NOTE BY THE CHAIRMAN ON MEETING OF 6-7 FEBRUARY 1973

1. The ninth meeting of the Working Party on Accessions to the European Communities was held on 6-7 February 1973. It was recalled that the Working Party, at its previous meeting on 7-8 December 1972¹, had agreed to take up three matters at its next meeting:

(i) a continuation of the discussion on the methodology for the examination of the Accession Treaty under Article XXIV:5(a);

(ii) a continuation of the examination of the questions and replies contained in document L/3754, which had been begun at the meeting of the Working Party on 30-31 October 1972²;

(iii) any questions which might be brought up in connexion with the negotiations under Article XXIV:6.

2. The following summarizes the discussion under each of these headings.

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

3. It was recalled that at its previous meeting the Working Party had held a preliminary exchange of views on the basis of the proposal of the Communities contained in Spec(72)127 as well as a refined version of an alternative proposal originally put forward by several members in October³ (paragraph 12 of Spec(73)2). It had not been possible to reach a consensus at that meeting on the subject.

4. The member who had submitted the proposal in paragraph 12 of Spec(73)2 said that his delegation maintained this proposal, which it considered to be a logical one. He reiterated the necessity for a statistical compilation involving an aggregation of information on tariffs and non-tariff measures in the Communities. This

¹The Note by the Chairman on the Meeting of 7-8 December 1972 is contained in document Spec(73)2.

²See document Spec(72)126.

³Spec(72)118, paragraph 8
approach need not, however, be the sole methodology. He appealed to other members of the Working Party not to block the carrying out of any appraisal at all and confirmed that his delegation was prepared to have the appraisal proceed on the basis of both proposals.

5. Some members, whose views were contained in paragraphs 7 and 10 of Spec(73)2, indicated that they also could accept the proposal in paragraph 12 of that document. Another representative reiterated his delegation's suggestion, as set out in paragraph 11 of Spec(73)2, that the various methods suggested in the Working Party be combined.

6. The spokesman for the enlarged Communities made a number of comments regarding the documentation on agricultural products which had been circulated by Australia and the United States at the end of 1972. He pointed out that the documentation concerned only a few products and did not therefore come within the framework of the exercise provided for under Article XXIV:5(a). Furthermore, in general, the figures showed, in effect, that the trends in self-sufficiency ratios as well as in imports of the products concerned had, from the viewpoint of supplying countries, been more favourable in the Community of Six than in the three acceding States. The bulk of the statistics contained in the tables in fact pointed to conclusions other than those which the delegations supplying the data wished to draw.

7. One of the members concerned said that the documentation submitted by his delegation was intended to suggest the different kinds of data in addition to variable levies per se which deserved analysis in order to assess the restrictiveness of duties and other regulations of commerce affecting agricultural trade. The fact that some of this data did not point in any particular direction only served to underline the balanced nature of the proposed methodology. His delegation considered that, as a first approach to the problem of methodology, the variable levy should be treated as a tariff and afterwards any necessary adjustments could be made in order to reach a reasonable approximation of its incidence on trade. He reiterated the view that the variability of the levy was not in itself a factor which rendered it incapable of assessment.

8. Another member, commenting on the Communities' proposal, said that the General Agreement provided rules with regard to trade barriers and measures affecting imports, but contained no obligations with respect to the evolution of imports. He considered that any ad valorem equivalence calculated would understate the restrictiveness of the levy, since the variability of the levy represented in itself a major obstacle and since the levy could act as an absolute barrier to trade when the Community price was below the threshold price. His delegation was, however, prepared to accept an ad valorem equivalent in order to arrive at some figure for general incidence, although bearing in mind that it understated the degree of restrictiveness of the levy. He also said that a comparison of the levels of support in the acceding countries with those of the Community of Six might be a useful way of tackling the problem.
9. Another member, agreeing that ad valorem equivalents tended to understate the restrictiveness of the variable levy, said that other measures such as deficiency payments posed the main problem for carrying out a quantitative assessment and that the variable levy lent itself admirably to quantification. He suggested utilizing various types of analyses to assist in making the assessment.

10. Other delegations considered that the possibility should be left open for discussing specific products in the examination under Article XXIV:5(a).

11. The spokesman for the enlarged Communities recalled a statement made at the previous meeting, to the effect that the CONTRACTING PARTIES had in the past considered the restrictiveness of quantitative restrictions (paragraph 10 of Spec(73)2). He said that no agreement had ever been reached in GATT on a method for calculating the restrictiveness of quantitative restrictions. He said that the Communities proposal was the only one which permitted a comprehensive view of the trends. With respect to the quantification of levies, even if it was feasible from a technical aspect it would yield only unmeaningful results. Because of the nature and specific functions of levies, they were not comparable with customs duties and the difference between world prices, which were unstable, and internal prices, which the levies were designed to stabilize, could not be deemed to constitute the protection afforded to the internal production of the EEC.

12. It was suggested that the time had come to move from the stage of general debate to that of preparing a detailed assessment as required by Article XXIV:5(a). It appeared necessary to prepare detailed assessments on two or three different bases in order to reflect the various policy viewpoints. The spokesman for the enlarged Communities submitted a paper prepared by the Communities, to serve as a basis for an assessment, which contains statistical data on import trends for the EEC (Six members) and each of the acceding countries. This paper has been circulated in document Spec(73)5.

13. Some representatives of developing countries said that they intended to make their own proposals as to the methodology to be adopted, and to this end they hoped to receive the assistance of the secretariat. The spokesman for the enlarged Communities recalled that while it had been agreed that the secretariat be authorized to assist developing countries specifically, the Article XXIV:5(a) assessment was an overall exercise, not exclusively related to countries taken individually. Assistance by the secretariat to developing countries should be afforded outside any legal context, should specifically concern the exports of those countries, and should be effected on the basis of the elements relevant to that exercise.

14. One representative considered that rather than delegations preparing a variety of assessments under Article XXIV:5(a), an attempt should be made to reach co-ordinated views on the question before the Working Party as to how the Accession Agreement met the requirements of Article XXIV:5(a). He did not understand how an overall assessment under this paragraph could be reached through a series of partial assessments. He said that his delegation would study the EEC data (Spec(73)5). Giving a preliminary reaction, he noted that the figures
supplied covered trade in some important agricultural items not subject to variable levies. In his view, aggregate trade figures alone provided no information about the incidence of protection. He did not accept the view that significant expansion of trade implied a reduction in the level of protection.

15. Another member, supporting the view that the methodology proposed by the enlarged Communities did not provide a valid basis for the assessment, noted that the Community statistics only involved imports and ignored exports which were often made by virtue of substantial subsidies.

16. The spokesman for the enlarged Communities said that there had not been a proliferation of proposals as to methodology; in fact, only two basically different proposals had been made. In his view, the method based on the growth rate of exports was meaningful; it was the only one allowing a comprehensive view of trends, and for the needs of the Article XXIV:5(a) exercise it presented fewer gaps and imperfections than did other methods. If it were true that the Communities' policy was a restrictive one, as claimed by some countries, that kind of evolution in imports would not have occurred, despite the play of other factors. The spokesman for the Communities said, for his part, that the Communities could agree that other members might prepare and present, under their own responsibility, analyses on the approach that they favoured.

Treatment of preferential duties

17. It was recalled that at the previous meeting the secretariat had been instructed to prepare a factual study on the question whether, according to GATT records, all the items appearing in Part II of the United Kingdom Schedule were bound or not. A note by the secretariat on that question had been circulated in document Spec(73)1.

18. Some representatives of developing countries noted that at previous meetings of the Working Party they had expressed the view that the work of the Working Party should not be confined to Article XXIV:5(a) and 6, but that paragraph 9 of that Article should also be taken into account. The position of the Communities had been that their commitment related solely to items bound in Part II of the Schedules concerned. These representatives considered that, in the absence of any notes or qualifications in the Schedule of the United Kingdom, all items must be considered to be bound. As mentioned in the secretariat note, the United Kingdom delegation had addressed a letter to various Commonwealth countries after the Kennedy Round, purporting to state that the items in Part II of its Schedule should not be construed as being bound in the sense of Article II. They could not agree that a unilateral declaration on the part of the United Kingdom could unbind the bindings in Part II of the Schedule. They reiterated the view that the items in Part II of the United Kingdom Schedule were bound, a conclusion which they considered was supported by the secretariat study.

19. The spokesman for the enlarged Communities considered that the question had been settled by the secretariat paper. The letter in question had been sent out before, or at the latest simultaneously with, the distribution of the Schedules.
If countries had not agreed with the contents of the letter, he believed that, in accordance with normal practice, they would have objected in one way or another at the time. With respect to Article XXIV:9, its provisions merely authorized negotiations on the preferences tolerated by Article I, but did not make them obligatory.

20. Representatives of the developing countries concerned stated that they could not accept the interpretation of the Communities on this matter. The representative of one of these countries indicated that his country had not received the letter sent by the United Kingdom as it had not participated in the Kennedy Round, but that this fact should not put it in a weaker or stronger position than those Commonwealth countries which had taken part in the Kennedy Round and hence had received the letter in question.

21. One delegation, while not taking a stand on the legal position of the preferences, expressed the view that it seemed strange that the status of GATT Schedules could be affected by privileged communications among some contracting parties only, since all contracting parties relied on GATT Schedules to ascertain not only their own rights but the right of their competitors as well.

22. The representative of the Communities stated that the Commonwealth countries which had participated in the Kennedy Round, and could therefore be considered to be directly concerned by the entries in Part II of the Kennedy Round United Kingdom Schedule, had been informed. Countries which were not within the Commonwealth system could not derive any entitlement from those preferences and were therefore not concerned.

II. Continued examination of questions and replies

23. As had been anticipated at the meeting of 30-31 October 1972, the Working Party reverted to a discussion of the questions and replies circulated in document L/3754 and addenda. The following reflects the discussion.

24. With respect to the general questions (1) and (2), one representative raised again the question whether the instruments presented to the GATT established a customs union or whether they constituted an interim agreement for the establishment of a customs union. He recalled the statement of the Communities' spokesman that "the Treaty contained firm and final provisions regarding the staged creation of a full customs union". In the view of this representative, the fact that the movement provided for was staged over a period of time implied that the Treaty constituted an interim agreement in the sense of Article XXIV. Moreover, in his view, the Treaty was incomplete in that it did not establish definitively all the duties and other regulations of commerce that would apply in 1977 and a number of decisions had still to be made in several important fields. For these reasons it did not appear to his delegation that the Treaty could be considered as an Agreement "establishing a customs union" in the sense of Article XXIV.
25. This representative recalled also the Communities' view expressed in paragraph 6 of Spec(72)126 that experience had demonstrated the validity of the underlying economic theory that customs unions were considered to expand trade generally. In his opinion, few instances had arisen of the actual establishment of customs unions and analysis of any such cases was so imperfect that it would be unwarranted to draw a conclusion such as that of the Communities.

26. As regards question 7 and paragraphs 8 and 9 of Spec(72)126 which relate to a possible re-examination in due course, he stated that it was not evident from the Treaty that substantially the same duties and other regulations of commerce would be applied by the parties with respect to third countries and asked whether Article 4 of the Treaty imposed the requirement of uniform member State treatment for products originating in third countries.

27. The spokesman for the enlarged Communities reiterated that the agreement was a definitive one, not an "interim agreement" in terms of Article XXIV. He pointed out that the Treaty did not even contain a denunciation clause. The duties and other regulations of commerce that would be applicable in 1977 were known to the same extent as those currently applied by the customs union of the Community of Six. Referring to the question concerning Article 4 of the Treaty, he said that Article XXIV:8 did not require absolute uniformity in respect of the regulations of commerce of the parties to a customs union.

28. One representative expressed the view that since the agreement appeared to be neither a customs union nor an interim agreement leading to a customs union, it might best be dealt with under paragraph (10) of Article XXIV, according to which the CONTRACTING PARTIES may, by a two-thirds majority, approve proposals which do not fully comply with the requirements of paragraphs 5 to 9. The spokesman for the enlarged Communities stated that paragraph (10) was not relevant, since it referred to agreements which were not in conformity with paragraphs 5 to 9 of Article XXIV; the agreement under examination was in conformity with these paragraphs.

29. One member raised a question in connexion with the reply to question 31 relating to the Joint Declaration of Intent on the development of trade relations with Ceylon, India, Malaysia, Pakistan and Singapore. He asked whether the appropriate solutions for developing independent Commonwealth countries in Asia, referred to in the Communities' reply, would be applicable also to his country, which was part of that geographical area. He also asked whether such appropriate solutions would be applicable also to other countries in that area, not contracting parties to GATT. In reply, the spokesman for the enlarged Communities said that notwithstanding the fact that the Communities were not entering into any contractual commitment in that respect, the Joint Declaration could be deemed to be applicable to the country of the previous speaker.

30. In relation to the replies to questions 37-39, regarding quantitative restrictions one representative remarked that Annex I in L/3754/1dd.2 relating to restrictions in force in the member States showed a great disparity between the measures applied in the Community of Six and the acceding States. He said that
information was still lacking as to the direction which the policy of the enlarged Communities would follow on the question of quantitative restrictions vis-à-vis third countries. The spokesman for the enlarged Communities said that the Official Journal of the Communities had published the common liberalization list henceforth applicable to the enlarged Community; he added that practically all imports into the Communities were at present liberalized. The process of harmonizing the Community's import régime for the limited number of products not yet covered was proceeding. The provisions of Article XXIV:8 did not require absolute uniformity as between the regulations of commerce of the parties to a customs union.

31. The following supplementary replies were given by the spokesman for the enlarged Communities in relation to a number of questions.

32. Information in reply to question 47 relating to trade affected by the Common Organization of Markets could only be given piecemeal. As regards question 48, the statistics on agricultural imports requested in section (a) would soon be available. Question 48(b) requesting statistics on the collection of duties, levies and taxes was considered to be irrelevant and in any event it was not possible to assess the total value collected for levies and taxes.

33. As regards question 74, the spokesman for the enlarged Communities said that the reference period to be used in determining the market prices for rice in the new member States was 1 September 1971 to 30 August 1972. The market prices would be c.i.f. Rotterdam price plus the freight cost of 5 units of account for each of the three acceding countries.

34. As regards question 75, he said that Article 86, paragraph 3 of the Treaty of Accession stipulated that if paragraph 1 and paragraph 3 of that Article could not be applied or if their application resulted in compensatory amounts leading to abnormal price relationships, the compensatory amount was to be calculated on the basis of the compensatory amounts applicable for butter and skim milk powder. The Council had decided to apply that method (see regulation 233/73 of 31 January 1973, JO L28, page 37). The intervention price for butter which had been used for calculating the compensatory amounts were as follows:

- Denmark 168.53 units of account per 100 kgs.
- Ireland 155.11 units of account per 100 kgs.
- United Kingdom 76.06 units of account per 100 kgs.

35. The answer to question 76 regarding compensatory amounts for calves and bovine animals was to be found in the Official Journal No. 25 of 30 January 1973, (Articles 6 and 7 of the regulation).

36. The measures referred to in questions 78 and 91 relating respectively to aid for seed producers and proposed measures for cereals had not yet been fully drawn up. When finalized, they would be communicated to interested delegations.
37. The reply to question 106(c) regarding State trading had been supplied in the basic documentation of the Communities. Detailed information on measures relating to rules of origin (question 106(d)) had been published in the Official Journal of the Communities.

38. Referring to paragraphs 54 and 55 of Spec(72)126, the spokesman for the enlarged Communities confirmed that duties on certain products had been increased in Denmark at the beginning of 1972. The increases would be of a temporary or transitional character. The trade affected was only of minor significance, if seen against the total imports of the enlarged Communities.

39. One representative, while appreciating the co-operation given to the Working Party by the enlarged Communities in supplying the responses to the questions, was impressed by the fact that much relevant information could not now be supplied simply because a number of important decisions remained to be taken during the transitional period. It was not possible, therefore, to have precise information on a number of aspects, relevant to a complete examination of the customs union as it may be formed at the end of the transitional period in 1977. He believed that the Working Party report should record this fact and draw attention to the expectation of its members that the contracting parties be kept adequately informed of future developments, so that they could take these into account in conducting their trading relations in the light of their rights and obligations under the General Agreement.

40. In concluding the discussion on the Questions and Replies, the Chairman said that this matter could be pursued if and when the Working Party considered it necessary to revert to it. He noted also that, according to the replies of the Communities, a number of questions needed to be considered in the future, in the light of the internal evolution of the Communities.

III. Article XXIV:6 re-negotiations

41. It was recalled that during the twenty-eighth session of the CONTRACTING PARTIES it had been agreed to commence the Article XXIV:6 re-negotiations at the beginning of January 1973. Document L/3807 contained the views of the enlarged Communities with respect to the negotiations under Article XXIV:6, which would be conducted on a bilateral basis. The Working Party held an exchange of views on the procedural aspects of the negotiations.

42. One representative noted that the Communities considered that the concessions they were offering, i.e. the adoption by the acceding countries of the Communities' Schedules, were greater than any compensation which might result for third countries from the provisions of Article XXIV:6. His delegation could not accept this view, since the proposal of the Communities entailed the withdrawal and modification of many concessions of great value to his country. In these negotiations his government would address itself to ensuring the maintenance of benefits derived from past negotiations and compensation where they could not retain
unimpaired the benefits of past negotiations. He assumed in this connexion that the Communities' notification in L/3807 meant that only the Schedules of the three acceding countries were being withdrawn and not the Schedules of the Community of Six. He asked whether it was proposed to proceed along the same lines as previous Article XXIV:6 re-negotiations. He wondered, in particular, how it was proposed to proceed with the calculation of internal compensation. His delegation hoped that the negotiations with the Communities would be concluded successfully before the summer recess.

43. Another representative reserved his government's position with regard to the view of the Communities on the concessions they were offering, discussed above. He considered this to be pre-judgment of a matter which could only be dealt with in negotiations. His government could accept the initiation of the negotiations on the understanding that such action was without prejudice to other matters under review by the Working Party, in particular the assessment of general incidence under Article XXIV:5(a).

44. One member recalled that he had already pointed out in the framework of the Article XXIV:5(a) examination, how his country's trade would be affected by the enlargement of the Communities, and that he might wish to raise these questions in the Article XXIV:6 re-negotiations. He pointed out that the enlargement created an imbalance for his country, since the United Kingdom had a large number of bindings in his country's Schedule, while his country did not enjoy any bindings in the United Kingdom Schedule.

45. Some delegations raised the question whether the Working Party itself or a special Trade Negotiations Committee should be entrusted with the task of co-ordinating the negotiations. In this connexion, it was suggested that the rules followed at the time of the Rome Treaty (8th Supplement, pages 101-103) could be useful.

46. One representative raised a point with regard to Ireland's invocation of Article XXXV against his country. His understanding of GATT rules regarding parties with no GATT relations was that this status ceased to exist when the two countries entered into tariff negotiations. He asked whether it could be assumed that, as a result of the negotiations, Article XXXV would automatically be disinvoked by Ireland.

47. The spokesman for the enlarged Communities said that his delegation would be ready for bilateral meetings with interested delegations as from 12 March. The delegations concerned should make contact with his delegation in order to fix precise dates. All the meetings would be held in Geneva. He said that the objective should be to conclude the negotiations by July, at the latest. He did not consider it necessary to establish a special body to deal with the negotiations because any general questions could be examined in the Working Party on Accessions. The Communities had reflected on whether documentation on internal compensation along the lines of that prepared by the Communities for the previous Article XXIV:6 re-negotiations might be provided, but had concluded that such
documentation was not useful. He preferred to leave open the question of procedures until the bilateral negotiations were initiated. As regards Ireland's invocation of Article XXXV, he considered that this was not affected by the enlargement but that this was a matter which could be discussed in the context of Article XXIV:6 negotiations.

48. It was agreed that the actual detailed re-negotiations should begin on 12 March 1973 and that these negotiations should be finished before the end of July, if possible. As regards the question of setting up a negotiating committee to deal with the Article XXIV:6 re-negotiations, it was agreed that no action need yet be taken, and that any questions which arose might be taken up in the Working Party. If it proved necessary to have a negotiating committee, it could be arranged for a later stage.

49. It was also agreed that delegations which so wished could inform the European Communities of their interest in items to be re-negotiated with, if possible, a copy to the secretariat.

IV. Next meeting of the Working Party

50. The Working Party agreed that the date for the next meeting should be fixed by the Chairman in consultation with the Director-General and the delegations primarily concerned.