1. The text of the Agreement signed on 24 September 1969 at Arusha (Tanzania) establishing an Association between the European Economic Community and the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya was communicated to GATT and circulated to contracting parties in L/3369.

2. A Working Party was appointed by the Council at its meeting on 29 September 1970 and was instructed to examine the provisions of the Agreement in the light of the relevant provisions of the General Agreement, and to report to the Council. The composition and terms of reference of the Working Party were set out in L/3446/Rev.1.

3. The Working Party met on 3 and 5 July 1972 under the chairmanship of Mr. M. Mizoguchi (Japan). For its examination the Working Party had available answers supplied by the Parties to the Agreement to questions raised by contracting parties and reproduced in L/3672.

4. In an introductory statement, the representative of the EEC recalled that the Agreement was one for an association within the meaning of the Treaty of Rome. The EEC had entered into the association with the three East African countries in recognizing its responsibility to achieve a harmonious balance with the commitments which it had previously undertaken with regard to other African countries. This followed naturally from the principles contained in the declaration of intention
adopted on 20 July 1963 when the first Yaoundé Agreement was signed. The present Association Agreement was designed to be compatible with the economic development needs of the three African countries in question, and was aimed at promoting trade between the EAC and the EEC. The rights and obligations in the Agreement created a free-trade area; and as such the arrangement met all the criteria embodied in Article XXIV, bearing in mind the particular development needs of the African participants.

5. The spokesman for the Partner States of the East African Community drew the Working Party's attention to the Agreement which they had signed in 1967 forming the EAC, the aim of which was to strengthen their industrial, commercial and other ties and to promote mutually an acceleration of their economic development. The Association Agreement, which had entered into force on 1 January 1971, was designed to take account of the interdependent interests of developing and developed countries, and to promote trade with the EEC, which constituted an important market for East Africa. The aim of the Association Agreement was fully consistent with the terms of the Treaty forming the EAC as well as with the provisions of the General Agreement. The Agreement would contribute to the further development of world trade.

6. After hearing the introductory statements by the parties to the Association Agreement, the Working Party proceeded to examine certain of its provisions and their compatibility with Article XXIV of GATT. Clarifications were sought in regard to some of the answers furnished in L/3672 by the parties to the Agreement. In regard to the application of quantitative restrictions mentioned in Article 6:4 of the Agreement the representative of the East African Partner States explained that they were applied globally to both the Member States of the EEC and to other
countries. He offered to supply a list of these restrictions. A member enquired as to the régime governing the three products (unroasted coffee, cloves and tinned pineapple) covered by Protocol No. 2 to the Agreement, and whether this was in the nature of tariff quotas for these items. The EEC representative explained that the measures referred to could not be described as tariff quotas. The quantities listed were ceilings set by the EEC which could be applied in order to avoid serious disturbances in traditional trade flows. The Protocol in question had so far been applied only once even though there were other instances where imports from the East African countries had exceeded the ceilings. A member observed that no answer had been given to the question as to what percentage of EEC imports of agricultural products from East Africa was exempt from duties, quantitative restrictions and fiscal charges, or other restrictions. The representative of the EEC replied that products enjoying special treatment covered only a few items which had been enumerated in the reply to Question 30 in L/3672. These accounted for some 6 per cent of total imports from East Africa. Another member enquired as to whether Article 6(1) of Protocol No. 2 to the Association Agreement would prevent the Partner States of the EAC from entering into agreements with third countries aimed at reducing customs duties. In reply, the representative of the EAC pointed out that Article 6(2) of that Protocol provided for necessary adjustments to meet development needs of the EAC Partner States so long as the overall volume of concessions and the balance of concessions accorded to the EEC were maintained. Article 6(1) would not prevent the reduction of EAC tariffs on imports from third countries. The representative of the EEC indicated that this was also the EEC understanding of the situation.
7. The Working Party proceeded to examine the Agreement in the light of the provisions of Article XXIV. Some members observed that with the entry into force of the Association Agreement, the EAC had imposed on the products listed in Annex 3 to L/3369, what were described as import duties on goods from countries other than the Member States of the EEC when no such duties had existed theretofore. In the view of these members this was a violation of Article XXIV:5(b).

8. The representative of the EEC took note that some members had found import duties to exist under the arrangement where none had been in force prior thereto, but stated that the duties in question were small, and that the list of items to which they applied covered only a small percentage of the trade between the Association members. In this context the spokesman for the EAC Partner States said that the fact that no import duties were applicable to goods from the EEC was consistent with Article 3 of Protocol No. 3 to the Association Agreement, which provided for the elimination of duties on these products. Moreover, in his view an inconsistency with Article XXIV:5(b) would have arisen only if the new régime had been more restrictive than before, but this was not the case since the import duties and fiscal entry charges taken together were in nearly all cases equal to the total amount of the fiscal entry charges imposed prior to the entry into force of the Association Agreement. A representative of one of the EAC Partner States pointed out in this connexion that although the charge in question was called a customs duty, its introduction had resulted from the East African States' need for revenue to meet their development needs. The representative of the EEC stated that paragraph 4 of Article XXIV should be interpreted as an introduction to paragraphs 5 to 8 of the Article. In his view the latter paragraphs must be read in the light of the recognition in paragraph 4 of the desirability of increasing freedom of trade by means of closer integration between the economies of the countries parties to the types of agreement covered by Article XXIV.
9. One member stated that the key issue was whether a free-trade area had resulted from the Association Agreement. If one accepted the argument of the parties to the Agreement, that the duties and fiscal entry charges were not higher or more restrictive than before this would mean that there was no distinction between fiscal entry charges and customs duties. Since the fiscal entry charges were applied by the EAC with respect to imports from the EEC, this arrangement would be in conflict with Article XXIV:8(b). In fact there was doubt as to whether there was any difference between the fiscal entry charge and a customs duty as applied in the EAC. He quoted the example of imported chocolate products on which, according to information available to his delegation, there was a customs duty of 8 per cent, a fiscal entry charge of 42 per cent and an internal sales tax of 20 per cent. Domestically produced chocolate paid only the last mentioned tax. The exemption from the fiscal entry charge was not in conformity with Article III:2 of the General Agreement.

10. A representative of one of the EAC Partner States pointed out that in such cases the intention was to give fiscal incentives to new industries in the region. It had to be remembered that the fiscal system in the EAC was still in its early stages, and that efforts were being made to develop it. There was, moreover, only a small number of instances of the type referred to, the fiscal entry charges being generally applied to goods not produced in East Africa.

11. Several members of the Working Party expressed their understanding of the development needs of the East African countries and of the underlying factors that had prompted them to follow certain fiscal policies. They expressed their concern, however, at the resulting discrimination in the treatment of imports from the EEC and third countries into the East African market. They
could not agree that a free-trade area as described in Article XXIV had been established because what was provided for was not an elimination of tariffs and other restrictions on trade between the EAC and the EEC but only a margin of preference over third country suppliers. Furthermore, in view of the widely divergent levels of economic development in the EEC and East Africa it was in their view doubtful whether a free-trade area could be established within a foreseeable period. One of these members held the view that free imports into the EAC from the EEC would expose the nascent industry in the former to very strong competition which it was in no position to meet, and that a free-trade arrangement was for this reason not even desirable.

12. The representative of the EEC felt that it was for the East African States themselves to determine what was in their own best interest. Moreover the requirement under Article XXIV was the elimination of obstacles to substantially all the trade, but not necessarily the total trade. The representative of one of the EAC Partner States said that the conclusion of the Agreement with the EEC had been dictated by the basic consideration that the East African countries needed improved access to markets of developed countries so as to compete more effectively with other suppliers, and no alternative solutions had been proposed.

13. The members of the Working Party expressed sympathy with the development needs of the East African countries. Some members considered, however, that the task of the Working Party was limited to an examination of the Association Agreement in the light of the relevant provisions of GATT. In their view the development needs of the East African countries could not be made a ground for trade discrimination against third countries. Members representing the parties
to the Agreement were of the opinion that it constituted a free-trade area within the meaning of Article XXIV. Several other delegations, on the other hand, considered that the arrangements did not meet the requirements of Article XXIV. One member considered that the same criteria did not apply to free-trade areas between developing and developed countries. Some other members could not agree that provisions of the General Agreement could be interpreted differently for different contracting parties.