1. The Working Party was established by the Council at its meeting on 10 September 1969 to examine the request by the European Economic Community for a waiver from its obligations under Article I of the General Agreement in order to reduce the customs duties in respect of certain citrus fruit originating from Israel and Spain and to report to the Council.

2. The Working Party met on 24-25 September, 3-4 and 28 November 1969 under the chairmanship of Mr. J.E. Larsen (Denmark).

3. The Working Party had before it the request by the European Economic Community for a waiver of obligations under Article XXV:5 (L/3239; Annex I hereto). In the course of its deliberations, two further documents were submitted: a note by the Commission of the European Communities on the system governing the importation of citrus fruit into the European Economic Community (Spec(69)122; Annex II hereto), and a statement by the United States on the trade impact of the system outlined by the Commission of the European Communities (Spec(69)133; Annex III hereto).

4. The deliberations of the Working Party showed that there was a distinct divergence of views between the European Economic Community on the one hand, and the great majority of the non-beneficiaries who took part in the discussion on the other. The differences in opinion related to the question whether the import régime and the preferential tariff treatment it included would have an effect on the trade of third countries, as well as to the prejudicial effect such preferences would have for the integrity of the General Agreement. The non-beneficiary citrus producing third countries held the view that their trade interests, both on a short-term and on a long-term basis would suffer. They, together with most members of the Working Party, did not consider the reasons given by the European Economic Community in defence of the application to be sufficiently weighty to justify the granting of the waiver for which the Community had applied.
5. In these circumstances the Working Party did not endeavour to prepare the draft text of a waiver. The report therefore limits itself to setting out the facts of the case as well as the views expressed on trade effects, legality, and principle.

Examination of preferential regime and its effects on trade

6. The representative of the EEC justified the system of price discipline comprising a 40 per cent tariff reduction on Israeli and Spanish citrus fruit imports in terms of the application of a similar system, with an 80 per cent reduction, introduced on 1 September for citrus fruit imports from Morocco and Tunisia to replace the advantages which the latter countries enjoyed in the French market. In view of the fact that the preference granted to Morocco and Tunisia was subject to price discipline, this system of conditional preference could not operate in respect of those two countries unless the Community's other two major suppliers for the same marketing period came under the same discipline. The 40 per cent reduction in the CCT on Spanish and Israeli citrus fruit therefore tended towards a two-fold objective, namely by bringing those countries into the price discipline system to enable the system to function and thereby to ensure market stabilization at remunerative prices which would be beneficial to other marginal suppliers as well. By according to all four countries preferential treatment conditioned by a system of price discipline, the EEC hoped to have fulfilled its obligations to Morocco and Tunisia without adversely affecting the interests of other suppliers, while at the same time contributing to price stabilization in the Mediterranean basin and thereby in the citrus fruit market in general.

7. The representative of the EEC further stressed the importance of bringing Israel and Spain into the system of price discipline, and consequently the conditional preference system, because, along with Morocco and Tunisia, they were part of the Mediterranean market where analogous production and marketing conditions existed. The four beneficiaries exported most of their oranges to the Community during the winter period when they accounted for 95 per cent of the market, while other suppliers exported to the Community mostly during the summer period when they accounted for most of the market.
8. The system was seen by the Community as essentially a pragmatic solution to the problems before the Community, designed to compensate beneficiaries without harming the trade interest of other suppliers.

9. The representative of the EEC said that the advantage of the system was that it induced the countries benefiting from it to adhere to a trade discipline which stabilized prices and thereby indirectly benefited third country suppliers. Preferential treatment for beneficiaries was conditional upon their respecting, during the period when reference prices were in effect, a minimum offer price which was considerably higher than the reference prices applicable to all exporters to the Community; otherwise they would lose their preference and be treated like all third countries.

10. The representatives of the EEC considered therefore that the system was basically a financial transfer from the Community to the beneficiaries rather than a trade advantage. To that extent the request for a waiver from the provisions of Article I was motivated essentially by reasons of a formal nature. Moreover, since the minimum offer price for beneficiaries was considerably higher than the reference price applied to other suppliers, the system gave the latter a sizeable trade margin over the former.

11. The reference price system for lemons was applied throughout the year. For other citrus fruit reference prices were applied for certain periods of the year (see page 4 of Annex II). For oranges reference prices were applied during that period of the year when beneficiaries constituted almost the only exporters; for that period of the year when reference prices were not applied, traditionally high market prices precluded any danger of price collapse.

12. In order to facilitate the Working Party's understanding and appreciation of the operation of the system and the reasons underlying it, the Commission of the European Communities circulated an explanatory note to members which is attached hereto in Annex II.

13. The representative of Israel and Spain explained their respective situations to the Working Party. Israel and Spain together supplied 50 per cent of all oranges imported by the EEC. The 40 per cent tariff reduction which had been unilaterally granted by the EEC to Israel and Spain was only a partial compensation for the preferential treatment given to Morocco and Tunisia and it
required respecting a rigid price mechanism. The representative of Israel said that the 40 per cent reduction could only properly be examined after, and in the light of, the preferences for Morocco and Tunisia. Fresh citrus fruits were Israel's most important net currency earner and 44 per cent of her total exports of these products went to the EEC. Israel's position was difficult enough since 70 per cent of her citrus exports were sold to EEC member countries whose duties for these products had undergone an absolute increase with the establishment of the Common Tariff. Regarding Spain, 75 per cent of its citrus fruit exports went to the EEC and these had a yearly value of US$ 140 million to US$ 150 million. It was important to note that the EEC exported to Spain three times the value of what it imported from Spain.

14. Following the explanatory statements by the representative of the EEC, Israel and Spain, members of the Working Party discussed the system at length.

15. Some members said they were unable to see how third country suppliers could possibly benefit from preferences granted to other suppliers. Preferences would serve as an incentive to beneficiary countries to sell more citrus fruit to the EEC and to increase new plantings in the near future. Access to the market for third country suppliers would therefore diminish and that would mean that the benefit from price stabilization would also be reduced. In any case, most members who spoke during the meeting did not see why contracting parties supplying citrus fruit to the EEC should benefit only indirectly from preferential reductions of tariffs that were bound in GATT and that had been paid for in previous negotiations. In this connexion, the representative of the EEC stated that the direct benefits resulting from the bound duties were not in any way brought into question; on the contrary, in addition to the direct benefit there was to be the indirect benefit accruing to other suppliers as a result of the stabilization and valorization system. The United States representative did not accept the observation of the Community representative with respect to the retention of direct benefits of the GATT binding.

16. Some members pointed out that preference beneficiaries were free to forego the preferential reductions and the attached minimum price discipline system if it proved advantageous to do so. Therefore, beneficiaries could choose between two alternatives and could thereby offer better contract terms to importers than third country suppliers. The representative of the EEC agreed that while
this was theoretically possible, the system was precisely intended to encourage preference beneficiaries to maximize prices of their products and stabilize the market. One could not believe that it would be in the interest of beneficiaries to start a price war since it would mean abandoning the financial transfer involved in the preferences. Demand for citrus fruit was very inelastic in the EEC, and the Mediterranean countries regularly co-ordinated their sales policies so as not to saturate the market.

17. Concerning the concrete trade effects of the preferences on third country exporters, to the EEC, the representatives of these countries and the representative of the EEC had divergent opinions. The former said important volumes of their citrus exports to the EEC would be affected. The representative of the EEC, on the other hand, said that the exports of third countries that could be affected would not be above US$10 million to US$20 million in the most unfavourable circumstances.
18. With reference to the explanatory note from the Commission of the European Communities on the system governing the importation of citrus fruit from third countries into the EEC (Annex II), the representative of the United States made a statement on the trade impact of the system on his country and other third country exporters (attached hereto in Annex III).

19. One member said that the price discipline system was no guarantee that no third country suppliers would be harmed. His country's prices for citrus fruits were usually above EEC reference prices and certainly not below the prices offered by preference beneficiaries. Therefore, the trade effects of the preference would be important; a slight rise in the prices of his country's citrus fruit could render them uncompetitive vis-à-vis preferentially taxed oranges.

20. One member said that taking into consideration that the citrus fruit market had been very competitive in the past few years and that marketing costs were high, it would be reasonable to predict that small reductions in gross selling prices would result in proportionately much greater effects on the net payment to the producer. Consequently, there was cause for concern when the competitive conditions in the market were being weighted in favour of preference beneficiaries.

21. Some members said that since the EEC was a large market the commercial measures taken there would necessarily have unstabilizing effects on other markets. For example, this would be the case if a rise in citrus fruit prices and a decrease in consumption in the EEC forced preference beneficiaries to divert their exports to non-traditional markets.

22. It was the opinion of four members that their citrus fruit exports to the EEC overlapped in an important way during the reference price period with those from Israel and Spain and would therefore suffer directly and immediately from the discriminatory treatment given to the latter. Moreover, some Israeli and Spanish citrus exports coincided with those from third country suppliers during periods when the price reference system was not in force; during this period the preferential tariff reductions would directly confer price advantages to Spanish and Israeli oranges.
23. The representative of the EEC agreed that the system was not perfect and that, theoretically, certain problems could arise. However, the system was a pragmatic approach to the problem the EEC had to deal with and it was soundly based on a careful study of trade trends and past experience in the market. Eighty per cent of orange exports from Israel and Spain to the EEC took place during the period when reference prices were in force and during the rest of the year they were marginal suppliers with the exception of the month of November when prices for the last three years were well above those offered when reference prices were in effect. Nevertheless, if problems of disequilibrium were to arise, the EEC would be compelled to seek an appropriate solution. Provisions to this effect could be included in the terms of the waiver being requested.

General considerations

24. The representative of the EEC stressed the necessity of granting tariff preferences to Israel and Spain in order to maintain balanced and competitive conditions in the Mediterranean area and the traditional currents of trade in products forming such a vital part of the export earnings of the two countries. The EEC itself would not obtain any benefits of a trade policy nature from such measures, which were purely unilateral in character. In fact, a financial transfer was taking place in favour of the two countries. In all other cases where requests for waivers had been examined, contracting parties had dealt with them on the merits of each case and he cautioned against the danger of a departure from that course in the future. The Community would certainly be willing, as other countries who had obtained waivers, to follow the usual procedure of consultations if serious repercussions were felt, and to hold regular reviews in order to ensure that the balance of rights and obligations under the General Agreement was not upset in any way.

25. Most members of the Working Party, however, considered that the preferences in question were not necessary. Both Israel and Spain were highly efficient producers and were planning to expand their production considerably. To exclude a very limited number of countries, which were traditional suppliers and which have even negotiated tariff bindings in return for their own concessions, was
not compatible with the basic principles of equality in treatment embodied in the General Agreement. The argument that the EEC had a special responsibility for maintaining economic stability in the Mediterranean area bore no relationship with the multilateral obligations of the EEC member countries as parties to the General Agreement. Moreover, the acceptance of this argument would imply the recognition of a discriminatory policy extremely prejudicial for developing countries which had important traditional commercial ties with the Community and which did not belong to the Mediterranean area. Some countries pointed out that should this contention by the Community be accepted, the network of selective, regional preferences could lead to the establishment of spheres of influence around the preference-granting countries. Bilateralism in the field of tariffs would be the result of such a deviation and the Article I, most-favoured-nation treatment, which formed the cornerstone of the General Agreement, would be most seriously weakened. The economic and political repercussion of the preferences under examination should not be underestimated. The consequences of selective preferences for the implementation of a system of generalized preferences which was conceived in order to introduce uniformity in the field of preferences should also be taken into account. The association agreements, as well as the problem presently being examined, had demonstrated the urgent need for the CONTRACTING PARTIES to establish rules guiding the introduction of preferences on a general non-discriminatory basis for all developing countries.

26. Some members stated that the interest of developing countries in the maintenance of non-discriminatory multilateral trade should far outweigh the benefits resulting from a few selected preferences. It would be safer for the two countries concerned if a course was adopted compatible with GATT, i.e. the extension of the tariff cuts on a multilateral basis. Should trade damage be inflicted on the two countries, then the matter could be reviewed in this light.
27. Some representatives were under the impression that if the preferences had been extended to all developing countries in a non-discriminatory manner, their governments might have considered granting their support to the application by the EEC for a waiver.

28. Representatives of several countries asserted that the EEC request could not be seen in isolation. The EEC had signed important association agreements and were currently negotiating preferential arrangements with other countries. The possibility that still other countries, or groups of countries, would want to negotiate similar discriminatory agreements which would be harmful to the interests of other contracting parties could not be overlooked.

29. Members of the Working Party regretted that the preferences had been put into force on 1 September without waiting for the outcome of the examination of the application by GATT. They pointed out that such an early introduction of preferences created a de facto situation which was without precedent.

30. Representatives of certain developing countries appreciated the efforts of the EEC to stabilize market conditions for citrus fruits. At the same time, however, they believed that stabilization should take place at a world-wide level.

31. While supporting the idea of organizing the Mediterranean market and the maximizing of prices for citrus fruits, one member of the Working Party stated that this aim could be attained through a non-preferential system. One could, for example, in the case of oranges limit the application of the system of price discipline and reduced duties to the period of the year particularly important for Mediterranean producers. The right to a conditional reduction would then be accorded to all exporting countries. In this way, it would be possible to respect the principle of the most-favoured-nation clause, to sufficiently organize the market and limit the financial transfer to third countries to reasonable dimensions. With regard to lemons, this member of the Working Party considered that preferences could not be justified by the existence of association agreements
with Morocco and Tunisia since the two countries exported only negligible quantities to the market of the EEC. Furthermore, unlike in the case of oranges, one could not speak of a regional and seasonal market. For that reason, the organization of the market should preferably be sought through co-operation with the principal suppliers. Some members considered that this suggestion was worth further consideration.

32. One member of the Working Party could not understand why his country, which was a member of the Association of Mediterranean Citrus Growers and which was during a part of the year the main supplier of lemons to the Community and also an exporter of oranges, should be excluded from the preference system. The representative of the EEC stated that they would examine this particular case.

33. The representative of the European Economic Community said that an extension of the preferences on a most-favoured-nation basis would lead to financial transfers in a way that would not be justified. A world-wide stabilization arrangement would be welcomed, but the Community could not be expected to assume the sole responsibility, and meanwhile the Community's intention had been to solve the problems with which it was confronted. With regard to the objections raised against regional preference systems, he maintained that a general discussion of the merits or demerits of such systems fell outside the terms of reference of the Working Party which should not deviate from the methods of work which the CONTRACTING PARTIES had always used up to now when granting waivers. The representative of the Community also recalled that there was a link between the preferences in favour of Israel and Spain and the Agreements of Association with Morocco and Tunisia.
34. Some members considered that it would be premature to take a final position with regard to the preferences until the Association Agreements with Tunisia and Morocco had been examined in GATT. Others, however, argued that the Working Party should consider on its own merits the case before it.

ANNEX I

Request by the European Economic Community for a Waiver of Obligations under Article XXV 5
\[L/32397\]

ANNEX II

System Governing the Importation of Citrus Fruit into the European Economic Community
\[Spec(69)1227\]

ANNEX III

United States Statement on the Trade Impact of the System Outlined by the Commission of the European Communities
\[Spec(69)1337\]