NOTE ON MEETING OF 29-30 JUNE 1972

1. At the meeting of the Working Party on 15-16 June, it was decided at the request of several delegations to continue at a meeting on 29 June the discussion on the type of documentation which the enlarged Communities would make available in respect of the accessions to the Treaty of Rome. Following that meeting, a note was circulated (Spec(72)51) outlining the main points discussed at that meeting both as regards documentation and the time-table for the question-and-answer procedure.

2. At the outset of the meeting on 29 June, the spokesman for the enlarged Communities made a declaration stating that the ten countries now, after due reflection, were able to present a revised and improved offer of documentation. He submitted a new and more comprehensive list of items of documentation which the enlarged Communities were prepared to supply in response to the documentation requested by a number of delegations at earlier meetings. In addition, he expressed the hope that also other members of the Working Party had reflected upon the problems connected with the documentation so that the Working Party could reach a mutually satisfactory solution in this respect. In their reflections the enlarged Communities had sought to find a balance between, on the one hand, the interest of other countries in having ample documentation and, on the other hand, the need to avoid undue delay in the proceedings of the Working Party and to remain within the context of Article XXIV. The new list replaced the original offer made at an earlier meeting (see Annex II to document Spec(72)51). In introducing the new list he said that on item 2, the enlarged Communities were willing to furnish information on customs duties included in Part II of the schedule of concessions of the United Kingdom, where these constitute bindings within the meaning of Article II of the General Agreement. On item 8, they were willing to give a brief analysis of the regulations in force and in the field of prices as follows:

- support prices, i.e. intervention price and purchase price
- beginning-of-season threshold prices
- guide prices
- gate prices
- minimum import prices, i.e. reference prices

1 The new list is contained in Annex I to this note.
and in the field of direct production subsidies:

- production aids expressed in accounting units per quantity or per hectare, and likewise premiums to users in accounting units per quantity.

As regards item 9, the Communities were prepared to give statistics for all imports, indicating countries of origin, and figures for 1971 as soon as they were available, which - as far as the present Community in particular was concerned - would be within a short period of time. These figures would relate to all imports and not only non-preferential imports.

3. The spokesman for the enlarged Communities stressed that the documentation which the enlarged Communities agreed to furnish to GATT in no way prejudged the methods of appreciation, the methods of negotiation which will be selected, or the position of the enlarged Communities in this respect. Moreover, any use of the elements furnished in order to try to determine an ad valorem equivalent of the levies charged on imported products by assimilation with the system in force in respect of industrial products would, in the view of the enlarged Communities, constitute an entirely erroneous method of appreciation of the support system established under the common agricultural policy, and would therefore be unacceptable to the Communities.

4. The Working Party agreed that questions asked to the enlarged Communities and their replies, as well as viewpoints expressed, should be duly recorded in this Note in view of the paramount importance of the material for the further examination of the accessions to the European Communities, by governments and in the Working Party.

5. Before addressing themselves to the individual items in the new list of documentation to be supplied by the enlarged Communities, delegations made some comments of a general nature.

6. Representatives of developing countries emphasized that the provisions of Part IV of the General Agreement should get a more prominent place in the examination by the Working Party since adherence to these provisions by the enlarged Communities might solve many of their problems.

7. Serious concern was expressed, both by developed and developing countries, about the inadequacy of the documentation offered by the enlarged Communities and the question this raised regarding the intentions of the enlarged Communities in respect of the Treaty and their obligations to contracting parties under Article XXIV. On most-favoured-nation industrial items the information seemed reasonably satisfactory. Concern was, however, expressed regarding the lack of documentation on preferential tariff duties in acceding countries in relation to paragraph 5(a), without which no assessment could be made under that paragraph. Similarly critical problems arose with regard to the examination of the incidence of variable levies. It was considered essential that data be provided which would enable the Working Party, by one or another method, to assess the restrictiveness of variable levies.
8. It was noted that the offer of the enlarged Communities did not refer to "other regulations of commerce" - which should include variable levies if these were not covered under the item on tariffs - but was selective and indeed covered only measures which were not applied under the Community régime.

9. There was general agreement with the view expressed by the enlarged Communities that documentation regarding the data to be provided should not prejudice the subsequent deliberations of the Working Party. However, it was pointed out that the enlarged Communities, by declining to furnish data on preferential rates and variable levies, were in fact prejudicing matters of fundamental importance. The hope was expressed that the enlarged Communities should agree to provide additional data, as it was desirable that the Working Party should be able to carry out its work using an accurate data base. The Working Party would not be able to complete its task on the basis of information which the enlarged Communities at this meeting had offered to make available. It was, however, recognized by the Working Party that the new list showed improvements for some items, in particular in the field of prices (item 8).

10. The spokesman for the enlarged Communities referred to his statements on earlier occasions. He reiterated that the documentation which the enlarged Communities had declared themselves prepared to offer was very voluminous and, in regard to its scope and nature, was without precedent in the history of GATT, whether it be in relation to the implementation of Article XXIV or to the implementation of other Articles of the General Agreement, such as the provisions concerning accession to the General Agreement. Other delegations stated that the enlargement was without precedent and, in any case, the Working Party should not be bound by past cases where the experience had been unsatisfactory.

11. The Working Party then undertook an examination of the offer for documentation made by the enlarged Communities in the order in which the items appear in the list (see Annex I).

Item 1. The five customs tariffs (most-favoured-nation rates)....

12. The following specific questions were asked:

1. Will the rates shown be "legal rates", "applied" rates, or both?

2. Will the presentation be so organized that all tariff and other data pertinent to any line item will appear on a single piece of paper?

3. What information on the treatment of variable levy items will be given for comparison with the tariff rates on these items?

In reply to the first question, the spokesman for the enlarged Communities confirmed that it would be the legal rates which would be given, since data for these were easy to establish from the technical aspect both as regards rates and statistics and could be obtained rapidly; moreover, these were of most interest to third countries in connexion with the examination under Article XXIV.
In reply to the second question, he stated that information would be given, as and when it was prepared, as soon as it became available. He stated that if the Working Party was to work on the basis of complete sheets or tables, considerable delay would be involved, because the preparation of each sheet or table could not be finalised before the last element of information to be included therein became available. As regards the third question relating to variable levies, he said that the enlarged Communities were offering a brief description of the regulations in force, the price levels and the production aids mentioned in item 8. The documentation would not include any quantified data on variable levies, as he had clearly explained in an earlier discussion. Because of the very nature of the instrument that the variable levy constituted, its characteristic being that its level was adjusted to changes in world prices, any isolated figures or evaluation of incidence in ad valorem terms would not be meaningful.

13. Commenting on the reply to the second question, some delegations stated that it was important to have the data for each tariff line in one place, even if this meant some delay in the presentation of the data. Unassembled data would be difficult to use.

14. Some delegations stressed the importance, for the examination under Article XXIV:5(a), of data showing preferential rates. The spokesman for the enlarged Communities stated that preferential rates were only tolerated by the General Agreement as could be seen clearly from paragraph 2 of Article I. During the past twenty-five years, unbound preferences had in fact been withdrawn without the question being raised in GATT. The formation of customs unions did not change the legal situation with regard to preferences. He could not understand the legal arguments put forward in favour of taking into consideration such preferences, which were not consistent with the spirit of the General Agreement. That aspect had not escaped the attention of the authors of the General Agreement, for in an earlier version of paragraph 5(c), mention had been made of such preferences. The fact that they were not mentioned, that they were simply tolerated and that the provision referred to "general incidence" were grounds for concluding that the examination under Article XXIV:5(a) should cover only most-favoured-nation rates.

15. Some delegations of both developed and developing countries expressed surprise at the position taken by the enlarged Communities and the argument they had used in favour of it. What was relevant under Article XXIV:5(a) were the duties "imposed", and there was no difference in this respect between preferential and most-favoured-nation rates. They took it that the enlarged Communities did not deny that preferences, as well as most-favoured-nation-rates, were in fact imposed in the United Kingdom and in Ireland. While unbound preferences had been withdrawn without any attention in GATT, the same was true of unbound most-favoured-nation rates. As regards preferences and the formation of customs unions, paragraph 9 of Article XXIV provided that preferences could be maintained or renegotiated, which was additional confirmation that they should not simply be ignored. These delegations concluded that preferential rates should, as far as
Article XXIV:5(a) is concerned, be dealt with in the same way as most-favoured-nation rates. Some delegations expressed the view that all items listed in Part II of the Schedules, except where special reservations had been made in the Schedule, were bound.

16. The spokesman for the enlarged Communities said that paragraph 9 of Article XXIV could not be interpreted in any way as substantiating any claim for compensation for the loss of preferences caused by the accession of the United Kingdom to the Communities. That paragraph permitted maintenance of preferences after formation of a customs union, and permitted, but did not oblige, the granting of compensation for withdrawals as a result of the formation of such a union. Bound preferences only related to a few items in this case.

17. Representatives of developing countries pointed out that the EEC, as well as the applicant member States, had now adopted the Generalized System of Preferences for imports from developing countries. As far as the developing countries were concerned, therefore, the term "applied" in paragraph 5(a) would be the preferential rates under the Schemes of Preferences, and they would be able to assess the implications which the enlargement would have on their trade only on the basis of information as regards the modifications that would be made in the preferential schemes as a result of the enlargement. They therefore attached considerable importance, not only to the data on preferential rates under the Commonwealth arrangements, but also the rates of tariffs and other information regarding the Schemes of Preferences.

Item 2. The bindings in each of the five tariffs

18. A question was raised as to the significance of the items appearing in Part II of the Schedule of two acceding countries. The spokesman for the enlarged Communities stated that the mere inclusion of items in Part II did not necessarily mean that they were bound. Other delegations expressed the view that items in the United Kingdom schedule were, in fact, bound. The secretariat was requested to give a legal opinion on this matter. The representative of the secretariat stated that paragraph 1(c) in Article II of the General Agreement was clear in regard to the meaning of a "binding" in Part II of a Schedule. Any omissions in the proposed notification of Part II bindings by the enlarged Communities could be brought to the latter's attention by the beneficiaries. The spokesman for the enlarged Communities said that it would always be possible to revert to that question at a later stage.

Item 3: Where there were initial negotiating rights, indication of the countries benefiting directly from the bindings

19. The spokesman of the enlarged Communities confirmed that the term "countries benefiting directly from the bindings" should be taken to mean those having initial negotiating rights.
20. The question was asked whether these concordances would appear in documents separate from those showing the five customs tariffs, i.e., those of item 1. If they were separate documents what was the difference between them.

The spokesman for the enlarged Communities confirmed that these documents were separate and that the concordance offered the key between the present tariffs of the four acceding countries and the common external tariff. Some members questioned whether this was the best method of proceeding. The spokesman of the enlarged Communities stressed that the proposed method (see sample contained in Annex II) was the same as that employed in the Kennedy Round. They could not find any better method, but were open to ideas on the subject.

21. The following questions were asked relating to these three items:

1. Does the information to be submitted under items 5, 6 and 7 cover all regulations of commerce, other than duties, that will be altered as a result of accession?

2. Does the phrase "where accession would lead to modification" include all cases where accession would lead to the imposition or removal of measures described under items 5, 6 and 7?

3. From the fact that the Community would submit no information under items 5, 6 and 7, are we to conclude that the Community does not apply and does not require member States to apply production subsidies, State trading or quantitative restrictions and measures of similar effect?

4. Can other information regarding anti-dumping duties, definition of rules of origin and sanitary regulations be supplied?

5. What are the "measures of similar effects" referred to in item 5? Do they include variable levies and voluntary export restraints?

22. The spokesman for the enlarged Communities said that the enlarged Communities had simply followed the wording of the request for documentation presented by a number of delegations (see Spec(72)51, Annex I). As regards the second question, he replied that modification referred to both imposition and removal of measures. Modifications only related to the acceding countries, since there would be no modifications in the practices of the Communities. Moreover, the Communities as such at present did not apply any quantitative restrictions nor did they operate State trading.
As regards additional information (see question 4) and a request for information concerning the generalized schemes of preferences applied by the Communities and the acceding countries, he said that the Communities would reflect upon that new request.

It was pointed out that in the consolidated request (see Spec(72)51 Annex II), Part II related to other regulations of commerce generally, giving only examples of such regulations. If variable levies were not considered to be tariffs, they would naturally fall under the heading of other regulations of commerce. The present difficulty would be removed if the Communities would agree to group items 5, 6 and 7 under a heading "other regulations of commerce including ....." and agree to supply, as appropriate, information for the five customs territories.

In reply to the question whether voluntary export restraints were included in "measures of similar effects" the spokesman for the enlarged Communities asked whether the country posing the question considered export restraints to be regulations of commerce. The delegation posing the question considered that this question from the enlarged Communities was irrelevant to the proceedings of the Working Party. One delegation emphasized that export restraints constituted an integral part of regulations of commerce by virtue of the fact that they had been notified in the GATT exercise concerning non-tariff barriers. As regards quantified data concerning variable levies, the spokesman for the enlarged Communities reiterated that that information was not included in the nine-point programme, which provided for a description of the regulations in force.

Item 8. Brief analysis of the regulations in force and in the field of prices ...

23. The following questions were asked with regard to this item:

1. Will the information under item 8 be supplied for all five customs territories? If not, how can comparisons be made and the effects of accession be examined?

2. Will price data themselves be given?

3. Will these data be annual averages?

4. Will not the acceding countries apply Community export subsidies? If so, why are they not submitted?

5. To permit comparisons of production aids, can they not be expressed uniformly in accounting units per unit of production?

6. Why are no quantitative data (on production consumption imports or exports) provided? How can the Working Party examine the effects of accession, using price data alone?
The spokesman for the enlarged Communities said that the reply to the first two questions was in the affirmative. It was difficult to reply to the third question, since they were in the course of reflection on this problem. As regards (4) and (6), they related to the linked questions of production, consumption and exports. It was difficult, and in many cases impossible, to give meaningful figures. In addition, provision of these data would involve the innovation of procedures under Article XXIV and even the General Agreement itself. Advantages and disadvantages of such a precedent should be carefully considered. Such information was not envisaged in the revised offer of the enlarged Communities. As to the fifth question, in certain cases, production aid was given according to acreage, and in others according to quantity produced. It was therefore difficult at this stage to say to what extent such data could be established on a harmonized basis.

The question was asked whether data for export subsidies could be given, to which the spokesman for the enlarged Communities replied that export subsidies were not production aids and therefore not included.

24. Several delegations urged the enlarged Communities to provide data on all tariff and non-tariff measures in the field of agriculture, arguing that if appropriate information was not given to enable the assessment of the restrictiveness of these measures no meaningful examination of the Treaty could be undertaken. They drew attention to the fact that paragraph 7(a) of Article XXIV required parties to a customs union to promptly make available such information as would enable the CONTRACTING PARTIES to make such reports and recommendations as they deem appropriate. In the discussion of item 8, several delegations stated that the enlarged Communities, by virtue of the last paragraph of its paper, had put limitations of such scope on the use of information that the Working Party could not carry out its mandate.

25. The following questions were asked in connexion with item 9:

(1) Will these data be supplied for each of the five customs territories?

(2) Where a CXT item is made up of various acceding country sub-items, will trade for each sub-item be shown by supplier?

(3) Will the Community please circulate to the Working Party a sample showing the format in which the information is to be submitted.

The spokesman for the enlarged Communities said that complete import statistics would be given for each of the five customs territories, and that statistics of total imports (all origins) would be indicated for each CXT tariff line, the import statistics of the four acceding countries being correlated with the CXT nomenclature. Those statistics would also cover imports under preferential items. As regards the sample, see annex II.
Several delegations considered that conclusions with regard to Article XXIV:5(a) could not be drawn if data on unbound preferences were not supplied.

26. In commenting on the last two paragraphs of the list submitted by the enlarged Communities, the question was asked how EC measures applied in the field of trade in agriculture could be evaluated on the basis of the information and the reservations attached to the Communities' list. The spokesman of the enlarged Communities stated that one method had been excluded, namely the calculation of ad valorem equivalents of the variable levies. Moreover, the question of establishing a method for the examination of the Treaty was a matter for the Working Party as a whole to decide upon. It was pointed out that the Communities had not only excluded one method (the calculation of ad valorem equivalents of variable levies), but had also not responded favourably to requests for available quantitative information on production and exports, thus effectively foreclosing other methods of assessing restrictions.

27. Several delegations commenting on the document as a whole felt that the information the members of the enlarged Communities had agreed to provide would not be sufficient for the required examination of the instruments of accession. They referred to the possibilities for third countries to give data with regard to the variable levies and preferential trade if the enlarged Communities could not provide sufficient information on these subjects.

In making concluding remarks which reflected also to a certain extent views expressed by others, one delegation pointed out that the discussion had been useful, mainly since it clarified the differences of position as regards the documentation offered by the enlarged Communities and the documentation requested by other members. The discussion had shown that serious gaps still existed between these positions. Explanations had been given in some areas as to the reasons underlying the differences in approach between the enlarged Communities and the requesting countries. No progress had been made as regards documentation concerning trade in the field of agriculture. On the contrary, the offer appeared to block solutions which had seemed possible at an earlier stage. Thus it had to be concluded that in several important areas the Working Party could not complete its examination of the Treaty on the basis of the present offer of documentation. This was to be regretted, since it was important that the CONTRACTING PARTIES, particularly at the present time, should be able to deal with fundamental principles of the General Agreement, to interpret them correctly and to apply them forcefully. It was very disappointing that the enlarged Communities did not appear to be prepared to co-operate to achieve these goals.

28. The spokesman for the enlarged Communities said that he was disappointed at the reaction to the considerable efforts which the Communities had made to meet the wishes of their partners. Whereas the Communities, after re-examining their position, had improved their offer and were prepared to furnish very abundant documentation, the position of other members of the Working Party had not changed.
except that some of them had presented requests for additional information. He reiterated that the documentation proposed went far beyond what had customarily been furnished in connexion with the examination of regional agreements or in pursuance of other provisions of the General Agreement, and that some members of the Working Party seemed to want to channel the examination of the Treaty of Accession in directions that had never before been followed in GATT.

29. Some delegations felt that more time was needed for the further consideration of the new list submitted by the enlarged Communities against the background of the explanations given at this meeting. Consequently, a new meeting was fixed for 20–21 July. The hope was expressed by the Working Party that a note on the meeting would be circulated by 7 July, after having received the necessary clearance from delegations.

30. The Chairman appealed to delegations which had not yet submitted their questions for the question-and-answer procedures, to do so immediately in order to meet the target date of 30 June. Questions not submitted in time would have to be consolidated and transmitted to the enlarged Communities at a later stage.
Annex I

INFORMATION TO BE FURNISHED TO GATT

1. The five customs tariffs (most-favoured-nation rates). For specific and compound rates, ad valorem equivalents.

2. The bindings in each of the five tariffs, including the customs duties included in Part II of the schedule of concessions of the United Kingdom where these constitute bindings within the meaning of Article II of the General Agreement.

3. Where there are initial negotiating rights, indication of the countries benefiting directly from the bindings.

4. Concordances between the tariff lines in the tariff of each of the four acceding countries and in the Common External Tariff.

5. Quantitative restrictions, including discriminatory quantitative restrictions and measures of similar effects applied by the four acceding countries, in cases where the accession would lead to modifications.

6. State trading applied by the four acceding countries, in cases where the accession would lead to modifications.

7. Production subsidies applied by the four acceding countries, in cases where the accession would lead to modifications.

8. Brief analysis of the regulations in force and in the field of prices:
   - support prices (intervention price and purchase price)
   - beginning-of-season threshold prices
   - guide prices
   - gate prices
   - minimum import prices (reference prices)

   and in the field of direct production subsidies:
   - production aids expressed in accounting units per quantity or per hectare, and likewise premiums to users (in accounting units per quantity).

9. All imports in 1970 and, as soon as available, in 1971: value at tariff line level, global data indicating countries of origin.
This documentation which the Community agrees to furnish to GATT in no way prejudges either the methods of appreciation, the methods of negotiation which will be selected, or the position of the Community in this respect.

Any use of the elements furnished in order to try to determine an ad valorem equivalent of the levies charged on imported products by assimilation with the system in force in respect of industrial products would constitute an entirely erroneous method of appreciation of the support system established under the common agricultural policy, and would therefore be unacceptable to the Community.
### Annex II
### WORKING FORMULA

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