might be of importance to some contracting parties but which might not have the same weight in the exercise as a whole. The important thing would be to establish the real incidence of the new situation in comparison to the previous régimes in the two new member States. The weight of any specific case would have to be compared to the substantial liberalization now taking place in Spain and Portugal.

4. The representative of Spain stated that, in 1971, the CONTRACTING PARTIES had recognized the agreement between his country and the European Economic Community, whose minimum objective, as reflected in document L/3579, had been "the creation of a free-trade area which, at a later stage, would be developed into a customs union". On that occasion, the representative of his country had indicated that "the implementation of the Agreement would accelerate the economic development of Spain, which would lead to benefits for third countries". Such objectives had been achieved more than satisfactorily as was shown by figures on the evolution of the Spanish economy and of its foreign trade during the period when the Agreement had remained in force. For these reasons and after a period of reflection, his country had decided to continue its efforts towards fuller integration with the economic area to which it belonged from many points of view. Spain was convinced of the possibility of combining its desires for economic progress and social well-being with the commitments undertaken in international obligations, also to the benefit of its trading partners. It was convinced that the integration fulfilled the requisites of Article XXIV of the General Agreement. With the accession to the Communities, it would be possible for Spain to assume more fully the GATT obligations in the tariff and non-tariff areas. After the Tokyo Round, Spain had undertaken to bind approximately 40 per cent of its tariff positions. By acceding to

the Communities, almost all tariff positions would be bound at a much lower level. Spain had become a party to four of the MTN Codes (Customs Valuation, Technical Barriers to Trade, Anti-Dumping and Subsidies and Countervailing Duties). Integration with the Communities required that it accede to and apply all the instruments negotiated in the Tokyo Round. While Spain had signed the first Multifibre Arrangement, it had not become a party to either of its Protocols of Extension. It would now need to apply the disciplines arising out of instruments relative to trade in textiles. Finally, Spain would immediately start applying the various systems of preferences to a large number of developing countries. All this was reflected in a substantial opening of Spanish markets, which would surely be rightly appreciated by Spain's trading partners, given the present economic situation.

5. The representative of Portugal stated that accession to the European Communities opened a new stage in his country's history. It successfully completed a long and complex negotiating process and a period of progressive approach to European integration. Portugal had become a founding member of the European Free Trade Association in 1960, and had signed a free-trade agreement with the European Economic Community in 1972. Accession to the Communities was a logical consequence of this process of liberalization. It implied the adoption of a model for Portuguese society as well as a new orientation for its external economic policy. The adaptation required for full integration was a challenge which would call on all of Portugal's energies. His country intended to participate to the fullest extent in the Communities even though a transitional period and specific modalities for flexibility had been envisaged in order to avoid excessive costs to its economy. Portugal believed that the solutions found for the adaptation period complied with the requirements of Article XXIV of the General Agreement. The adoption of the "acquis communautaire" implied an important opening of the Portuguese market and increased transparency in regulations. The previous trade régime had been characterized by a considerable degree of interventionism and by recourse to administrative and fiscal practices aiming at providing protection for the weaker sectors of the economy. Adoption of the "acquis communautaire" would also have positive effects for Portugal's foreign trade with other contracting parties. The direct effects of participation in a customs union such as the ones stemming from the adoption of the Common Customs Tariff, had to be stressed. The former Portuguese tariff had been on average 30 per cent higher than the CCT and alignment with the latter would therefore result in a significant dismantling of tariff barriers. After accession, Portugal had become a donor by adopting the Community's GSP scheme, thus improving market access for beneficiary countries. The positive effects of changes in the tariff and non-tariff areas would bear benefits for all, and enable Portugal to assume GATT disciplines more fully.

6. The representative of the European Communities reiterated that the tariff offer had not been put forward by the European Communities on a take it or leave it basis. The introduction of a new tariff (EEC regulation 3330/85) was consistent with Article XXIV:5 and had been done essentially to provide the enlarged Community with a legal and legitimate basis for tariff negotiations under Article XXIV:6. In examining the new tariff the Working Party would have to take account of the fact that this was part of a negotiating process during which further tariff changes would certainly be made. On the basis of the new tariff, one could distinguish - within

total imports for the Community of twelve of between 224 and 265 billion ECU (in 1983 and 1984) - the following categories in order to establish their relative significance in the Article.XXIV:5 exercise:

- items subject to variable levies (on which a weighted average had not been calculated) and which accounted for about 2 per cent of the total imports of the Community of twelve. Whatever the incidence of these levies might be compared with the situation prior to enlargement, it was highly unlikely that 2 per cent of trade would be a significant factor in any overall analysis to be conducted by the Working Party;

- items for negotiation which had been left blank and which amounted to 6 per cent of the total. The analysis of this category could, in their view, be left aside for the present, pending tariff negotiations during which the Community would be making offers. It had to be clear that the amount of trade thus involved was also of limited significance. Even if these items might be of importance to some contracting parties, overall they were not a large category;

- items where a weighted average tariff was not provided and which amounted to less than 5 per cent of the total imports of the EC/12. Since the duty rates for the EC/10 were retained for these items, there would be no change in incidence for countries accounting for 90 per cent of the trade in the category: the only possible change in incidence could arise in Spain and Portugal whose trade in relation to overall Community imports was minimal;

- items where the weighted average tariff had been introduced and on which the incidence would be trade neutral by definition. The volume of trade in this category was over 85 per cent of the total imports of the Community of twelve.

7. Leaving blank items aside for the time being, the Working Party could address the situation for 94 per cent of the total imports for the EEC/12. It was perfectly possible to reach a valid, albeit preliminary, conclusion about the tariff incidence of enlargement on this basis; if the Working Party accepted their view that the incidence of duties on the bulk of this trade was neutral, then further analysis of the tariff incidence would not significantly modify the general picture. There could be no doubt that the incidence of the substantial tariff reductions taking place in Spain and Portugal, often from very high duty levels, would be of major importance. Because the former duties had been almost prohibitive in their effects, these cuts, together with other changes would lead to an effective opening of the market. This was a factor which had clearly to be recognized by the Working Party. Furthermore, as long as the new tariff was suspended, the duties applied were those of the EEC/10 to which the new members were aligning, to the advantage of third countries. This would mean that for more than 85 per cent of the import volume the trade neutral incidence would become trade positive. Given the low levels of Spanish and Portuguese imports in the "blank" items, the 6 per cent represented by these items would also be trade positive. This observation might be of some significance in the Working Party's final analysis of the tariff.

8. Any uncertainty in regard to the tariff could be more than satisfactorily balanced by liberalization of other regulations of commerce The introduction of the value-added tax in Spain constituted a radical modification of its previous cascade taxation system. Cascade tax on imported products tended in general to be higher than on locally-produced goods and under such a system it was difficult to calculate exactly how much refunds should be made on exported goods. Consequently, elements of distortion could occur in relation to both imports and exports, a factor which had been the subject of complaints in GATT from Spain's trading partners in the past. Some steps had been taken in 1982-83 to reduce some of the distorting effects of this system but, with the introduction of the VAT, these distortions had effectively been done away with. While estimates of the degree of this distortion varied, the economic studies available suggested, on a conservative basis, that it amounted to at least five percentage points on average, in terms of the effect on import and export prices. The fiscal liberalization which had taken place was, therefore, a major contribution to a more trade-neutral system in Spain from which all trading partners would take immediate benefit. This was an important factor to be included in any general appreciation of the overall incidence of regulations of commerce after enlargement. A further field in which substantial improvements for third countries occurred was that of import régimes. Past notifications by Spain to the GATT showed that three different types of restrictive trade régimes were in place prior to enlargement. These régimes translated into restrictions on a large number of products at the four-figure level, with in addition the effects of State trading, import monopolies and discretionary licensing. The substantial developments now envisaged, therefore, represented a significant improvement in the quality of access to the Spanish market. Similarly, in the case of Portugal, past notifications, e.g. in the context of the Balance-of-Payments Committee, made readily apparent the extent of the restrictive régimes. In addition to import restrictions as such, adopted in the context of BOP difficulties, imports were subject to various procedures connected with the allocation of foreign exchange, for example a system of prior reporting of imports which was designed to exercise control over them. The decision by Portugal to abandon its invocation of balance-of-payments difficulties was a further substantial move towards a liberalized régime. As in the case of Spain, further elimination of restrictions was expected through the transitional period as laid down in the Treaty. Therefore, the general incidence of regulations of commerce in terms of Article XXIV:5 had to be regarded as substantially less restrictive now and at the end of the transitional period than prior to accession.

9. The representative of Argentina first stressed his concern at the supposedly interim agreement reached by the European Economic Community and the United States on access of certain agricultural products into Spain and the rest of the Community. Before the Working Party completed its work, it had to look into this agreement. Although aware of the negative incidence for the United States of the enlargement of the EC, he regretted that bilateral consultations had been held on an agreement which might be detrimental for other countries. Neither of the two parties could have been unaware of the implications of the situation since the government of Spain had repeatedly recognized the damage that could arise out of its accession to the EC. He therefore enquired whether the Commission of the European Communities would notify the details of this agreement so that the

effects upon other contracting parties might be established. It was regrettable that this type of agreement occurred just before multilateral negotiations on agriculture. He wondered what confidence smaller trading partners like his country could put into such negotiations in these circumstances. He went on to note that for the third time, the CONTRACTING PARTIES examined the consequences of enlargement of the European Economic Communities. Previous exercises had not made it possible to arrive at a conclusion on whether the enlargement in question was compatible with the provisions of the General Agreement, and those of Article XXIV:5 in particular. From a purely commercial point of view, some contracting parties had suffered damage from the enlargement of the Community, not just because important markets for their products had disappeared as a result of the introduction of restrictive measures at the border, but also because the Common Agricultural Policy had been extended to other producers thus causing damage in third markets, as a consequence of unfair competition due to Community subsidies. The present enlargement of the Community was occurring at a moment when a new round of multilateral trade negotiations was due to begin and a certain overlap was inevitable between that round and negotiations on compensations pursuant to Article XXIV:6. Earlier experience from the Kennedy Round indicated that the biggest obstacles arose on compensations under Article XXIV. The exercise which was beginning was extremely complex and available information was far from being an adequate basis. He wondered, therefore, how it would be possible to determine the commercial impact of a series of regulations and commercial practices maintained by the Community especially in the field of agriculture - questions such as variable levies, minimum prices and the mobile element on all products containing sugar. He hoped that the Commission would be in a position to offer shortly all the information which the CONTRACTING PARTIES might require especially concerning restrictions at the border. His delegation in particular looked forward to receiving a clear and concrete reply from the Community on whether or not quantitative restrictions were maintained and if so on their coverage. It was also preoccupied by the fact that the Community had withdrawn the totality of its bound tariff and that the provisional tariff contained a considerable number of blanks in the agricultural sector which was of essential importance to Argentina. The accession of Spain and Portugal to the Communities had caused commercial prejudice for his country, especially in the agricultural sector and above everything in products such as maize and sorghum which since 1 March 1986 had been made subject to prohibitive variable levies. In other areas of bilateral trade, a first examination had made possible the identification of certain other sectors where Argentina's trade would be affected. While all these aspects would need to be examined in the course of Article XXIV:6 negotiations, it was also clear that the procedural delays in both GATT and the Community itself caused substantial commercial losses for certain exporting countries, a situation which could only be settled through acceptance by the Community of the need to complete as quickly as possible Article XXIV:6 negotiations. One also had to consider how the accession of Spain and Portugal to the Communities could distort trade through deviation of commercial currents and take into account the consequences of this for the commercial interests of third countries.

10. The representative of the United States stated that her authorities had undertaken a dynamic assessment as suggested by the EC. They still doubted that the situation was not more restrictive after enlargement than

before. In the Community's proposed new tariff, the tariffs for industrial products consisted of trade weighted rates in those instances where either the corresponding Spanish or Portuguese rates had been bound, or, if unbound, where the rates had been higher than in the EC(10). While the resulting duties in EC(12) would be in general somewhat lower than the previous Spanish or Portuguese rates they would be slightly higher than that of the EC(10). For products subject to trade-weighted averages, the overall result might be statistically neutral but the changes might be damaging from the standpoint of a trading partner's particular trade interests. The suggestion by the representative of the Communities that the problems would be negotiated under Article XXIV:6 and that too much emphasis should not be placed on the impact of enlargement on a particular country was not acceptable to her delegation. In its view, the Working Party had to examine the impact on particular trading partners as well as on all contracting parties. Furthermore, Article XXIV:6 did not cover all relevant matters. The rate applied by the EEC(10) was extended to Spain and Portugal when the rate applied by these countries had been unbound though lower. More than 300 of the Community's industrial tariff of 1,660 items would be affected in that manner, which was not insignificant. Examples were chemicals, computer parts, coal and related products. Suppliers of these products to Spain and Portugal would therefore find a situation which was more restrictive than the one prevailing before enlargement. Article XXIV:6 did not address this situation which would have to be borne in mind during the Article XXIV:5 examination. Her delegation also wondered whether the Community intended to calculate a trade weighted average tariff based on the past three years rather than take figures for 1983 only.

11. Some ninety-six non-industrial items had been left blank in the proposed new tariff. These blanks represented some of the Community's most important concessions in the sector of agriculture and fisheries. If these blanks were considered withdrawals, the Working Party had no choice but to conclude that the EC had failed to meet its GATT obligations. Her delegation could not accept the view that these blanks, representing over $4 billion worth of trade between the United States and the enlarged Community, were to be filled through Article XXIV:6 negotiations. They had to be filled by the Community before the Working Party could reach any conclusion. Furthermore, the information supplied by the Community in document L/5984 indicated numerous instances where the EC's offer constituted a worsening compared to the pre-enlargement situation in Spain and Portugal. Examples of particular interest to the United States were the unbinding of Spanish concessions on maize and sorghum which had been replaced by a variable levy in excess of 130 per cent ad valorem. The loss to the United States amounted to $624 million in average annual shipments between 1981 and 1983. In Portugal, though corn duties had not been bound, the United States would lose $400 million in annual shipments when the Community's variable levy system was introduced in that country. The variable levy category which was misleadingly referred to as constituting 2 per cent of the EEC's imports, represented 30 per cent of United States' exports to Spain. A variable levy did not simply impair, but completely nullified previous bindings. The extension of the Common Agricultural Policy and in particular of variable levies to Spain and Portugal constituted serious new obstacles which would disadvantage all exporters of agricultural products.

12. Her delegation was also preoccupied by the new quantitative restrictions introduced in Portugal. Of particular concern were the new quotas on oil seed and oil-seed products as well as the minimum purchase requirement on feed grains. These were new trade restrictions which were inconsistent with GATT obligations. The earlier Portuguese programme for oil seeds had not restricted imports. Portugal had had internal machinery which could have been used to restrict imports of feed grains, contrary to GATT rules, but that machinery had not been used. The new Community quotas were not a liberalization measure and there was no legal justification for them. Likewise, the minimum purchase requirement also constituted a serious new restriction not consistent with the Community's GATT obligations. There existed no justification under Article XXIV for quantitative restrictions. To the contrary, Article XXIV:4 required that a customs union should not raise new barriers for other contracting parties. On the industrial side, while it was true that certain restrictions had been eliminated in Spain and Portugal, new forms of protection were emerging. In Spain, administrative authorization had been introduced against non-EC countries on a long list of products which was expected to be enlarged. These developments did not fit with the Community's assertion that Spain's import régime was being liberalized with respect to third countries and she wondered how the Community would justify those measures under the GATT. In conclusion, her delegation's analysis showed that the post-enlargement situation was more restrictive for third countries than had been the case before the accession of Spain and Portugal to the Community. Without prejudging the outcome of the Working Party, she was therefore interested to hear what steps the Community was preparing to consider to ensure that its agreement with Spain and Portugal met the provisions of Article XXIV:5(a).

13. The representative of Japan stated that the accession of Spain and Portugal was a positive development for peace and prosperity. Nevertheless, while regional arrangements were given a status under the GATT, they constituted deviation from the basic principles of free competition and non-discrimination. If such arrangements were the product of a historical development, one had to ensure that they did not bring about disadvantages for third countries but instead facilitated the expansion of trade. On this point the enlargement had to be in strict conformity with the provisions of the General Agreement and those of Article XXIV in particular. His delegation considered the Accession Treaty to be an interim agreement in terms of Article XXIV; but had no intention to dwell on that question, provided the EC did not preclude the application of Article XXIV:7 under which the CONTRACTING PARTIES could make recommendations. With regard to the timing of the implementation of the Treaty, and its relationship to the examination carried out under Article XXIV, no specific reference to this question existed in the General Agreement. However, in view of the difficulties involved in modifying the Treaty after its examination in the GATT was completed, priority should be given to this examination over implementation. Another subject that he wanted to raise was how the general incidence of duties was calculated by the European Economic Community. Because his delegation was worried about the precedent which would be set for the future, it considered that the issue should be discussed in the Working Party. The idea of striking a balance between agricultural and manufactured goods in calculating general incidence was unacceptable. The interest of a specific trading partner in a specific item had to be taken into account. The compensatory adjustment

envisaged in Article XXIV:6 had to be based on each bound item. The underlying principle of Article XXIV:6 was that an increase in a duty bound in one of the constituent members of the Customs Union, had to be compensated by a reduction in the duty for that specific item in the other constituent members of the Customs Union. Although some quantitative restrictions and non-tariff measures had been liberalized in Spain and Portugal there remained in both countries a significant number of quantitative restrictions which discriminated against Japan. His government had both bilaterally and in the GATT repeatedly requested that these import restrictions be eliminated immediately. Unless satisfactory replies were provided by the EC to these requests, Japan would have no alternative but to conclude that enlargement had been achieved at the expense of third countries.

14. The representative of Australia could endorse much of what had been said by the representatives of the United States and Japan. As a smaller contracting party which did not have the negotiating power of bigger trading partners, Australia's interests were protected through the preservation of and implementation of GATT rules. It participated in the Working Party in order to ensure that these rules were firmly and strictly adhered to and without any intent of prejudging the outcome of the thorough examination of the Accession Treaty. If the European Communities were not in the same position then the Working Party was wasting its time. She would expect the Community to be ready to modify, as necessary, the terms of the Treaty of Accession to meet its obligations under Article XXIV, including Article XXIV:4 according to which the objective of a customs union was not to raise barriers to the trade of other contracting parties. Her delegation had to be convinced that that had not occurred and for that reason the interests of individual contracting parties were important. What had given rise to these concerns was a comment by the representative of the EC that Article XXIV had to be made operational. If in order to make Article XXIV operational any type of agreement had to be accepted, then this was another case of bending the rules. On the question of the procedures of the Working Party and of Article XXIV, it was up to the Working Party to determine whether or not the blanks were important or not and what weight they had to be given in determining whether the incidence of duty was higher after enlargement than before. A judgement could not be made without information on the blanks. Under Article XXIV:7, the parties to a customs union had to provide information promptly to the CONTRACTING PARTIES on the customs union. She interpreted that to mean that the blanks had to be filled in. To say that products covered by the blank items were a small part of trade and therefore unimportant was not acceptable. The information required from contracting parties under Article XXIV:6 had not been received by Australia, in spite of repeated efforts. Specifically, there had been no notification of modified bindings, no statistics, no compensatory offers for bindings, even though Australia had negotiating rights on some items. The procedures and rules of the GATT had to be maintained and the onus for this was on the big countries. Australia tended to believe that the tariff proposals of the Community were on a take it or leave it basis. It needed to be convinced that this was not the case and wondered how the EC would react if Australia also modified bindings without providing the required information. Therefore, Australia was asking that the information be supplied so that the Working Party could begin its investigations under Article XXIV:5.

Finally, she said that the answer provided by the Community in L/5984 to the question on agricultural subsidies and production aids was thin and evasive.

15. The representative of Uruguay stated that his authorities were examining the situation brought about by the enlargement of the Community, in the light of problems which might arise for his country. His delegation shared the concerns expressed by other contracting parties, especially Argentina, with respect to the agreement on certain agricultural products concluded by the Community and the United States, because this agreement had been negotiated outside the framework of the General Agreement without taking into account the interests of smaller trading partners on whom it could have an impact. His authorities were also particularly worried about the implications for Uruguay's exports of agricultural and fisheries products, of the accession of Spain and Portugal to the Communities. For example the reply to question 98, relating to imports of rice by Portugal, indicated that the terms of sale and particularly credit lines would be modified by certain suppliers thus possibly changing the origin of some Portuguese imports. This could be detrimental to Uruguay's exports. They were also preoccupied by the tariff positions which had been left blank and hoped that the situation could be clarified.

16. The representative of Canada stated that he was looking forward to working towards an objective assessment of post-enlargement duties and regulations of commerce. However, he was concerned that the information supplied by the Community was insufficient. It was essential to have information on the undetermined tariff rates for the Working Party to be able to conduct its examination. He believed that the effects of enlargement on the trade of individual parties was a very relevant aspect of the CONTRACTING PARTIES' work. In making an assessment on whether post-enlargement duties and regulations had a positive or negative incidence, he was not convinced that even though changes might be trade neutral for 85 per cent of EEC imports, the overall result could not be negative, since if the trade effect on the remaining 10 or 15 per cent of EEC imports was negative, then the overall result would necessarily have to be negative as well.

17. The representative of Hong Kong shared many of the concerns expressed about the Community's new common customs tariff including those of Australia on the procedures of Article XXIV:6. Some contracting parties had put emphasis on agriculture which was quite understandable. But the effect of the common customs tariff on industrial products could not be overlooked. They were particularly relevant for Hong Kong whose exports to the Community were mostly of industrial products. Hong Kong's initial assessment indicated that if implemented in its present form the new CCT would result in overall higher duties being paid by Hong Kong to the Community. To give but one example in respect of Chapter 85 of the CCT, "Electrical machinery and equipment", the estimated increase in duty payable by Hong Kong to the Community was 8.3 million ECU per annum, based on recent trade. Increase of duty on individual items in the same chapter ranged from 0.7 per cent to 1.1 per cent. In general, incidences of reduction of duties appeared to be small, at least with respect to Hong Kong's exports. Hong Kong would be in a position to address the possibility of entering Article XXIV:6 negotiations after a more detailed examination of the situation and in the light of developments in the Working Party and elsewhere..

18. The representative of Hungary shared many of the concerns expressed with the tariff, non-tariff and agricultural aspects of the accession of Spain and Portugal to the Communities. Of particular concern to his delegation was Article 177 of the Treaty of Accession which contained the rules governing the Community's common commercial policy. Paragraphs 3 and 5 of that Article and its annex 15 indicated that following accession and until 30 December 1991 and 31 December 1989 respectively, Spain would apply different régimes in the field of quantitative restrictions vis-à-vis contracting parties. He requested the Community to indicate what was the GATT justification, in their view, for the application of these different régimes.

19. The representative of New Zealand, beginning with the legal basis on which the Working Party had to proceed, welcomed the assurance given by the Community that the tariff offer it had made was not put forward on a take it or leave it basis. However, while New Zealand noted the explanation of the practical considerations which lay behind the procedures followed by the Community, it was a fact that in its notification to GATT it had said that concessions had been withdrawn. The concern over this approach was compounded by the fact that the Community offer contained blanks. His delegation would anticipate that these blanks would be filled in not just because this would be needed for the Working Party to complete its assessment under Article XXIV:5 but also because it was appropriate under existing provisions that the EC should do so, as bindings were affected. An offer had to be communicated to contracting parties so that they could determine their response. He could not share any suggestions that the blanks did not matter because they represented a small portion of trade and that one could proceed to making an overall assessment of incidence, without taking them into consideration. While he agreed that one should not prejudge the outcome of the Working Party's investigation, a basis would still be needed on which to make an assessment. For that, full information had to be made available. New Zealand would resist suggestions that the Working Party proceed in a segmented fashion leaving to one side certain sections of the CCT as suggested by the EC for example, variable levy items. The logical consequence of proceeding in such a manner would be to rewrite Article XXIV:5 to say that the Working Party would examine the overall effects in duties and regulations of commerce, with the exception of variable levies where they applied. One had to proceed with the rules as they were, namely that nothing should be prejudged and that there should be a comprehensive assessment to begin with. Moreover, he questioned the assessment of trade significance alleged by the EC in those cases. The Community arrived at a figure for the effect of variable levies on commerce by making use of trade-weighted averages. But over time the trade affected by variable levies might amount to much more than 5 per cent of the total. Other effects such as the ones on production and trade would have to be taken into account by the Working Party. Such an assessment could not be made in advance. As to the trade-weighted approach followed by the Community in determining its new tariff, New Zealand was in the process of assessing the effect which this had on its own interests, especially in terms of bindings for which New Zealand reserved its rights under Article XXIV:6. As a matter of principle, he could not accept a procedure whereby concessions which had been negotiated with and paid for by contracting parties might be compensated unilaterally in the new Community tariff, even though he did not rule out the possibility that some compensation could be negotiated satisfactorily. The general incidence of duties and regulations of commerce had to be established by the Working

Party in as precise terms as possible, but one would also need to concentrate on the impact of enlargement on the trade interests of individual contracting parties. A clear picture would have to be drawn of any redistribution of the balance of rights and obligations, of the costs and benefits to individual contracting parties and of the relative shifts in trade benefits between sectors, which arose as a result of enlargement New Zealand expected to lose a substantial amount of trade with Spain and Portugal which was not likely to be compensated elsewhere. It would be unacceptable if a considerable number of contracting parties were found by the Working Party to be worse off as a result of the enlargement of the Community.

20. The representative of Czechoslovakia shared the concerns expressed by other delegates. Not all documents, statistics and information needed to evaluate the enlargement's conformity with GATT obligations had been supplied by the Community and he wondered when the additional information would be made available. His delegation was particularly concerned by the fact that the accession of Spain to the Community had led to an increase from 32 to 69 in the list of items whose importation was subject to quantitative restrictions. In this new list, there were some items such as lead crystal, which were not even produced by Spanish industry. His delegation would therefore reserve its rights to make requests for compensation if conditions of access to the Spanish and Portuguese markets were to worsen.

21. The representative of Poland stressed the deep concern which her delegation felt at a number of aspects of the accession of Spain and Portugal and in particular, the EC idea that the Working Party should look at the global effects of enlargement on the CONTRACTING PARTIES, regardless of individual interests. This approach was contrary to GATT obligations and therefore unacceptable to her delegation. Furthermore, since Spain's accession, Polish exports to that country had been exposed to forty-eight new quantitative restrictions which had not existed beforehand. She therefore wanted to receive on this subject a clarification which would take into account all relevant GATT provisions.

22. In response to statements made, the representative of the European Communities noted a tendency to look only for possible negative aspects. He had not heard any delegation say that they welcomed the fact that many restrictions were being eliminated. The same was true as regards the tariff improvements which quite clearly were going to take place. Concerning references to the Community's recent bilateral discussions with the United States, this was, in the Community's view, a question which had arisen out of bilateral negotiations under Article XXIV:6. In that context, every contracting party was fully entitled to resolve problems in a way that was acceptable to both sides. If this problem had not been resolved it could have had far more serious and damaging effects on the CONTRACTING PARTIES as a whole than the temporary solution which had been found, to the benefit of the GATT as a whole. The two sides had found themselves in a situation on whose juridical aspects there had been disagreement, as indicated in document L/6009. The situation had been such that some solution had to be found. This should not be disturbing to other contracting parties because (i) this was a purely autonomous situation in which the Community envisaged doing something in an area where it had no bindings and no GATT obligations and (ii) the changes, although agreed upon bilaterally, would result in a procedure applicable to all other contracting parties. For those two reasons, he did not think that any

continue to be discussed with the other concerned delegation and if a result was achieved it would be notified to other contracting parties like the result of any other Article XXIV:6 negotiations.

23. The representative of Argentina considered this explanation inconsistent and not in accordance with the General Agreement. Argentina was the principal supplier of sorghum to Spain, accounting for approximately 70 per cent of Spain's total imports of this product. Therefore, the provisions of Article XXIV:6, of Article XXVIII:4 and of its interpretative notes were applicable. Paragraph 4 of the said notes stipulated that: "The object of providing for the participation in the negotiations of any contracting party with a principal supplying interest, in addition to any contracting party with which the concession was initially negotiated, is to ensure that a contracting party with a larger share in the trade affected by the concession than a contracting party with which the concession was initially negotiated shall have an effective opportunity to protect the contractual right which it enjoys under this Agreement". Thus, Argentina enjoyed an effective opportunity of protecting its rights but this had been denied it by the European Communities which had not complied with the provisions of the General Agreement. His delegation reserved its right to take whatever action was made possible by the General Agreement. The representative of the European Communities replied that the Community had not denied any right which Argentina had in relation to any product. It recognized that Argentina had a major interest in the products which had been a subject of discussion with the United States. In fact, the Community had consulted Argentina in the context of future Article XXIV:6 negotiations and intended to pursue these contacts one step further so that negotiations could be engaged. Argentina had been informed of discussions held and arrangements made. Whatever the result of the negotiations which would continue, both with Argentina and the United States, they would be communicated to the GATT. The representative of Argentina reiterated that Argentina was in the same position as Australia. It had approached the Community in writing about four or five months ago and was still awaiting a reply which would formally state that the Community was ready to initiate negotiations under Article XXIV:6. However, as far as he knew, the Community had not consulted his authorities before reaching an agreement with the United States even though Argentina was the principal supplier of sorghum to Spain and as such was entitled to take part in the consultations and to defend its rights.

24. The representative of Australia recognized that the temporary resolution of the dispute between the EEC and the United States was offsetting any more damage to world trade, but was concerned that such deals could prejudice the interests of other contracting parties. The EEC had solved its problem with the United States but it had failed to meet its obligations under the GATT which protect the interests of smaller contracting parties. All contracting parties which spoke in the Working Party had expressed concern about the procedures followed. The representative of the European Economic Community reiterated that the terms of the temporary arrangement would be available to all contracting parties on an erga omnes basis and that details had appeared in the press. He was not aware of any other obligation to the Community arising out of that agreement.

25. The representative of Argentina took up the argument that there was no requirement to notify since the Community's duties on the items in question had not been bound. He wondered who would notify the agreement since Spain had joined the Community, and her commitments had been assumed by it.

26. The representative of the European Communities replied that the Community had notified GATT that the schedules of Spain and Portugal had been withdrawn. This was an inevitable step in the enlargement of a customs union. The practical consequences of this withdrawal were taken care of through continued implementation of the obligations of the EC/10. The EC recognized that when Spanish or Portuguese bindings were withdrawn this was a matter for negotiations. There might be disputes about timing, but the Community had simply followed the existing practice which had not been challenged in the past. This was an area in which the EC/10 had no binding and had made an autonomous adjustment. The fact that thereafter was being discussed in the Working Party showed that full transparency existed.

27. On the question of the blank items, the representative of the European Communities referred to the fact that a number of delegations had said that it was absolutely necessary to have these duty rates filled in order for the Working Party to do its work. These delegations had also said that they needed to know how their interests might be affected in an Article XXIV:6 situation. For reasons that he had already explained, the Community had found it necessary to adopt a different negotiating position on the occasion of the present enlargement. In past enlargements, the Community's tariff had been the basis for the tariff of the new enlarged Community and the new members had simply aligned themselves to that level. In the present situation, alignment had become a subject for negotiation because the attitude of certain partners had made it necessary for the Community to reserve some of its rights for the negotiation itself. The effect of this on the Working Party was that there were certain things that it could not analyse at this stage, but the Community could not be made to abandon its bilateral negotiating position either. It was entitled to negotiate on the level of the future tariff that it wished to maintain and the blanks were part of that operation. The process in which offers on the blanks would be made was the bilateral Article XXIV:6 negotiation. Those contracting parties which had interests should express them so that negotiations could be held with them. Offers would not be made in the Working Party because its task was a different one.

28. Turning to the question of the incidence of duties and regulations of commerce, the representative of the European Communities said that Article XXIV:5 did not require that the Working Party look at individual situations. Such situations might vary considerably from one country to another and what was important for one delegation might not be significant in the overall picture. Therefore the Community could not lend itself to such an approach. For countries which had individual difficulties relating to bound items and negotiating rights, the Article XXIV:6 procedure was open. If these difficulties did not relate to bound items or negotiating rights, then their room for manoeuvre was limited. If the trade that was involved was minor, then clearly the Working Party was not a forum which could take account of that to any significant degree, and the Community would therefore reject the idea that an overall view of the incidence was in fact the result of adding up the incidence on many individual

contracting parties. Even though a large amount of a country's exports to Spain and Portugal were now covered by levies, this did not alter the statistical fact that of all the import trade of the EC(12), only 2 per cent was subject to levies. The same was true for tariff lines where Spanish and Portuguese duties might be increasing. This was not an important area in relation to the total volume of trade and if the Working Party was not to be guided by statistical facts, then it would seem that it was going to depart from any objective approach. The Community was not trying to divide the tariff into segments, it was simply trying to relativize its various components since as he had already said, for 85 per cent of the import volume of the EC(12), the position under Article XXIV:5 was trade neutral even before the XXIV:6 negotiations.

29. The representative of the United States reiterated her views, that from Article XXIV:4 and :5(a) it was clear that what was meant was the trade of contracting parties, not of parties to the customs union. The requirements of XXIV:5(a) could not be fulfilled without looking at the specific effects on individual contracting parties. Statistics of the amount of trade subject to variable levies would only show one side of the coin. She again rejected the approach suggested by the Community. The representative of New Zealand considered that Article XXIV:5(a) required an examination of the effects of enlargement on the trade of individual contracting parties since "as a whole" had not been added after the "contracting parties". Therefore while working towards an assessment of the incidence of enlargement, it would be necessary to look at the effects on individual countries. The representative of the European Communities in a final remark on this point, said that their approach which was being questioned now, was borne out by all previous discussions which had dealt with the formation or enlargement of customs unions. Articles XXIV:4 and XXIV:5(a) both referred to the contracting parties in the plural which meant the totality of contracting parties not members of the customs union. Under Article XXIV:5(a), one had to strike a multilateral balance between the members of the customs union and the contracting parties taking into account the overall effects on everybody. One also had to strike a bilateral balance under Article XXIV:6 in cases where the formation of a customs union gave rise to some difficulty in relation to a specific tariff obligation. This was the interpretation which had always been made of these two paragraphs and if different interpretations were going to be put forward, this would mean that the Working Party was going to be transformed into a forum for juridical argument. Furthermore, in their opinion the phrase in Article XXIV:4 about "not raising barriers to the trade of other contracting parties" was nuanced by the fact that it was only part of the sentence. It could therefore not be interpreted as meaning that a barrier could not be raised under any circumstances. Article XXIV:5(a) spoke of general incidence whether lower or higher which meant that some barriers could be raised if others were lowered. The existence of Article XXIV:6 also justified this interpretation.

30. The representative of Japan reiterated his question about the discriminatory quantitative restrictions maintained by Portugal and Spain against imports originating in his country. He hoped that this question would be addressed by the Community at the next meeting because it was within the ambit of the Working Party. The representative of the European Communities replied that this subject would be dealt with, as

Article XXIV:5(a) spoke of whether the general incidence of duties and regulations. The representative of Japan had not said whether he approached the matter from the same point of view nor had he mentioned the fact that there would be substantial liberalization in Spain and Portugal which would be of benefit to Japan. The Community would welcome an examination of the situation in that spirit. The representative of the United States was concerned at this reply. Quantitative restrictions in Portugal took the form of both quotas and minimum purchase requirements. She recalled that during the discussions on the last enlargement of the Community, many delegations had made it clear that there was nothing in Article XXIV which permits a derogation from the obligations arising out of Articles XI and XIII. It was therefore not appropriate to include in the balance, any GATT measures which were not consistent with Articles XI or XIII. The representative of the European Communities found it surprising that long established interpretations were being questioned. He drew attention to the relevant discussion which had taken place in the Working Party of 1959. When the United States delegation was saying that it did not want to take into account the liberalization of measures which were GATT inconsistent, his response would be that one would first have to show that these measures were GATT inconsistent. In the case of Portugal, one should look at a balance of payments situation which had been clearly recognized. In the case of Spain and of Portugal one needed to look at which measures were covered by Protocols of Accession and which were not. One could refer to Article XXXV. Therefore one could not assume that measures were GATT inconsistent. Article XXIV:5 simply talked of general incidence. The Community was fully entitled to say that the result of the Treaty was going to be substantial liberalization. Anyone who disputed that fact would need to demonstrate how the Spanish or Portuguese régimes would become more restrictive on the whole, which would be extremely difficult. The United States said that the European Communities had referred to the relationship between the provisions of the Accession Treaty dealing with quantitative restrictions, and Article XXIV:5. In addition, it would also be necessary to examine whether new quantitative restrictions violating Articles XI or XIII could be imposed when establishing or enlarging a customs union.

II. QUESTIONS AND REPLIES

Questions 1-5: General considerations

31. The representative of the United States, referring to the response to question 2 on the blanks in the proposed common external customs tariff of the enlarged Community, stressed that the Working Party could not reach definitive conclusions until all the necessary information was provided. If the blanks were considered withdrawals, the United States would conclude that the European Communities had not met their basic obligations under Article XXIV. This was not a matter for bilateral negotiations, contrary to what the Communities implied in their response. In their response on the overall effects of enlargement, the Communities asserted that "certain duties imposed in respect of trade with non-member countries would not, on the whole, be higher or more restrictive than the general incidence of the duties and trade regulations applicable in the constituent territories of the Customs Union prior to its enlargement" (L/5984, page 2, paragraph 2). He wondered why only customs duties were mentioned in the first part of the sentence, while, when addressing conditions prevailing prior to

enlargement, there was a reference to both customs duties and trade regulations. His delegation hoped that the omission was not deliberate, given that Article XXIV:5 applied to regulations of commerce which included variable levies and other relevant regulations. His delegation also had major doubts about the validity of the EC's contention on the overall balance. The blanks covered over 4 billion ECU of exports from the United States to the EC and affected very sensitive products. Furthermore, unbound Spanish and Portuguese duties to be bound at the higher EC/10 rate concerned another 500 million ECU of trade for the United States and would seriously disadvantage their exports. The EC had indicated the possibility of maintaining previous bindings, for example in its response to question 19. Under such a scenario, looking at US trade with Spain and Portugal from the tariff angle, disadvantages outweighed advantages by a ratio of 1.7 to 1. Specifically, 1.8 billion ECU of trade would be covered by improvements, while 2.7 billion ECU of trade would suffer disadvantages. This could be much worse depending on how the blanks which covered all of the EC were filled. The longer term picture for agricultural trade was even bleaker because of the extension of the Communities' agricultural policy to the new entrants. The effects of enlargement had already been felt by United States exporters of feed grains because of the extension of the variable levy to such products as corn and sorghum. As the Communities' agricultural programmes were applied on a wider basis, effects would also begin to be felt in third country markets. On the industrial side, there might well in the long term be reductions in Spanish and Portuguese tariff rates but the value of these would be limited by the preferential access which the EC(10) would enjoy in the Spanish and Portuguese markets. This might be inherent to a customs union as was suggested by the European Communities, but it was no consolation for the commercial opportunities lost by non-members. He was concerned that the impact of tariff reductions would be outweighed by increases in other regulations of commerce. In particular, third country suppliers would face severe disadvantages as a result of seventy new quantitative restrictions which were applied by Portugal on agricultural products, such as oil seeds and grains and of import quotas imposed on a long list of industrial products in Spain. These measures represented new quantitative restrictions for which the EEC had not presented any justification under the GATT. Finally, in its response to the first four questions in L/5984, the EEC had stated that the application of the Common Customs Tariff had been suspended for a period of two years or until the end of Article XXIV negotiations, should they be concluded before that time. The United States took note of the fact that this did not apply to the unbinding of previously bound Spanish duties and their replacement by prohibitive variable levies.

32. The representative of the European Communities did not think that the purpose of the Working Party was to continue bilateral exchanges of views which were not relevant to the Article XXIV:5 exercise. At some point the Working Party would therefore need to decide how far it would go in covering such matters. He wondered on the basis of which GATT provision it had been said that one could not comply with Article XXIV:5 unless one had an indication of what the tariff on the blank items would be. The same technique had been used when the Community had been originally set up and had caused no juridical problem. It had been said by the Community on that occasion too that the customs union was in the process of being set up but that there were a number of products where the rates had not initially been

fixed. These blank items, covering a minimal portion of the EC's trade, would be filled through Article XXIV:6 negotiations, whose outcome would be reported to the Working Party. It had also been said that the effects of Spain and Portugal adopting the common agricultural policy would be damaging in the long term. The Communities were the biggest importer of agricultural products in the world and a major customer for the United States. He did not see why the Community could not be a better customer with twelve markets, than with ten. As to effects on third country markets, he did not think that such considerations were based on Article XXIV and they could therefore not be relevant to the Working Party. On the industrial side, it had been said that some positive effects would be diminished because of preferences created with the Customs Union among its members. However, Article XXIV did permit the establishment of customs unions. The fact that the Spanish and Portuguese markets would be substantially opened was not diminished by the fact that the two countries would be giving free access to the EC(10), because that was a requirement of Article XXIV. One could not argue both that the Community should observe Article XXIV and that to do so made it impossible to strike a balance with the outside world. If instead it was argued that the Customs Union was a fact and that it diminished advantages to others, this would have to be closely examined. It had also been said that the Community had offered no justifications for new restrictions. What had been done was to make the existing, somewhat discretionary, import régimes more precise and transparent, to the benefit of all. If a comparison was going to be made between the situations before and after accession, one had to make sure that some clarity existed in both situations. Though it was prepared to examine this point when the relevant questions were taken up, the Community did not believe that new quantitative restrictions were being introduced in Spain and Portugal. In most cases where existing ones were maintained, this was for a transitional period of four or five years during which Spain and Portugal were having to adjust to the Community system, which was one of the most advanced in the world. If a country like Portugal which had applied restrictions for balance-of-payments purposes, had made such a move autonomously, it would have been considered quite unprecedented. He therefore appealed to the participants in the Working Party to demonstrate a sense of balance and a sense of what was relevant to its work.

33. The representative of the United States noted that there was disagreement on what should be discussed bilaterally and in the Working Party. Some of the considerations which pertained to bilateral discussions with the Community were also relevant in the context of the Working Party. With regard to the blanks, their view was not that the Community could not present a tariff with blank items in it, but rather that by doing so it was failing to meet its Article XXIV:5 obligations. If one took at face value the argument that the trade weighted averages across the products that were filled in were trade-neutral, then one was left with a net impairment. One also needed to assess the long term overall effects of enlargement. They were not optimistic about the effects that extension of the Community's agricultural regime to the new entrants would have in the long term because the United States had already began to suffer from this extension. Trade diversion would have to be assessed against the benefits which the EEC argued would arise out of enlargement. A large number of speakers had suggested that there were new quantitative restrictions introduced in Spain and Portugal. This was a serious problem, as they believed that Article XXIV did not provide a cover for the introduction of such restrictions.

34. The representative of the European Communities stated that the only area in the new tariff where the EEC/10 mechanism applied was with respect to variable levies. In this area, they were only aware of two bindings where Article XXIV:6 negotiations with the United States had been engaged and negotiations with others would be initiated. The tariff was introduced but not applied and would be the object of negotiations. This was a legitimate basis for negotiations and the Community would be making offers. The final result of the Working Party would depend on the outcome of the negotiations, because, unlike what had happened in the past, the final position of the Community had not yet been determined. As indicated in the reply to questions 1-4 "it was certainly not the intention of the Community to introduce, in connection with the present enlargement, a Common Customs Tariff having a higher general incidence". That was a statement of intention leaving flexibility for negotiations. He underlined again that the Community attached great importance to the question of preferential access. If delegations argued that the value of concessions in the industrial field was diminished by preferential access within the Community, this would be a major difficulty. If instead of enlarging the Community, which was not just an economic decision but also a political one, the parties had decided to establish a full free-trade area with Spain and maintain the one existing with Portugal, both countries would have kept their external tariffs and the question of compensation would not have arisen. If one compared both situations, it was clear that enlargement was better for third countries than a full free trade area, and yet the EC was being criticized for it. This was not a reasonable approach under Article XXIV.

35. The representative of the United States stated that there were many items other than sorghum and maize which were bound in the Spanish and Portuguese tariffs, and were now unbound in the CCT and subjected to a variable levy. On the question of trade diversion, he drew attention to question 5 and the reply to it. The conclusions from an examination of the trade diversion effects of Greece's accession to the Community were quite clear: benefits which the EEC had predicted for third parties had not materialized. The only assumption that one could make was that the new enlargement, like in the Greek case, would result in trade diversion while benefiting the members of the customs union. The EEC could therefore not claim that a reduction in Spanish and Portuguese duties would benefit third countries, because preference for its own suppliers in these two markets was simultaneously increasing. In the Greek case imports did not increase after accession, but instead fell somewhat. In order to counter the effect that fluctuations in economic growth might have, the US had examined imports as a percentage of consumer expenditure. In the four years before Greek accession (1977-1980), imports had constituted 39.6 per cent of consumer expenditure. This figure had risen to 40.6 per cent in the first three years after accession (1981-1984) but there was strong evidence of trade diversion, because the share of the Community in Greek imports had increased from 42 per cent to 48 per cent whilst the United States' share had fallen from 4.7 per cent to 4 per cent. The impact could be seen even more dramatically in the agricultural sector where the Community's share had risen from 36 per cent to 76 per cent, while the United States' share had fallen from 12.9 per cent to 4 per cent. In 1984, the United States' share in the Greek market had been 1.5 per cent which meant that it had been virtually eliminated from that market. The EEC had also sharply increased its market share in the industrial field; the decline in the share of other trading partners in the Greek market could therefore not be

been virtually eliminated from that market. The EEC had also sharply increased its market share in the industrial field; the decline in the share of other trading partners in the Greek market could therefore not be attributed to depressed economic conditions. While the positive effects of accession might be difficult to quantify, the effects of the proposed tariff increases and of the quantitative restrictions were apparent and constituted a reason for the US concern. The US would welcome any evidence to show that the trade-creating effects of enlargement for non-member countries would outweigh its trade-diverting effects because these assertions could not be accepted on faith.

36. The representative of the European Communities had major reservations about whether it was necessary or appropriate for the Working Party to look at Greece's accession to the Community. He also had major reservations about the methodology that had been suggested. If one wanted to look at things in that way one could also look at what had happened when the initial customs union had been set up and also at what had happened when the original EC(6) had been expanded to the EC(9). There were several points of reference which might be used. 1984 was not necessarily appropriate because this was a year when US exports were at a historically low level and the balance of trade deficit at a historically high one. If one looked at other points of reference in the past, one could see that the growth of imports of the EC(6) had been more rapid in the first few years than that of world trade. If one looked at the situation after 1973, the import trend of the EC(9) was also positive in terms of trade-creation, particularly for the three new members. In the present case, there was no way in which one could arrive at any conclusions that were based on fact. One could only speculate; there was a transition period of 7-10 years, and therefore some time would pass before sufficient data became available. Article XXIV:4 set out the general principle that in a free trade area or a customs union both trade diversion and trade creation are bound to occur. The need to strike a balance was recognized and that was why Article XXIV was written into the GATT. The Community was therefore entitled to argue that as a result of enlargement there would be trade creation effects which would benefit third parties. The arguments used against that were short-term. Because there was a transitional period, the benefits might take some time before they could show but they could not be invalidated totally. One should not look at the present situation but at what would happen when the customs union was established.

37. The representative of Argentina noted that in the reply to question 5, and throughout the replies, for instance in the sections on commodities and quantitative restrictions, the EC had expressed certainty as to the benefits which they were expecting the enlargement to provide for third parties. It seemed, however, that the Community was conceding that one could not assess the benefits of accession for third parties with any precision.

38. The representative of New Zealand acknowledged that there would be instances where reduction of the Spanish and Portuguese tariffs to the level of that of the EC(10) would mean lower duty rates for Spain and Portugal in those instances. However, the margins of preference either in respect of the EC(10) or in respect of other countries which currently benefited from such arrangements, had to be addressed in assessing the incidence on those items. One should also look at internal subsidy policies and their effects on the production of industrial and agricultural

goods. Any such measures could lead to reductions of imports independently of what the common customs tariff could be. These questions could not be ruled out a priori as subjects for examination and he was therefore seeking clarification on those points.

39. The representative of the United States added that in order to have a correct picture of the effects on third countries of Greece's accession to the Community, his delegation had also looked at the figures for Japan. Japan had in 1980 had an 11 per cent share of the Greek market. This had gone down to 6.8 per cent in 1983.

40. The representative of the European Communities replied that these figures did not fit with the Community's own studies of trade relations between Japan and Greece. However, this was not strictly relevant to the work of the Working Party. In any event, the EC(9) had had a free trade relationship with Greece so that the major development had been a reduction in Greece's external barriers. With respect to the preferential arrangements entered into by the Community with other countries, these had been discussed in the GATT at the time and the new member States had acceded to them when they joined the Community. As to how these arrangements affected incidence in terms of Article XXIV:5 one had to consider whether the level of protection at the border in the two member States was greater after enlargement than before. So far as third countries were concerned this could only be done by looking at tariff reductions and the liberalization that was taking place. He did not see why the existence of preferences would reduce the value of tariff reductions for third countries. These preferential arrangements had existed before accession and he did not see why, if the new member States aligned themselves to them, that should be regarded a negative phenomenon. He finally noted that the procedure followed in the past, which would imply that Spain and Portugal simply aligned themselves to the EC(10) tariff, was a procedure that had been attacked on juridical grounds.

III. DOCUMENTATION

41. The representative of the European Communities referred to L/5936/Add.4 containing a communication from his delegation on documentation. He recalled that in 1980 the GATT Council had adopted guidelines to be followed in tariff negotiations (BISD/27S,26). These required that a notification of an intention to withdraw or modify bound items had to be accompanied by basic statistics relating to the products involved. This procedure which had been designed for normal Article XXVIII cases had to be adapted to the much more complex Article XXIV context, where tariff changes across the board were envisaged for the new member States. An additional factor was that in an Article XXIV context a full concordance had to be provided so that the tariffs and statistical lines of the various parties could be compared. In the past the Community had provided separate copies of the basic import statistics and concordance tables for each contracting party. However, in view of the scale and cost of the operation they had this time made the basic data referred to in L/5936/Add.4 available to the GATT secretariat in the form of computer listing and on magnetic tape. Interested delegations could consult this data to determine their negotiating interest. For those who wished, a copy of the magnetic tape could be made available. Similar arrangements applied

negotiations which were available at the secretariat. The Community was confident that in this way the requirements of other contracting parties would be met, both for the Working Party exercise as well as in the context of Article XXIV:6 negotiations. For the latter, delegations which had not yet indicated their negotiating interest, should determine their positions and if they considered that they had interests that were affected they should inform the Community within ninety days of the date of L/5936/Add.4[1] so that negotiations could be initiated. However, it was not the Community's intention to deny rights to countries which might notify it slightly after this date. The GATT Council procedures envisaged that statistics should be provided for the last three years for which they were available. In the present case this would have meant the years 1983-85, which was the period immediately prior to enlargement. Data for 1985 was incomplete and that for Spain and Portugal for 1982 was not in comparable form. At this stage the Community was providing full information for 1983 and 1984 and they considered it appropriate to engage in tariff negotiations on that basis. This had happened in the past when data had been constructed before enlargement and because of the problem of comparability there was a margin of error involved. However, the three-year period was normal and they would try to provide the data for 1985 after the summer break. He thought that the procedure outlined was satisfactory. If negotiation was sought with the Community, it would be able to provide more detailed information to each country on a bilateral basis.

IV. DATES AND AGENDA OF NEXT MEETING

42. The Working Party agreed to meet again on 7-8 October 1986. At this meeting the Working Party will continue its examination of the questions and replies contained in L/5984, simultaneously with the additional questions and replies circulated in L/5984/Add.1.

[1] i.e. 8 July 1986

ANNEX 1

EEC statement made at the informal meeting, held on 26 May 1986

First some remarks on procedure. It has been stated in public declarations that the Community's introduction of the Accession Treaty has been carried out on a unilateral basis, with insufficiently short notice of third countries and without prior examination (or, on tariff aspects, negotiation) in the GATT.

The Community firmly rejects any suggestion that it has failed to respect GATT procedures. In general terms, we have proceeded to implementation of the enlargement along exactly the same pattern of procedure as in the past. There has been one difference of time-scale in the sense that the period between signature of the Treaty and its coming into force was shorter than on previous occasions. This was the result of delays in completing negotiation, together with the political importance of maintaining the date for accession. Nevertheless, the Community has made every effort to respect GATT procedures.

There are three points:

Unilateral action

The Community believes that the provisions of Article XXIV do contain important elements which are unilateral. For example, if you read paragraph 4, together with paragraphs 5-8, we believe that a clear right is established for the parties to a customs union or free-trade area to proceed with their proposals. Naturally, the requirements of paragraphs 5-8 have also to be observed; but as we have pointed out elsewhere (e.g. in the Citrus Panel) no formal decision or approval by contracting parties is required and the procedure is essentially one whereby the parties may proceed unless the CONTRACTING PARTIES make a recommendation that the arrangements be modified so as to meet Article XXIV requirements. In this sense unilateral implementation, combined with respect of the requirements in paragraphs 5 and 7, is the norm in such cases.

GATT notification

The Community reported the signature of the new Treaty as soon as possible. Subsequently, it made the texts available, informed the GATT of ratification and of entry into force on 1 January, and of its readiness to engage in Article XXIV procedures (L/5936 and addenda). More recently, in February, we informed the CONTRACTING PARTIES of the consequential action on previous tariff concessions of the parties and of the new tariff which had been established. I will have more to say on this later on. It is clear, however, that these notifications, together with the establishment of this Working Group, should be considered as satisfactory observance of the need to keep other contracting parties fully informed.

Conditions of implementation

The Treaty of Accession entered into force on 1 January and the first tariff changes (as the beginning of the process of adapting to a common

system) were made on 1 March. In this context we should note that the provisions of Article XXIV contain no specific requirements as to timing. It is clear that a GATT examination is necessary, as well as tariff negotiations under paragraph 6; but the time relationship between this activity and the implementation of a customs union is not specifically set out. I have already referred to what seem to be important unilateral elements in the Article in this respect. What should be underlined, however, is that nothing has been done in this case which is different from previous cases. While it was possible in the past to begin the process of GATT examination before the date of accession, it was never the case in our experience that the working party examination under paragraph 5 or the tariff negotiations were fully terminated before the first steps were being taken for tariff alignments and the adoption of other commercial regulations. As already indicated, the time-scale in the present case has been more compressed; but the basic principle which has been followed - that nothing in Article XXIV requires prior action in the GATT before implementation - is exactly the same as in past cases.

General description

The Treaty of Accession covers a broad field of economic activities and includes provisions, inter alia, on institutional matters, on matters relating to free movement of labour, services and capital, on the development of common policies for agriculture and fisheries (covering the establishment of uniform prices and production policies), as well as commercial policy matters. These latter issues are the ones of direct interest in GATT, but they should nevertheless be considered in the broader context of a customs union which aims at the development of common policies in much broader economic and monetary fields.

In the Community view the Accession Treaty is a definitive agreement for the adoption of a customs union, although it contains, on lines similar to those in previous cases, transitional provisions before the full union is achieved. We do not therefore consider this to be an interim or provisional agreement in terms of paragraph 5(c) but an agreement to be examined under paragraph 5(a); and this examination would include the question whether the transitional period is considered, in all the circumstances, a reasonable one.

In effect paragraph 8 of Article XXIV requires the enlarged customs union to achieve trade free of duties and other regulations among its members on "substantially all the trade between them". It also provides that substantially the same duties and regulations are applied by each member to trade with third parties.

In the light of this, a broad description of the commercial policy provisions may be of interest. In the field of tariffs, for industrial products, the Treaty provides for the gradual elimination of duties on internal trade and for alignment to a common level for external trade over a period of seven years (although there are some specific cases in which the common tariff is applied immediately, e.g. in the civil aviation sector). It might be noted that under this programme previous duty rates applied by Spain and by Portugal will already be more than halved within three years, by 1 January 1989. This will result in substantial benefits through better market access for third country suppliers.

A similar period of seven years is foreseen for the transition to the Common External Tariff in the fisheries sector. Duties on internal trade will be eliminated over the same period, except for certain sardine products where the time-table runs until 1 January 1996.

As regards agriculture, the situation can be presented in summary terms as follows:

- In principle, the period of transition for adaptation to the full Community régime in this sector is ten years; but within this overall period the pattern of transition is variable according to the product and the country, and the rhythm of adaptation is different for the different mechanisms that form part of our common policy (e.g. tariffs, other border measures, harmonization of prices).

- For products subject to customs duties, tariff elimination in internal trade, and tariff alignments towards the common external tariff, will take place in annual stages over either seven or ten years (details below).

- For products subject to the common organization of markets within the Community, the rules and mechanisms of the common agricultural policy applicable to imports (including variable levies) are introduced in Spain and in Portugal from 1 March 1986.

- For Spain, the period for adaptation to the Community régime is, for most products, seven years. As an exception to this general rule, the transition period in the sector of vegetable oils and fats extends over the full ten years, with specific arrangements for imports during the first half of this period.

- For fresh fruits and vegetables a different pattern of transition will apply over the ten-year period. Tariff reductions will take place annually, beginning on 1 March 1986; but for other aspects of common policy the previous national régime will continue to apply in the first four years and full adaptation to the Community régime will take place in the following six years.

- For Portugal two different transitional régimes will apply. For some products which are subject to a classical (i.e. progressive) transition process, tariff alignments and other adaptations will take place during seven years. As in the case of Spain, this period is ten years for vegetable oils and fats. For the bulk of the agricultural sector, however, a two-stage transitional system is foreseen; annual tariff reductions will take place over ten years, but for other aspects of common policy, there will be a first phase of five years when the provisions of the previous national régime will continue to apply, subject to certain conditions, and the full adaptation to the Community régime will take place in the following five years.

The broad result of these provisions would be that the requirements of paragraph 8 would be largely fulfilled after seven years and totally achieved, even for sensitive agricultural items, after ten years.

Article XXIV:5(a)

The Working Party has as a principal task to examine under paragraph 5(a) whether the duties and other regulations of commerce in respect of trade with third countries are or are not on the whole higher or more restrictive than the general incidence of such duties and regulations in the national régimes of the parties prior to accession.

In this context, the Community would wish to underline that extremely positive developments have already taken place and are foreseen during the transitional period as regards non-tariff measures. In broad terms, the effect of enlargement will be a substantial liberalization, with increased access to a more transparent and open market in Spain and Portugal, i.e. a homogenous and more predictable situation. For a number of products previous régimes such as State trading, or import monopolies, or discretionary licensing systems are to be progressively or immediately abolished. In Spain, the introduction of the Value Added Tax system in place of the previous régime of indirect taxes is considered to be more trade neutral and thus to be of benefit to third countries.

In more specific terms, a large number of quantitative restrictions are to be eliminated. In the case of Spain almost 200 items at four-digit level have already been liberalized since 1 January or will be during the transitional period. As regards Portugal, about 40 items at this level are also to be liberalized. Furthermore, the previous balance of payment measures in force in Portugal (restrictions, import surcharges) have been completely abolished from 1 January as a result of accession.

It is clear from this broad description that very substantial liberalization has already taken place in the NTM sector and will continue to do so and the conclusion seems to us to be inescapable that the general incidence of the other regulations of commerce will be substantially lower and less restrictive than was previously the case.

On the tariff side, the new Community has introduced a new common tariff on the basis indicated in our notification of 13 February. It is important to underline that/these tariff rates are not at present being applied and will not be put into force during two years, or until XXIV:6 negotiations have been completed. I will come back to this aspect a little later. As regards the tariff aspects of the XXIV:5 exercise, there are three points to be made:

- First, as regards the general incidence of this tariff, we consider that this is by definition no higher than the previous tariffs of the various parties for all cases where the new rates have been calculated on the basis of a trade-weighted average of the duty previously in force. Assuming these calculations have been correctly made, the resulting tariff would be by definition neutral in its effect on trade with third countries.

- There are, of course, some cases where the weighted average rate has not been retained in the new tariff. This has been the case for a number of items where Spanish and Portuguese duties were lower than the common tariff of the Ten but were not bound. In these cases, for obvious reasons in the context of the XXIV:6

negotiations, the Community has maintained its previous level of duty of the Ten with a view to offering tariff concessions at these rates covering also Spain and Portugal. In the context of the present, more general XXIV:5 exercise, these cases would represent, at a minor level, an increase in the incidence of duties in Spain and Portugal; but in our view any such increase would be overwhelmingly cancelled out by the improvements I have referred to in the non-tariff sector.

- There is also the question of the products for which our new tariff has no rates of duty for the time being. This technique is exactly similar to what was applied for certain cases when the original Community was established in 1957. These rates have to be determined during the tariff negotiations. As a consequence, the Community would accept (a) that no final conclusion on the greater or lesser incidence of duties can be reached in these cases at this stage and (b) that a final analysis by the Working Party on this point would have to be postponed until a later stage in the tariff negotiations.

Nevertheless, in the light of the points that I have made about the positive effects in the non-tariff sector other than the 30 or so items which have been left blank in the new tariff - only 5-6 per cent of the trade of the Twelve, the Working Party may feel able to reach some preliminary and provisional conclusions under paragraph 5(a). We would urge it to do so.

The weighted average tariff

I should now like to make a few remarks about this new tariff and why we have felt it necessary to adopt it. At the time of Greek Accession, certain arguments were advanced to show that it was not possible to recognize credits for the Community arising out of the tariff reductions and new bindings by Greece, essentially for two reasons. The first, juridical in character, was that Greece and the Community had agreed to adjust Greek tariff rates down to the Community level and that other GATT contracting parties were fully entitled to the benefit of such changes under the m.f.n. rules.

This argument was unacceptable to us. Apart from the fact that many aspects of a customs union enlargement involve departures, permitted under Article XXIV, from normal m.f.n. treatment and are thus different in character from a normal trade agreement between two contracting parties, this argument would mean that the enlarged Community would be effectively deprived of its freedom of negotiation under Article XXIV:6; and this cannot have been the intention of the drafters of Article XXIV and was never an argument used in 1957 or in the 1960's.

The second argument, deriving from a particular interpretation of XXIV:6, was based on the fact that where Greek customs duties were being aligned down to the Community level there was no corresponding movement in the duty of the other partner to enlargement and thus no compensation to be taken into account. The Community was unable to share this interpretation, which would lead to the result that any upward movement in the Greek tariff contrary to a binding would be regarded as giving a right to compensation

while any downward movement would not generate any credit nor be taken into account. This line of argument was also not acceptable, since it would ignore the real and substantial benefits for third parties of an enlarged Community tariff constructed in this way, a situation which we considered to be quite inequitable and unrealistic.

It was largely to avoid further sterile discussions along the line of these arguments that the Community decided on this occasion to introduce a new weighted average tariff. We believe that this technique, which is not new in itself, is fully consistent with Article XXIV:5(a), and that since the new tariff includes duty movements up and down by the partners to enlargement on individual items, the credits resulting from these movements will on this occasion have to be fully taken into account.

The reason for this different approach is essentially to provide the enlarged Community with a legal basis for tariff negotiations under XXIV:6, which would be quite free of any ambiguities arising from the arguments to which I have referred. As I have stated, discussion of the tariff aspect in the XXIV:5 exercise will have to take account of the fact that the Community is engaged in a negotiating process and, in due course, of the results of that process.

Thus there will certainly be further changes in the tariff offers to be made by the Community before final duty rates are established. It would not be appropriate, in the context of the present meeting, to indicate the Community's negotiating intentions; but I can assure you that it is our firm intention to conclude the negotiations with a tariff for the enlarged Community whose incidence, overall, will be no more restrictive than that which resulted from the duties previously applicable in the constituent countries. This will require us to address those elements in our initial offer for which the incidence is not yet clear, especially the positions which have been left blank, and on this point we shall naturally be putting forward proposals in the negotiations. If we achieve this tariff objective which I have just mentioned, it will be clear that the impact of non-tariff changes - which must in our view be considered as extremely positive - will enable us to meet the criteria of Article XXIV:5 without difficulty.