Working Party on Accessions to the European Communities

NOTE BY THE CHAIRMAN

MEETING ON 30-31 OCTOBER 1972

1. The Working Party held its seventh meeting on 30-31 October 1972. As agreed at its meeting on 9-10 October (Spec(72)113), the Working Party went through answers by the enlarged Communities to the questions put by contracting parties (L/3754 and addendum 1) and discussed the methodology of the examination of the Accession Treaty under Article XXIV:5(a). Several representatives pointed out that the views expressed by them on the questions and answers were necessarily of a preliminary nature, their capitals not having had time to examine document L/3754.

2. The representative of Poland made a general statement regarding the impact on Poland's trade of the enlargement of the Communities. The full text of the statement has been circulated in document Spec(72)121.

3. The spokesman for the enlarged Communities said that he would revert at a later occasion to the questions raised in the Polish statement.

A. Questions and Answers

1. General questions

4. With reference to the reply to question 1, there was a discussion in the Working Party on the character of the Accession Treaty. Some representatives maintained that the Treaty should be considered as an interim agreement in the sense of Article XXIV:5(c) as it did not provide for an immediate abolition of duties and other regulations of commerce between the signatory countries. The spokesman for the enlarged Communities pointed out that the Treaty contained firm and final provisions regarding the staged creation of a full customs union and did thus not have the character of an interim agreement.

5. Some members of the Working Party welcomed the statement in the reply to question 4 that the enlargement would have beneficial effects not only to the trade of the participating countries but also for third countries; it was pointed out, however, that experiences in the past had shown that the benefits were not evenly distributed between the two categories of countries. The representative of a developing country said that he understood the statement in the reply to question 5 that no decline was foreseen in the trade position of developing countries in the market of the enlarged Communities as a positive undertaking and not merely a forecast. Any adverse effects
on the trade of developing countries as a result of the enlargement of the EEC would not only be contrary to the principles and objectives of this process but would also be contrary to the objectives under Part IV of the General Agreement. Commenting on the statement in the reply that the developing countries could also have recourse to their rights under the General Agreement to defend their interests, he stated that because of their inherent weak bargaining position, these countries might not be always in a position to resort to GATT procedures to protect their own interests. The solutions to the problems of these countries would, therefore, have to be found not merely on legalistic basis but by also taking into account the overall commitment to avoid any adverse effects on their trade.

6. The spokesman for the enlarged Communities pointed out that the reply to question 5 could not be taken as a binding commitment. Article XXIV of the GATT contained provisions for the establishment of customs unions because such unions were considered to expand trade generally; it was the Community's view that experience had demonstrated the validity of the underlying economic theory.

7. With reference to the reply to question 6, some members of the Working Party said that they did not agree with the opinion expressed there that if a customs union fulfilled the criteria laid down in paragraphs 5-9 of Article XXIV, it automatically met the requirement of paragraph 4 that its purpose "should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories". For the spokesman of the Community, the word "accordingly" at the beginning of paragraph 5 of Article XXIV, indicated clearly that this was the intention.

8. A member of the Working Party pointed out that important aspects of the common external trade policy of the enlarged Communities - which might affect the outcome of the examination under Article XXIV:5(a) - were not yet known. Against that background he felt that it would be essential to have a general re-examination of the arrangements as suggested in question 7.

9. The spokesman for the enlarged Communities said that such a general re-examination would not be justified. It was clear from the provisions of the Treaty that substantially the same duties and other regulations of commerce would be applied by the members of the enlarged customs union on their relations with the rest of the world, as required by paragraph 8(a)(ii) of Article XXIV.

II. Tariffs

(a) Elimination of duties inside the Community

10. A member of the Working Party pointed out, with reference to the reply to question 9, that the use of applied or legal rates for the purposes of Article XXIV was not a new problem. In 1962, the then Executive Secretary had given an interpretation of the meaning of the word "applicable" in paragraph 5(a) of Article XXIV (L/1919). This interpretation should be borne in mind; it had neither been adopted, nor rejected by the CONTRACTING PARTIES. It would, in his opinion, be necessary to take into account the applied rates for comparisons under Article XXIV.
11. The spokesman for the enlarged Communities said that for practical reasons it had been found more convenient to supply data on legal rates. For example, where customs duties were suspended, it was frequently not possible to supply import statistics corresponding to such duty suspensions.

12. In elaboration of the replies to questions 13 and 14, the spokesman for the enlarged Communities said that in view of the heterogenous nature of the "charges having equivalent effect", they would be examined on a case by case basis. In so far as such charges would be found to exist in the acceding countries, it was not the intention that they should be generally abolished within the Community but maintained towards third countries. The original Community had not adopted such charges and therefore the provisions of the Treaty of accession would not result in the introduction of such charges in the acceding countries.

(b) Introduction of the Common External Tariff in the acceding countries

13. Some members of the Working Party regretted that the Communities were not yet prepared to express opinions on the methods for appraisals under Article XXIV:5(a). They did not share the views of the Communities set out in the reply to question 17 on the interpretation of "on the whole" and "general incidence". They pointed out that this issue had not been settled by the CONTRACTING PARTIES; in their view it would be justified to take into account in the examination of the Accession Treaty under Article XXIV:5(a) the effects of the enlargement on particular products and countries.

14. The spokesman for the enlarged Communities replied that the language of paragraph 5(a) of Article XXIV which used the terms "on the whole" and "general incidence" unambiguously called for an overall appraisal of the incidence of the customs duties. The Communities would fulfil their obligations under that paragraph.

15. Referring to the reply to question 20, a member of the Working Party asked whether more precise information could be given on measures to balance increases and decreases of duties in cases of an advanced alignment with the Common External Tariff.

16. The spokesman for the enlarged Communities said that, at the present stage, it was difficult to forecast whether or to what extent a more rapid alignment would be effected. He recalled that in the case of the Rome Treaty, an accelerated alignment had been accompanied by an autonomous reduction of the CXT level by 20 per cent.

17. In reply to a question whether the tariff quota for newsprint, referred to in question 23, would be reduced by an amount corresponding to imports from the United Kingdom, Denmark and Ireland and the rest allocated between third countries, the spokesman for the Communities said that this question was being discussed. Most Community imports came from Nordic countries other than Denmark; the Treaty on accession in itself would therefore not change the situation radically.
18. Members of the Working Party representing developing countries said that the statement in the reply to question 31 that arrangements under the Generalized System of Preferences could solve problems arising from the elimination of Commonwealth preferences was not clear. The GSP preferences were of a general nature and could hardly be used to compensate for the loss of contractual Commonwealth preferences.

19. The spokesman for the enlarged Communities recalled that the Joint Declaration of Intent did not have as its aim to establish a relation between the problems resulting from the application by the United Kingdom of the Common External Tariff to the Commonwealth countries and the existence of the system of generalized preferences from which those same countries enjoyed the benefits. When examining with India, Malaysia, Pakistan, Singapore and Sri Lanka the problems which could occur in the trade field, the Community could not, nevertheless, ignore the situation resulting from the application of the system of generalized preferences.

20. Members of the Working Party stressed that when elaborating the 1974 programme for imports under GSP, the enlarged Communities should ensure that it would not be less favourable than previous arrangements in the Communities or the acceding countries. The representative of Malta pointed out that his country was a beneficiary of the GSP in the United Kingdom but not in the member countries of the Communities. The spokesman for the Communities was of the opinion that this problem should be considered in a different connexion. With reference to the question raised by the representative of Malta it should be recalled that even if Malta was not amongst the beneficiaries of the system of generalized preferences, it was connected with the Community through a bilateral Association Agreement.

21. Some members of the Working Party expressed concern with the replies to questions 32-34. They referred in particular to the statement in the reply to questions 32 and 33 that the parties to the Treaty, could not "isolate certain contracting parties in evaluating the total incidence of the common import system". They pointed out that it was not a question of isolating certain contracting parties but of taking account of the trade carried out under preferential duties. "General incidence" in Article XXIV:5(a) must be interpreted as covering imports from all sources at all rates of duty. Either to ignore completely preferential imports or to consider them as having been carried out at m.f.n. rates would give a distorted picture of the change that would take place in the general incidence of protection. One member expressed that view that if negotiations under paragraph 9 had been envisaged, preferential trade would have been irrelevant for the purposes of Article XXIV:5(a), but it was clear that such negotiations would not take place.

22. The spokesman for the enlarged Communities recalled that the position of the Communities in respect of the treatment of preferential trade had already been clearly set out in the replies to questions 32-34 and in the course of earlier discussions in the Working Party.
III. Quantitative Restrictions

23. One member commented that only scant information had been provided by the enlarged Communities on the question of quantitative restrictions. He added that from the information supplied there appeared to be a relatively large number of exceptions to the principle of Article XXIV:8(a)(ii), according to which substantially the same regulations of commerce should apply towards third countries.

24. The spokesman for the enlarged Communities stated that under the provisions of the Treaty, most of the exceptions referred to were of a purely temporary nature, and they would disappear as a result of the process of alignment. In any event, only a minimal proportion of total Community imports were affected by these exceptions.

25. The following specific points were made with respect to individual questions and replies in this section:

26. The hope was expressed that the Annex I referred to in the reply to Question 38 would be furnished shortly.

27. Referring to question 39, some delegations asked for confirmation that the common policy of the enlarged Communities on quantitative restrictions would be in line with the relevant articles of the General Agreement.

28. The spokesman for the enlarged Communities stated that the Working Party should address itself to the question whether the accessions would change the situation with regard to the restrictions currently applied. He pointed out that, to the extent that the common trade policy had not been finalized, the enlargement would not change the situation. The process of establishing a common trade policy was at a fairly advanced stage, and in fact a common liberalized list already existed which included most items of the Brussels Nomenclature. For items not on this list, the accession in itself would entail no change. He added that in the past ten years there had been general progress in the elimination of residual restrictions, and expressed the view that this progress would continue after the enlargement of the Community.

29. With reference to question 40 one representative asked whether the United Kingdom quantitative restrictions on textiles referred to in Annex VII, Section VI, were applied on a global basis or only to a certain number of countries. He also noted that Annex VII, Section VI, as well as Protocol No. 6, provided for a relatively long list of quantitative restrictions to be maintained by Ireland, in some cases against specific countries.

30. The spokesman for the enlarged Communities pointed out that in the case of the United Kingdom the restrictions were applied in some cases against specific countries; in other cases, where there was no indication as to countries, they applied globally.

31. Some delegations requested further information regarding the abolition of "measures having equivalent effect" to quantitative restrictions, referred to in Article 42 of the Treaty. They asked whether it would be possible to identify such measures and whether the Communities intended to inform the contracting parties of the timing and method of their removal.
32. The spokesman for the enlarged Communities said that the problem was one in which the Community had already some experience. It had not always been easy to identify such measures, and a number of cases had been referred to the Court of Justice for decision as to their exact nature. He expressed the view that only a small number of such measures existed and that they did not have any substantial effects on trade. As an illustration, he gave measures applied in the field of public health, standards and defence. The problem of determining whether such measures fell within the definitions of "measures having an equivalent effect to quantitative restrictions" or of "other regulations of trade" was a highly complex one, requiring each time a specific examination of all the relevant aspects.

33. One representative stated that it was not self-evident that measures such as government procurement, standards for health and safety which could be considered as measures equivalent to quantitative restrictions, had a marginal effect on trade. He considered that an attempt should be made to form a judgement on whether any change would result in the restrictiveness of such measures after formation of the customs union.

34. The spokesman for the enlarged Communities stated that the maintenance of a few measures of this kind could not affect the fulfilment of the obligations under Article XXIV. Having regard to the difficulties in defining what constituted a measure with equivalent effect under the terms of the Rome Treaty, he was not in a position to provide a list of such measures to the Working Party.

35. Referring to question 44 one representative asked for clarification as regards the treatment to be given by Ireland to imports of motor vehicles from third countries.

36. The spokesman for the enlarged Communities stated that it would not be useful to discuss details of the Irish scheme for motor vehicles. Under the commitments of the Accession Treaty it was envisaged that, even during the period of validity of the scheme, the obstacles to trade within the enlarged Communities would be gradually eliminated.

IV. Agriculture

37. Some representatives asked whether variable levies fell within the general heading of "duties and other regulations of commerce" which had to be examined in the study of the Treaty. In their view, variable levies did fall under that heading and it was indispensable to take them into account in order to reach an assessment under Article XXIV:5(a) of the changes in the levels or incidence of border protection against imports operated by the acceding States when these countries adopted the Community system.
38. The spokesman for the enlarged Communities explained that the term "sui generis" in the reply to question 49 to describe variable levies had been chosen in order to underline that the levy was neither a "duty" nor "other regulation of commerce". The levy was closely linked to the internal price level as well as to world market prices. It was therefore fundamentally variable in character. It would not be assimilated to a customs duty and its quantification was neither significant nor meaningful. Neither did the variable levy fall in the category of "other regulation of commerce" which normally referred to quantitative restrictions or similar measures at the border. In illustrating the special character of the levy he pointed out that countries which applied duties on agricultural imports also employed a number of other measures to support their agriculture at the border whilst the levy was the only instrument used in the case of the Community; the reduction of a customs duty would thus leave the remainder of a country's agricultural policy unchanged whereas a reduction of the levy would interfere directly and immediately with the whole agricultural support system of the Community. There was therefore a fundamental difference, in both nature and function, between the variable levy on the one hand and measures applied at the border such as duties and other regulations of commerce at other hand.

39. One representative, whose views were shared by a number of others, stated that the full amount of the variable levy import charge represented a form of border protection against imports, since no similar charge applied on internal Community trade. In order to examine the effects of the Accession, he stated that the Working Party should be supplied with the average amount of charges assessed in 1970-71 for each tariff line item subject to levy. His delegation could not understand why it was impossible to quantify levies, since data presumably existed on day-to-day charges levied, as well as overall imports for each item. Nor could he understand why the fact that a reduction of the levy affected the internal price should preclude it from examination, and pointed out that similar effects arose from reductions in tariffs. He asked whether the Working Party should not develop a methodology enabling a comparison to be made between the previous duties and the new import system for variable levy items.

40. The spokesman for the enlarged Communities stated that since all members of the Common Market applied the same agricultural system and prices, levies in internal Community trade were unnecessary. He also pointed out that customs duties were implemented irrespective of price whilst levies would not be applied if exports of third countries were effected at the price level prevailing in the Community. In cases where the effective price on the world market surpassed that prevailing on the internal market, this even resulted in measures to correct the difference the other way round. As the Community had no quantitative restrictions on variable levy items, its agricultural support system would be affected by actions with respect to variable levies.

41. In order to supplement the reply to question 51, the spokesman for the enlarged Communities stated that any problems raised in connexion with the withdrawal or modification of bindings of acceding countries as a result of their adhering to the Common Agricultural Policy could be taken up in the Article XXIV:6 renegotiations. It was not possible to state at this stage how these questions would be settled as the Community would indicate its position regarding "compensatory adjustments" in accordance with the provisions of Article XXIV:6 at the opening of the renegotiations.
V. Relations with Associated States and certain Third Countries

42. One representative pointed to the disparity in the treatment of different agreements after the enlargement of the Community. He noted that while the acceding States would adopt the Community régime with respect to the seven Mediterranean countries referred to in Article 103:3, this would not be the case for the associated African and Malagasy States nor for the countries associated with the Community under the Arusha Convention. Moreover, he noted that the régime applied by the United Kingdom to the Commonwealth countries listed in Annex VI would not be adopted by the other member States of the Community.

43. In reply to further questions related to questions 94 and 95, the spokesman for the enlarged Communities stated that negotiations on a trade agreement had recently been concluded with the Egyptian Arab Republic, but that it was not clear whether the agreement would enter into force before 1 January 1973. It was recalled that the Council had recently decided that, as far as possible, agreements concluded should be notified and placed on the agenda of the first Council meeting following their signature (C/11/81).

44. It was pointed out also that the Treaty provided that the acceding States should adapt progressively to existing agreements. The details of the methods of adaptation were a matter for future negotiations in each case.

VI. Other Questions

45. One representative expressed the views, with reference to the reply to question 106(a), that in many cases refunds could in fact be equated with export subsidies.

46. With regard to the replies to question 106(b) and (f), one representative noted that special provisions were applicable during the transition period for Ireland and the United Kingdom with respect to anti-dumping regulations and countervailing duties and expressed the view that this constituted a departure from the principle of applying substantially the same regulations of commerce. He also stated that these matters would be raised in the appropriate bodies in GATT, i.e. the Anti-Dumping Committee and the Group on Subsidies and Countervailing Duties.

47. The spokesman for the enlarged Communities replied that such exceptions had existed in the present Community for a number of years without attracting attention. Being of a transitional nature, they would automatically expire with the achievement of a Common Market. He could not accept that these measures entailed a deviation from the principle of applying substantially the same regulations of commerce since at the most only a few products from a few sources would be affected, accounting for an insignificant proportion of total Community imports. It present the Community applied no anti-dumping duties.

48. One representative asked whether the rules of origin referred to in the reply to question 106(d) were all-embracing and applicable also in the case of imports under the Generalized System of Preferences.
49. The spokesman for the enlarged Communities stated that this was not the case since specific rules of origin were applied under the Generalized System of Preferences.

50. One representative stated, with reference to the reply to question 109, that his delegation did not consider that the Working Party on Border Tax Adjustments had reached definitive conclusions on the trade implications of the value-added tax and held the view that the effects on trade flows of the introduction of the Value-Added Tax in the acceding countries was relevant to a consideration of the effects of the enlargement.

51. The spokesman for the enlarged Communities recalled that in the Working Party on Border Tax Adjustments, his delegation had held the view that the value-added tax affected identically domestic products and imports and had therefore no effect on trade. He believed that there had been little disagreement of this matter in the Working Party. He recalled that there had been some divergence on view on whether replacement of cascade taxes by value-added taxes affected trade. In the United Kingdom at present, there was no cascade tax but a tax which applied at only one stage of trade at the wholesale level. He considered that the reply given to question 109 adequately answered the question put.

52. Referring to the reply to question 113, one representative said that the application by Ireland of Article XXXV vis-à-vis Japan represented an important exception in the external policy of the enlarged Community. It could not be contended that the invocation of this Article had a marginal effect since all trade between Ireland and Japan was affected. He hoped that this large deviation in policy would be dealt with promptly and in a manner consistent with the spirit and provisions of the GATT.

53. The spokesman for the enlarged Communities pointed out that this exception related to imports by only one of the acceding countries from only one contracting party, which constituted a very small proportion of overall enlarged Community imports from all sources. The proportion of trade affected was therefore less than marginal.

54. One representative stated that Denmark had raised certain duties on 1 January 1972 and asked what were the purposes of those increases in duty and whether it was intended that the new higher rates would be used as the basis for adjustments during the transition period.

55. The spokesman for the enlarged Communities took note of this question and stated that a reply would be supplied at a later meeting.

B. Methodology of Article XXIV:5(a) examination

56. The spokesman for the enlarged Communities said that as had been promised at the July meeting of the Working Party - he would express some general views on the methodology of future work. The Working Party was facing a number of difficult problems, primarily in the agricultural sector and in particular in relation to the variable levies. There was no reason to go over once more the various arguments used at earlier
occasions. He only wished to stress a few main points. The examination under Article XXIV:5(a) was a global exercise; the text of the General Agreement spoke of "on the whole" and "general incidence". He maintained that some members of the Working Party looked upon the examination from a wrong angle. It was neither a question of examining the effects of the enlargement in individual sectors, nor was it a question of an examination of the Common Agricultural Policy as such, nor was it a question of looking at it on a country-by-country basis. Furthermore, this examination was not to be carried out on the basis of projections concerning possible future developments of trade. Those methods suggested for the examination were clearly not in conformity with the provisions of Article XXIV:5(a). The Communities were prepared to propose for discussion at the next meeting of the Working Party a methodology that would be at the same time detailed and precise. In so far as the Common Agricultural Policy was concerned, he considered that it was basically a question of examining, on the one hand, the trade effects of the policy of the original Community and, on the other hand, the effects of the policy of the acceding countries. It was, inter alia, not possible to compare the variable levy system with normal protective measures; the examination should therefore concentrate on comparing the trade effects of existing policies. He stressed that the Communities and the acceding countries had already supplied a vast background documentation for such an examination.

57. Several members of the Working Party stressed that they were disappointed that the Communities were not yet able to present concrete suggestions for the examination. They said that it was very difficult to start examining the extensive documentation already supplied by the Communities and the acceding countries until a decision had been taken on the methodology. It was to be regretted that obviously no serious examination under Article XXIV:5(a) could be undertaken until after the entry into force of the Accession Treaty.

58. Some members of the Working Party pointed out that the variable levies were not the only measures which at the same time were part of a country’s external protection and its internal agricultural policy. They could not understand why it should be so difficult to quantify the variable levies for the purposes of Article XXIV:5(a).

59. Other members of the Working Party recalled that there were other important aspects of the XXIV:5(a) examination where there were still wide differences of opinion, i.e., the treatment of imports under preferential duties.

60. Some members of the Working Party regretted that the Community was neither prepared to accept the establishment of a Technical Group, as suggested at the previous meeting of the Working Party, nor to entrust the secretariat with the task of consolidating information received from both sides.

61. The spokesman for the enlarged Communities noted that the main area, where there were differences of opinion, was the agricultural sector. He felt that it would not be meaningful to discuss further issues about documentation until a decision had been taken on the methodology to be used. He estimated that at least two weeks would be required for the elaboration in detail of the proposals to be submitted by the Communities (cf. paragraph 56 above) with regard to the treatment of the agricultural sector.

62. It was agreed that the Working Party would meet again to continue the examination of the questions and answers and the discussion of the methodology when delegations had had sufficient time to consider the proposals to be submitted by the Communities. The date was to be fixed by the Chairman in consultation with the Director-General and the delegations primarily concerned.