1. In March 1971, the Council of the European Communities and the Government of Malta notified to the CONTRACTING PARTIES that an Agreement of Association had been concluded between the European Economic Community and Malta on 5 December 1970 and had entered into force on 1 April 1971. The matter was discussed at a meeting of the Council on 21 April 1971 (see C/M/68). After having heard declarations from the representatives of the European Economic Community and Malta to the effect that, in the view of the parties, the Agreement was in accordance with Article XXIV:5-9 of the General Agreement, it was decided to set up a Working Party with the following terms of reference:

"To examine, in the light of the relevant provisions of the General Agreement, the provisions of the Agreement Establishing an Association between the European Economic Community and Malta of 5 December 1970, and to report to the Council."

2. The Working Party met on 9 and 22 February 1972 under the chairmanship of Mr. Angel M. Oliveri Lopez (Argentina). The following was the composition of the Working Party:

<table>
<thead>
<tr>
<th>Country</th>
<th>Country</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>Ghana</td>
<td>Portugal</td>
</tr>
<tr>
<td>Australia</td>
<td>Greece</td>
<td>Spain</td>
</tr>
<tr>
<td>Brazil</td>
<td>Ivory Coast</td>
<td>Switzerland</td>
</tr>
<tr>
<td>Canada</td>
<td>Jamaica</td>
<td>Tunisia</td>
</tr>
<tr>
<td>Ceylon</td>
<td>Japan</td>
<td>Turkey</td>
</tr>
<tr>
<td>European Communities</td>
<td>Malta</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>and member States</td>
<td>Norway</td>
<td>United States</td>
</tr>
</tbody>
</table>

1The text of the Agreement of Association is contained in document L/3512. The questions addressed to the parties, as well as the replies thereto, are contained in document L/3639.
3. The parties to the Agreement referred to the statements they had made when the Agreement was introduced in the Council on 21 April 1971, to the effect that the envisaged customs union was in full conformity with the requirements of paragraphs 5-9 of the General Agreement. Malta was increasingly dependent on the European market as an outlet for its exports and the development of its foreign trade relations with Europe found its natural place in the framework of European/Mediterranean co-operation. There was an evident necessity in the case of Malta to restructure and diversify its economy and, being a small country with limited natural resources, it was of fundamental importance for Malta to participate in the process of European economic integration. Concerning trade exchanges between Malta and the enlarged EEC, they indicated that Malta's exports to the enlarged Community represented in 1968 - 66 per cent of its total exports, in 1969 - 72 per cent, and in 1970 - 75 per cent. As to Malta's imports, the respective percentages were 74 per cent, 73 per cent and 73 per cent.

4. Other members of the Working Party supported these views. The political will of the parties to form a customs union, the precise undertakings in the Agreement and the necessity for Malta to develop its trade through participation in arrangements for regional integration were factors to which full weight should be attributed.

5. In examining the questions and replies it was established that the terms "the major part of trade exchanges" and "provisional agreement" in the English version should be interpreted to mean respectively "substantially all the trade" and "interim agreement", these being the terms used in the General Agreement. With regard to the customs tariff of Malta, it was explained by the representative of Malta that revenue derived from customs duties formed an important part of budgetary income in his country. Describing the structure of the Maltese tariff he said that in many cases, imports were free of duty; the average duty for industrial products would probably be around 30 per cent and only in exceptional cases were the rates above 50 per cent.
6. The Agreement was examined with reference to the relevant paragraphs of Article XXIV of the General Agreement.

Paragraph 5(c) of Article XXIV

7. With regard to the term "plan and schedule", certain members of the Working Party maintained that the Agreement lacked the necessary precision with regard to the elimination of duties and other regulations, in particular for the second stage of its implementation. By way of illustration, they drew attention to what they considered to be vague and ambiguous terms used in the Agreement and its Annexes, such as the parties "envisage" and commitments undertaken "in principle". In particular, reference was made to the absence in the Agreement of clear provisions for elimination of restrictions on imports into the Community of agriculture- and textile products from Malta. These product groups were of particular importance for Malta; these members considered that the requirements of paragraph 5(c) to the effect that the interim agreement "shall include a plan and schedule for the formation of such a customs union ... within a reasonable length of time" had not been met.

8. Several members of the Working Party stated that paragraphs 5-9 of Article XXIV had to be interpreted against the background of paragraph 4 which recognized the desirability of closer integration between the economies of countries. From the point of view of the General Agreement an evolutionary timetable, such as the one presented in this Agreement, was preferable to a precise and detailed schedule in the case of countries with different levels of development. Such a timetable might be more likely to lead to the formation of a customs union within a shorter period. They noted the firm intention of the parties to the Agreement to form a customs union and saw no reason to cast doubt on their political will to achieve that goal. They agreed with the contention of the parties that the Agreement was in conformity with paragraph 5(c).

9. The parties to the Agreement emphasized that the declared intentions expressed in the Agreement and its annexes should be given full consideration. As stated by a number of members of the Working Party, the different stages of development of Malta and the Community excluded the preparation of a precise and complete schedule.
and called for the adoption of a realistic approach. In their view, the term "interim" had been expressly inserted in paragraph 5(c) to provide for cases where the establishment of a precise plan and schedule would not be feasible from the outset. The case before the Working Party constituted such special circumstances as had been foreseen by the drafters of the General Agreement because of the wide disparity in development between the parties. Accordingly, they reiterated their firm view that the Agreement was compatible with paragraph 5(c).

10. One member of the Working Party could not accept this interpretation pointing out that no interpretative material existed to substantiate such a view. On the contrary, the text of paragraph 5(c) was very clear and unequivocal.

Paragraph 7(c) of Article XXIV

11. The parties to the Agreement reaffirmed their intention to notify changes in their plan and schedule in conformity with the provisions of this paragraph. This would also apply to the result of any renegotiations.

Paragraph 8(a) of Article XXIV

12. A member of the Working Party, commenting on the importance to Malta of income originating from duties which, in 1971, amounted to 35 per cent of total revenue requested clarification of Maltese intentions with respect to differentiation between customs duties and taxes as referred to in the Declaration concerning Article 3 of Annex II of the Agreement. The member who had raised this point expressed reservation to the compatibility of such a change in the Maltese tariff with the intent of Article XXIV:8(a). If after entering a customs union Malta were to retain essentially the same level of charges on imports from all sources as presently existed in the Maltese tariff, but redefined as revenue duties, his delegation wondered how it could be said that trade was free of duties. This member also wondered whether the calculation of trade coverage would be affected by such a change in definition of the present Maltese tariff. Further discussion brought to light that the English and French texts of Article XXIV:8(a) differed in that the English text referred only to "duties" while the French text referred to customs duties ["droits de douane"]. The parties to the Agreement stressed
that there was no prohibition in the General Agreement for a country to levy revenue duties; Malta would adopt the Common External Tariff of the EEC and, if necessary, would have revenue duties applicable to imports from all origins. Malta had already started to modify its fiscal policy. In any case Malta had no tariff binding under the General Agreement and thus retained full freedom with regard to all its duties. The Working Party came to no conclusion on this matter.

13. Some members of the Working Party stated that quantitative restrictions were kept for a large proportion of EEC imports originating from Malta, in particular agricultural, petroleum and textile products. These members of the Working Party therefore considered the Agreement not to be compatible with paragraph 8(a) of Article XXIV. The representative of Malta said that during the first stage no complete elimination of quantitative restrictions was envisaged. During the second stage, they could all be eliminated on a non-discriminatory basis.

14. Some members of the Working Party found it difficult to pass judgment on the compatibility of the Agreement with paragraph 8(a) of Article XXIV in the absence of a binding commitment to establish a full customs union at the end of the ten-year period envisaged in the Agreement. The parties to the Agreement stressed its interim character and reaffirmed their intention to establish a customs union covering substantially all of their trade, both on industrial and agricultural products.

General considerations

15. All members of the Working Party expressed sympathy for the desire of Malta to establish closer links with the European Economic Community.

16. A number of members of the Working Party considered that although the Agreement of Association in certain respects was more in line with the general philosophy behind Article XXIV than many of the Association Agreements previously examined under the General Agreement, it did not fully meet the requirements of that Article. Reduction in tariffs and other trade barriers between the participants was only specified for the first of the two five-year stages of the transitional ten-year period. The mere intention of the parties to establish a customs union at the end of the ten-year period was not in itself sufficient to permit contracting
parties to undertake usefully the study provided for in paragraph 7(b) of Article XXIV. Indeed, the provisions of the Agreement were too vague in several respects to enable conclusive findings to be reached. Furthermore, they noted that to a large extent agricultural products had not been included in the programme for liberalization of trade between the parties. In addition, the continued maintenance of a certain number of quantitative restrictions pointed to the view that the Agreement was not in conformity with the provisions of paragraph 8(a)(i) of Article XXIV. In their opinion, neither with regard to the plan and schedule nor with respect to trade coverage did the Agreement comply with the provisions of Article XXIV. Consequently, the trading interests of third countries under the General Agreement were not sufficiently safeguarded. One member of this Group had reservations about the implications of Malta's intent to distinguish between fiscal and customs duties at the end of the first stage. In his view the retention by Malta in whole or in large part, of the existing level of charges in the present Maltese tariff but redefined as revenue duties would not be consistent with the intent of the General Agreement as regards the establishment of customs unions.

17. Some members of the Working Party were of the view that the difference in the stage of development between Malta and the EEC should be given full consideration and that the firm intentions of the parties to establish a customs union supported their contention that the Agreement was compatible with Article XXIV.

18. The parties to the Agreement, supported by other members of the Working Party, considered that the Agreement fully met the requirements of paragraphs 5-9 of Article XXIV. Apart from the fact that the trade coverage was largely sufficient to meet the requirements of Article XXIV, quantitative restrictions would be eliminated by Malta on a non-discriminatory basis and agriculture fully included during the second stage of the transitional period. They stressed the strong geographic and economic links which existed between Malta and its European partners and highlighted the necessity for Malta to diversify its economy through its closer integration with that of the European Economic Community. The objective of a progressive formation of a customs union was clearly stated in the Agreement and constituted a firm commitment by the parties. They noted that the strict
implementation of Article XXIV advocated by certain members of the Working Party had not been upheld in the examination of similar Agreements by GATT, and that none of those other Agreements had been found incompatible with Article XXIV. The term "interim agreement" in paragraph 5(c) pointed to an evolutionary timetable for the achievement of a customs union whereby special circumstances in each individual case would be taken into consideration.

19. The Working Party welcomed the assurance of the parties to submit reports on the implementation of the Agreement. The desirability of a report on the outcome of the negotiations provided for by the end of the first stage according to Article II, paragraph 3 of the Agreement was stressed.