1. The working Party held its eighth meeting on 7-8 December 1972. As promised at the meeting on 30-31 October 1972 (spec(72)126), a communication setting forth the position of the European Communities with respect to the examination under Article 14 IV:(a) had been transmitted to the secretariat and distributed in document spec(72)127.

2. The representative of South Africa made a general statement regarding the impact on South Africa's trade of the enlargement of the Communities. The full text of the statement has been circulated in document spec(72)134.

3. The spokesman for the enlarged Communities commented on the views expressed at earlier meetings of the working Party by the representatives of Australia, the United States, Canada and Poland regarding the impact on their trade of the enlargement of the Communities (see documents spec(72)110, 112, 111 and 121 respectively). The full text of the statement by the spokesman for the enlarged Communities has been circulated in document spec(72)135. With regard to the statement by the representative of South Africa, the spokesman for the Communities said that the views expressed were, in his opinion, not relevant to the examination under Article 14 IV:(a). The statement dealt with sectoral and bilateral trade aspects, while the examination under Article 14 IV:(a) was related only to global aspects of the trade of the enlarged Communities.

4. The representatives of Canada and the United States, in reply to the comments by the spokesman of the Communities on their earlier statements, agreed that the examination under paragraph 5(c) should be on a global basis but they considered it appropriate and relevant that attention be drawn to the impact of the enlargement on the trade of individual countries.

5. The representative of Poland, in reply to the comments by the spokesman for the Communities, said that the interpretation of Article 14 IV was an important issue; the general statements made had contributed to clarify the standpoints of the countries concerned. He wished to emphasize that the estimates contained in the Polish statement had been confirmed by Poland's trading partners.
I. The Methodology Proposal of the Communities (Spec(72)127)

6. The spokesman of the enlarged Communities noted that problems of methodology appeared mainly in the agricultural field where border measures were closely linked with internal support measures and that it would therefore be inappropriate to try to assess the protective incidence of what appeared to be border measures. Consequently he expressed the view that the best way for proceeding to the examination provided for in Article XLI:5(a) in the agricultural sector would be to compare growth rates of imports in the Communities and in the three acceding countries over a past representative period. The Communities were prepared to supply figures in relation to the methodology proposed.

7. Several members of the Working Party considered that the method suggested by the Communities - development of trade - was not an adequate basis for the examination and could not be expected to lead to valid conclusions. They pointed out that trade was affected by many factors other than the incidence of duties and other regulations of commerce applied at the border. It was well-known that trade often increased more over high tariffs than over low tariffs. This obviously did not mean that duties and other regulations of commerce were lower or less restrictive in the former instance. Also, they noted that trade flows were subject to influences wholly or partly outside the control of an individual government, such as developments in the general economic environment. Certain measures applied by governments within their borders (e.g. buyers' premia, deficiency payments, and particular fiscal measures) might regulate commerce; others (e.g. measures of general monetary and fiscal policy) might heavily influence trade flows.

8. It was also pointed out that trade was likely to expand faster in a country in the course of relaxing severe protective measures than in a country traditionally following a liberal import policy. This did not mean that the incidence of the restrictiveness was less in the first country than in the second. An increase in imports at the same time as a large increase in consumption could not be regarded as a proof of a low incidence of restrictive measures.

9. The spokesman for the enlarged Communities stressed that it could not be denied that there was a link between protection and trade flows. In this sense the comparison between rates of import increase was meaningful, all the more as this comparison, as was the case in the Community proposal, covered a very large range of products coming from a large number of countries during a representative base period. The Community methodology was complete in the sense that it took into consideration all relevant measures without the need to quantify each of them, a
procedure which would be incomplete and extremely difficult. In fact, notwithstanding many attempts, such a quantification had never succeeded. Another very important aspect was that the Community methodology would avoid the need to assess internal policy measures which fell outside the scope of Article XXIV.

10. Other members of the Working Party said that they could not object to the submission of data on trade flows, but such information alone clearly would not be sufficient to enable the Working Party to conduct a satisfactory examination of the legal instruments providing for enlargement of the European Community in the light of the criteria set forth in paragraph 5(a) of Article XXIV. They could not understand why the Communities considered it impossible to measure the restrictiveness of variable levies. The CONTRACTING PARTIES had in the past considered the restrictiveness of quantitative restrictions, and the problems of measuring the restrictiveness of variable levies and of quantitative restrictions were in many respects similar. They did not suggest that only variable levies be taken into account; indeed, they recognized the need to take account of other measures, some of them internal (such as deficiency payments), for the assessment to be a fair one.

11. A member of the Working Party suggested that the proposals of the Communities and those of other members of the working Party could be combined. He also suggested as a practical measure which would solve the problems for specific products that special quotas be established which would not be subject to variable levies.

12. A member of the working Party expressed serious concern with the fact that the working Party after eight meetings had not been able to agree on a methodology. He proposed the following methodology which, in his opinion, represented a realistic approach:

To assess the general incidence of duties and other regulations of commerce, a meaningful calculation of the overall change in the height of tariffs and levies was needed. Protection should be specified in terms of ad valorem equivalents of tariffs and all other regulations of commerce for the three acceding countries and the EC, such as found in the last columns of pages 8 and 9 in the information furnished by the United States on grain levies for the EC and Denmark. Those data had been compiled from and based on official statistics of the members of the enlarged Communities. It was suggested that the most appropriate product breakdown would be on a BTN chapter-by-chapter basis, which was also very similar to the sectoral breakdown approach used in the GATT Working Party's examination of the Rome Treaty in 1960-1961. This approach was technically feasible and should give an objective result.
Averages should be weighted by trade. Of the averages contained in the GATT Tariff Study, the average weighted by a combination of country and world trade was most appropriate. Either 1970 or 1971 data could be used, although using both years would give the most accurate picture, if adequate 1971 data were available.

Two exercises should be carried out. One would include all duty rates and other regulations of commerce (most favoured nation and preferential) weighted by country and world imports, and the other would include only most-favoured-nation levels of protection weighted by country and world imports.

Such a methodology was a straightforward approach which appraised directly the height of restrictiveness of duties and other regulations of commerce applied at the frontier. It did not present an easy task, but one which could be achieved and which in the end would yield clear unbiased results.

13. The spokesman for the enlarged Communities maintained that a study of the development of import flows for the agricultural sector was the best way and the most realistic approach suggested in the Working Party for the examination under Article XXIV:5(a). In fact, in the view of the Communities, the approach proposed by other members of the Working Party would not represent a sound basis for the examination under Article XXIV:5(a). Other members made it clear, however, that they did not consider the Community proposal as a valid basis for future work.

II. Problems of developing countries

14. Representatives of some developing countries stated that an aspect of the Communities' paper (Spec(72)127) which caused them special concern was the interpretation of the term "on the whole" in paragraph 5(a) of Article XXIV. These representatives found it difficult to accept the Communities' proposal that the appraisal be made in a global manner with respect to products as a whole and the contracting parties as a whole. These delegations therefore concluded that the terms "on the whole" and "general incidence" appearing in paragraph 5(a) must be interpreted in relation to the trade of individual contracting parties.

15. Some of these representatives drew attention to the special position of developing countries with respect to the formation of a customs union. Since developing countries relied on a limited number of export products, increases in duty on such items would not be automatically compensated by reductions in other items. While indicating their intention of seeking compensation in the framework of the Article XXIV:6 renegotiations, they stated their view that compensation under that paragraph would not compensate them fully for the losses they would incur.
16. These delegations did not consider, moreover, that the existence of the Generalized Preference Scheme could meet the special problems of the developing countries, having regard to the fact that many products were either excluded from the scope of that scheme or were subject to restrictions. They also pointed out that the Generalized Preference Schemes operated by Denmark and the United Kingdom were more favourable to the developing countries than the present scheme of the European Communities, and asked how the adaptation of these schemes to that of the Communities would be effected. Some delegations representing countries benefiting from Commonwealth Preferences stressed also that the Generalized Preference Scheme could not be adduced as compensation for loss of preferences in the United Kingdom market.

17. These delegations therefore called on the European Communities to give special attention to ensuring that the trade interests of the developing countries were not damaged and to take into account Part IV of the General Agreement, especially Article XXXVII. They stated that even if the methodology proposed by the Communities were acceptable to the developed countries, it could not provide a basis for evaluation of the impact of the enlargement on the trade of developing countries.

18. The spokesman for the enlarged Communities stated that he did not wish to revert in detail to the question of the interpretation of Article XXXV, paragraph 5(a), which in his view had been already exhaustively discussed. He considered that although admittedly all the terms of paragraph 5(a) were not altogether unequivocal, several of the interpretations put forward by delegations contradicted some of its essential terms such as "on the whole" and "general incidence". If such interpretations were accepted, contracting parties would in effect be precluded from forming customs unions, since they implied that alignment of duties should be based in each case on the lowest rate in any of the participating countries. This was not the intention of the authors of the General Agreement who had recognized the desirability of increasing trade through economic integration. He said that the Communities recognized the apprehensions voiced by developing countries and would examine the questions which had been raised. Various approaches to this effect could be envisaged. He recalled that Protocol No. 23 to the Treaty of Accession authorized the acceding States to defer the adoption of the Generalized Preference Scheme of the Communities until 1974. He could not say at this stage how the Community scheme would evolve by 1974 but improvements to the current Community scheme had been foreseen at the Summit Conference of the member States in October 1972. Finally, he recalled that at the time of the examination of the Treaty of Rome in 1960, fears had been expressed by developing countries - fears which had proved to be unfounded. In the view of the Communities, the enlargement of the Communities also would have beneficial effects to the trade of all countries including developing countries.
III. Treatment of preferential duties

19. Some delegations recalled the position taken by the Communities with respect to the term "duties and other regulations of commerce" as referring to m.f.n. rates only. They stated that, in their view, this phrase covered all trade and therefore, also, trade at preferential rates.

20. One representative, supported by some others, stated that the Communities had never given valid reasons why preferential rates should be excluded from the Article XXIV:5(a) exercise. He noted that the Communities had argued that preferential rates were merely "tolerated" under the General Agreement, but this was a subjective view which was irrelevant to the examination of the duties applicable in the acceding countries. He recalled also that the Communities had stated that unbound preferential rates lacked any status under the General Agreement. In the view of this representative, unbound preferential rates had exactly the same status under the General Agreement as unbound m.f.n. rates.

21. The spokesman for the enlarged Communities stated that the Communities had in fact, at previous meetings, explained the reasons why preferential duties should be excluded. He referred in particular to the meeting of the Working Party on 29-30 June 1972\(^1\) in which he had indicated the Communities' position that Commonwealth preferences were only tolerated and had pointed out that unbound preferences had been withdrawn in the past without the question being raised in the GATT. To take such preferences into consideration in calculating the general incidence could not be justified because according to this thesis the elimination of the preferences could then have to be accompanied by a reduction of the most-favoured-nation rate in order that the general incidence rule be respected. This would mean that countries, other than the beneficiaries of the preferences, obtained not only the advantage of the elimination of the preferential régime but also the additional advantage of the reduction of the most-favoured-nation rate. Furthermore, according to paragraph 9 of Article XXIV, maintenance of preferences after the formation of a customs union was not compulsory. The Communities could not accept the view that preferences, which were merely tolerated by the General Agreement, should by the mere fact of countries forming a customs union, obtain the legal status of most-favoured-nation duties. Such a view was not only unrealistic but contrary to the spirit of the General Agreement itself.

\(^1\) Spec(72)79
22. Some delegations pointed to the fact that Article XXIV, paragraph 5(a), referred to duties "applicable" and stated that they could not accept the Communities' interpretation that this did not include preferential rates. They did not believe it possible for the Working Party to discharge completely its responsibility in relation to paragraph 5(a) if preferential rates were not taken into account.

23. The spokesman of the enlarged Communities indicated that the meaning of the word "applicable" raised the question as to what rates should be taken into account, the m.f.n. rates which were the normal GATT duties, or rates which were maintained only on the basis of exceptional provisions. That the interpretation of the word "applicable" raised difficulties was not surprising since divergencies of opinion had already appeared as to whether the word "applicable" meant "legal rates" or "applied rates". The position of the Community in this respect had been set forth at the meeting of the Working Party on 29-30 June 1972 (Spec(72)79, paragraph 12) and had also been referred to in answer 9 of the questions and answers document (L/3754).

24. One delegation, while not taking a stand on the legal position of the preferences, proposed that a solution be adopted whereby two assessments should be made, one covering all duties including preferential ones, and the other dealing with m.f.n. rates only. In the view of this delegation, such a statistical exercise could be initiated leaving open for later debate the question of the relevance of preferential trade to the Article XXIV:5(a) examination.

25. A representative of a developing country asked whether it would be feasible for the secretariat 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. It was agreed that the secretariat should prepare a paper on this subject.

26. The spokesman for the enlarged Communities recalled that, at the meeting of the Working Party on 9-10 October, he had said that the Community services were preparing customs cards for individual tariff items to serve as documentation for the negotiations under Article XXIV:6 (see Spec(72)118, paragraph 5). He announced that cards covering BTN chapters 25-50 were being transmitted to the secretariat.

27. A member of the Working Party pointed out that the renegotiations under Article XXIV:6 would have begun at the time of the next meeting of the Working Party. He suggested that the procedures for those negotiations should be included in the agenda for the forthcoming meeting of the Working Party.
28. It was agreed that the working Party would take up the following matters at its next meeting:

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

(b) a continuation of the examination of the questions and answers, contained in document L/3754, which had begun at the meeting on 30-31 October 1972 (see document Spec(72)126);

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

29. It was agreed that the next meeting of the working Party should be held on 22/23 and if necessary on 24 January 1973, unless consultations revealed that a meeting in the week of 5-9 February would be more appropriate.