1. At the meeting of the Working Party which was held on 17 February 1988, the secretariat was requested to prepare a factual summary of the discussion to date which would be used by the Working Party in the preparation of its final report. This summary draws upon the notes prepared by the secretariat on the meetings of the Working Party which were held under the chairmanship of Ambassador F. Jaramillo (Colombia) on 8 July, 7-8 October and 3 December 1986, 15 May 1987 and 17 February 1988. These notes are contained in Spec(86)46 and Corr.1, Spec(86)60, Spec(87)2, Spec(87)31 and Spec(88)15 respectively.

I. General Statements

2. The representative of the European Communities stated that the enlargement provisions were fully consistent with Article XXIV of the General Agreement and with paragraph 5(a) thereof in particular. The import régimes which had been in force in the two new member states prior to accession had given substantial protection. The tariffs had on average been at a level much higher than in the Communities. In addition, the two countries had had relatively few tariff bindings. In many cases, the regulations of commerce were not totally transparent and their effects were sometimes uncertain or even restrictive because one of those
countries had been under a régime of balance-of-payments problems. The conclusion that had to be drawn was that, at the end of the transitional period, the general incidence of duties and other regulations of commerce in the two countries would be lower and less restrictive than before. If this conclusion were not shared by other contracting parties, then it would be hard to imagine any customs union or enlargement of a customs union which could be acceptable. This would mean that Article XXIV was so imprecise as to be hardly operational.

3. Article XXIV: 5 only required an examination on the broadest possible basis. The task was general, namely to reach a view on whether the general incidence of customs duties and regulations after enlargement was on the whole more or less restrictive than before. Even if a negative incidence were shown to be the case for certain items, such as when duties were increased or replaced by variable levies, one had to consider whether these effects were not balanced by the effects of other changes in the tariff sector taken as a whole. An overall appreciation of effects of changes in tariffs and regulations of commerce had to be made. In assessing general incidence, one had to avoid too static an analysis and to take into account the trade-creating effects of the establishment or enlargement of a customs union.

4. The representative of Spain stated that in 1971, the CONTRACTING PARTIES had recognized the agreement between his country and the European Economic Community, whose minimum objective had been "the creation of a free-trade area which at a later stage, would be developed into a customs union" (BISD, 18S/166). On that occasion, the representative of his country had indicated that "the implementation of the Agreement would accelerate the economic development of Spain, which would lead to benefits for third countries". Such objectives had been achieved more than satisfactorily as was shown by figures on the evolution of the Spanish economy and of its foreign trade during the period when the agreement had been in force. For these reasons and after a period of
reflection, his country had decided to continue its efforts towards fuller integration with the economic area to which it belonged from many points of view. Spain was convinced of the possibility of combining its desires for economic progress and social well-being with the commitments undertaken in international obligations, also to the benefit of its trading partners. It was convinced that the integration fulfilled the requisites of Article XXIV of the General Agreement. With accession to the Communities, it would be possible for Spain to assume more fully GATT obligations in the tariff and non-tariff areas. After the Tokyo Round, Spain had undertaken to bind approximately 40 per cent of its tariff positions. By acceding to the Communities, almost all tariff positions would be bound at a much lower level. Spain had become a party to four of the MTN Codes (Customs Valuation, Technical Barriers to Trade, Anti-Dumping and Subsidies and Countervailing Measures). Integration with the Communities required that it accede to and apply all the instruments negotiated in the Tokyo Round. While Spain had signed the first Multifibre Agreement, it had not become a party to either of its Protocols of Extension. It would now need to apply the disciplines arising out of instruments relative to trade in textiles. Finally, Spain would immediately start applying the Communities' various systems of preferences to a large number of developing countries. All this was reflected in a substantial opening of Spanish markets, which would surely be rightly appreciated by Spain's trading partners, given the present economic situation.

5. The representative of Portugal stated that accession to the European Communities opened a new stage in his country's history. It successfully completed a long and complex negotiating process and a period of progressive approach to European integration. Portugal had become a founding member of the European Free Trade Association in 1960, and had signed a free-trade agreement with the European Economic Community in 1972. Accession to the Communities was a logical consequence of this process of liberalization. It implied the adoption of a model for
Portuguese society as well as a new orientation for its external economic policy. The adaptation required for full integration was a challenge which would call on all of Portugal's energies. His country intended to participate to the fullest extent in the Communities even though a transitional period and specific modalities for flexibility had been envisaged in order to avoid excessive costs to its economy. Portugal believed that the solutions found for the adaptation period complied with the requirements of Article XXIV of the General Agreement. The adoption of the "acquis communautaire" implied an important opening of the Portuguese market and increased transparency in regulations. The previous trade régime had been characterized by a considerable degree of interventionism and by recourse to administrative and fiscal practices aiming at providing protection for the weaker sectors of the economy. Adoption of the "acquis communautaire" would also have positive effects for Portugal's foreign trade with other contracting parties. The direct effects of participation in a customs union such as the ones stemming from the adoption of the Common Customs Tariff (CCT), had to be stressed. The former Portuguese tariff had been on average 30 per cent higher than the CCT and alignment with the latter would therefore result in a significant dismantling of tariff barriers. After accession, Portugal had become a donor by adopting the Communities' GSP scheme, thus improving market access for beneficiary countries. The positive effects of changes in the tariff and non-tariff areas would bear benefits for all, and enable Portugal to assume GATT disciplines more fully.

6. The representative of the European Communities stated that the introduction of a new tariff (EEC regulation 3330/85) was consistent with Article XXIV:5 and had been done essentially to provide the enlarged Communities with a legal and legitimate basis for tariff negotiations under Article XXIV:6. The Working Party would have to take account of the fact that during the negotiating process further tariff changes would certainly be made. On the basis of the new tariff, one could distinguish - within total imports for the EC/12 of between 224 and 265 billion ECU
(in 1983 and 1984) - the following categories in order to establish their relative significance in the Article XXIV:5 exercise:

- items subject to variable levies (on which a weighted average had not been calculated) and which accounted for about 2 per cent of the total imports of the EC/12. Whatever the incidence of these levies might be compared with the situation prior to enlargement, it was highly unlikely that 2 per cent of trade would be a significant factor in any overall analysis to be conducted by the Working Party;

- items for negotiation which had been left blank and which amounted to 6 per cent of the total. The analysis of this category, could in their view, be left aside, pending tariff negotiations during which the Communities would be making offers. The amount of trade thus involved was of limited significance. Even if these items might be of importance to some contracting parties, overall they were not a large category;

- items where a weighted average tariff was not provided and which amounted to less than 5 per cent of the total imports of the EC/12. Since the duty rates for the EC/10 were retained for those items, there would be no change in incidence for countries accounting for 90 per cent of the trade in the category: the only possible change in incidence could arise in Spain and Portugal whose trade in relation to overall Community imports was minimal;

- items where the weighted average tariff had been introduced and on which the incidence would be trade neutral by definition. The volume of trade in this category was over 85 per cent of the total imports of the EC/12.
7. Leaving blank items aside for the time being, the Working Party could address the situation for 94 per cent of the total imports of the EC/12. It was perfectly possible to reach a valid, albeit preliminary, conclusion about the tariff incidence of enlargement on this basis; if the Working Party accepted their view that the incidence of duties on the bulk of this trade was neutral, then further analysis of the tariff incidence would not significantly modify the general picture. There could be no doubt that the incidence of the substantial tariff reductions taking place in Spain and Portugal, often from very high duty levels, would be of major importance. Because the former duties had been almost prohibitive in their effects, these cuts, together with other changes would lead to an effective opening of the market. This was clearly a factor which had to be recognized by the Working Party. Furthermore, as long as the new tariff was suspended, the duties applied were those of the EC/10 to which the new members were aligning, to the advantage of third countries. This would mean that for more than 85 per cent of the import volume the trade neutral incidence would become trade positive. Given the low levels of Spanish and Portuguese imports in the "blank" items, the 6 per cent represented by these items would also be trade positive.

8. Any uncertainty in regard to the tariff could be more than satisfactorily balanced by liberalization of other regulations of commerce. The introduction of the value-added tax in Spain constituted a radical modification of its previous cascade taxation system, which had been the subject of complaints in GATT because of its distorting effects vis-à-vis exports and imports. The fiscal liberalization which had taken place was a major contribution to a more trade-neutral system in Spain from which all trading partners would take immediate benefit and had to be included in any general appreciation of the overall incidence of regulations of commerce after enlargement. The substantial improvements now envisaged in the import régimes of both countries and the abandonment by Portugal of its invocation of balance of payments difficulties represented a significant opening of both markets and therefore the
general incidence of regulations of commerce in terms of Article XXIV:5 had to be considered as substantially less restrictive now and at the end of the transitional period than prior to accession.

9. The representative of Argentina stated that before the Working Party completed its work, it had to look into the interim agreement reached by the Communities and the United States on access of certain agricultural products into Spain and the rest of the Communities. He regretted that bilateral consultations had led to an agreement which might be detrimental for other countries. Spain had repeatedly recognized the damage that could arise out of its accession to the EC and he therefore enquired whether the Communities would notify the details of this agreement so that its effects upon other contracting parties might be established. For the third time, the CONTRACTING PARTIES examined the consequences of enlargement of the European Communities. Previous exercises had not made it possible to arrive at a conclusion on whether the enlargement in question was compatible with the provisions of the General Agreement, and those of Article XXIV:5 in particular. Some contracting parties had suffered damage from the enlargement of the Communities because important markets for their products had disappeared as a result of the introduction of restrictive measures at the border, and also because the extension of the Common Agricultural Policy to the new entrants had caused damage in third markets. The exercise which was beginning was extremely complex and available information was far from being adequate. His delegation looked forward to receiving a clear and concrete reply from the Communities on whether or not quantitative restrictions were maintained and if so on their coverage. It was also preoccupied by the fact that the Communities had withdrawn the totality of their bound tariff and that the provisional tariff contained a considerable number of blanks for products which were of essential importance to its country. The accession of Spain and Portugal to the Communities had caused commercial prejudice for its country, especially in the agricultural sector and above everything in
products such as maize and sorghum which since 1 March 1986 had been made subject to prohibitive levies.

10. The representative of the United States doubted that the situation after enlargement was not more restrictive than before. In the Community's proposed new tariff, the overall result might be statistically neutral for products subject to trade-weighted averages, but the changes might be damaging from the standpoint of a trading partner's particular trade interests. Therefore, the Working Party had to examine the impact of enlargement on particular trading partners as well as on all contracting parties. Furthermore, Article XXIV:6 did not address the situation arising out of the binding of some 300 industrial tariff items which had been unbound, though at a lower level in Spain and Portugal. This question had to be taken up in the Article XXIV:5 examination. Moreover, some ninety-six non-industrial items had been left blank in the proposed new tariff. If these blanks which represented some of the Communities' most important concessions in the sectors of agriculture and fisheries, were considered withdrawals, the Working Party would have no choice but to conclude that the EC had failed to meet its GATT obligations. Under Article XXIV:7, the members of a Customs Union had to provide information promptly to the CONTRACTING PARTIES. The unbinding of Spanish concessions on maize and sorghum and the implementation of the Communities' levy system in both countries constituted serious new obstacles which would disadvantage exporters of agricultural products. New quantitative restrictions and minimum purchase requirements were introduced in Portugal for certain agricultural products, for which there was no legal justification. Article XXIV:4 required that a customs union should not raise new barriers for other contracting parties. On the industrial side, while it was true that certain restrictions had been eliminated in Spain and Portugal, new forms of protection were emerging, such as the introduction in Spain of administrative authorization for imports from non-EC sources of a long list of products. The representative of the United States concluded that, taking into account
changes in the duties and other regulations of commerce of Spain and Portugal, the post-enlargement situation would on the whole, be more restrictive than the pre-enlargement situation. He enquired as to the steps that the Communities were prepared to take to meet their obligations under Article XXIV:5.

11. The representative of Japan stated that while regional arrangements were given a status under the GATT, they constituted deviation from the basic principles of free competition and non-discrimination. One had to ensure that these arrangements did not bring about disadvantages for third countries but instead facilitated the expansion of trade. The EC should therefore not preclude the application of Article XXIV:7 under which the CONTRACTING PARTIES could make recommendations. When calculating the general incidence of duties one could not, as suggested by the EC, strike a balance between agricultural and manufactured goods. The interest of a specific trading partner in a specific item had to be taken into account. The underlying principle of Article XXIV:6 was that an increase in a duty bound in one of the constituent members of the customs union, had to be compensated by a reduction in the duty for that specific item in the other constituent members of the customs union. Although some quantitative restrictions and other non-tariff measures had been liberalized in Spain and Portugal, there remained in both countries a significant number of measures which discriminated against his country. If no response was received to requests that these restrictions be eliminated, his country would have no option but to conclude that enlargement had been achieved at the expense of third countries.

12. The representatives of Australia, Uruguay, Canada, Hong Kong, Hungary, New Zealand, Czechoslovakia and Poland expressed concerns about the implications for their countries' exports of the accession of Spain and Portugal to the Communities. They requested the European Communities to supply all the information needed to the Working Party for it to complete
its assessment under Article XXIV:5 as well as for the negotiations to be held with some participants under Article XXIV:6.

13. In response to the statements made by various members of the Working Party, the representative of the European Communities said that they had left some items blank in the new tariff of the EC/12, in order to safeguard their negotiating position. Offers for these items would be made in the course of the negotiations, but not in the Working Party because this was not its task. Individual difficulties which related to bound items and negotiating rights would also be taken up under the Article XXIV:6 procedure, but for those which did not, there was little room for manoeuvre. On the question of the incidence of duties and other regulations of commerce, Article XXIV:5 did not require that the Working Party look at individual situations which might vary considerably from one country to another. In their opinion, the phrase in Article XXIV:4 about "not raising barriers to the trade of other contracting parties" was nuanced by the fact that it was only part of the sentence. It could not be interpreted as meaning that a barrier could not be raised under any circumstances. Article XXIV:5(a) spoke of general incidence whether lower or higher which meant that some barriers could be raised if others were lowered. The existence of Article XXIV:6 also justified this interpretation. The representatives of the United States and New Zealand disagreed with this approach and argued that the requirements of Article XXIV:5(a) could not be fulfilled without looking at the specific effects of enlargement on individual contracting parties.

14. The representative of Canada stated that they had noted the Communities' position that the Treaty of Accession established a customs union and not an interim agreement under Article XXIV:5(c). They were not convinced that this was in fact the case, because the EC trade régime would not apply to substantial sections of both the Spanish and Portuguese economies until ten years after accession. They therefore drew the conclusion that the transitional régime was an interim agreement which
would result in a full customs union once it was fully implemented. Consequently, the parties to the agreement should not put it into force if they were not prepared to modify it in accordance with the recommendations of the CONTRACTING PARTIES, if the CONTRACTING PARTIES found that the agreement was not likely to result in the formation of a customs union within the period contemplated. Furthermore, they took issue with the EC's contention that "credit" was owed to the Communities for the relaxation of non-tariff barriers which had resulted from the accession of Portugal and Spain. The trade liberalization effect of the removal or modification of certain practices was minimal in the agricultural area, since they would be replaced by the Common Agricultural Policy's instruments which would relegate non-EC suppliers to the status of residual sources. Other measures which were being eliminated, were inconsistent with the GATT and had to be phased out without compensation, in view of the standstill and rollback commitments undertaken under the Punta del Este declaration.

15. The representative of Australia stated that Article XXIV only allowed a breach of bindings if negotiations were held according to the procedures of Article XXVIII which envisaged compensatory adjustments. The Communities had withdrawn their entire GATT schedule at a time when the negotiations had not even commenced nor had the information required under Article XXVIII been submitted. Even though they had suspended the application of the proposed EC/12 tariff, the Communities had not refrained from imposing variable levies on agricultural products, despite the expectation in Article XXIV that notifications and negotiations would precede action to implement a customs union. It was essential that the Working Party examine in detail all the aspects of the extension to Spain and Portugal of the CAP and its levies and the concept of inherent credits.

16. The representative of New Zealand stated that when evaluating the impact of enlargement on contracting parties, with a view to conducting the assessment required by Article XXIV:5(a), the trade statistics which
would be used should cover m.f.n. suppliers only and exclude the present constituents of the customs union from each other's trade. One could not calculate the effect of a reduction of the m.f.n. rate to a rate higher than the preferential one, on the basis of trade that had occurred on a preferential basis, because trade had occurred between the members of the customs union before enlargement, but on a preferential basis and because there were going to be new preference receivers which had been m.f.n. suppliers prior to enlargement. Under the EC's approach, these would be credited with a benefit, in spite of the fact that the benefit obtained was not due to the reduction of the m.f.n. rate but to the preferential access obtained after enlargement. However, the representatives of Finland, speaking on behalf of the Nordic countries, and of Austria did not agree that import data should be broken down into m.f.n. trade and other elements because this was not justified by Article XXIV.

17. The representatives of Japan, the United States and Hungary stated that Article XXIV did not waive any contracting party from its obligations under Article XI and XIII. The Treaty of Accession allowed, and in some cases required, Spain to introduce discriminatory quantitative restrictions on a number of tariff lines. The representative of Japan stated that since accession seven new restrictions had been applied by Spain against products originating in his country, in addition to the remaining ones. According to the representative of Hungary, the accession of Spain to the Communities had resulted in the introduction by that country of quantitative restrictions inconsistent with Article XIII, for Hungarian exports on 94 CCCN headings or sub-headings. This development was contrary to Spain's obligations under the GATT vis-à-vis Hungary and the Treaty of Accession was therefore inconsistent with the provisions of Article XXIV.

18. The representative of the European Communities responded that some of the points raised by delegations related to bilateral negotiations under Article XXIV:6 and would be pursued in that context. Other points could be tackled in the course of the examination of questions and replies. No new discriminatory quantitative restrictions had been introduced in Spain
after its accession to the Communities. His delegation did not think that it was possible to calculate with precision the general incidence on the whole of tariffs and non-tariff measures. Attempts at quantification which had been made in the past had not been successful. He could not agree to make a distinction in the tariff data between preferential and non-preferential sources as the Article XXIV:5(a) exercise covered all trade flows.

II. Questions and replies

(a) General considerations

19. The representative of the United States reiterated his delegation's view that the enlargement of the Communities would seriously disadvantage his country's exports. In particular, the effects of any reductions which would occur in the Spanish and Portuguese tariff rates for industrial products would be limited by the preferential access which the EC/10 would enjoy in the Spanish and Portuguese markets. However, the impact of tariff reductions could be outweighed by stricter regulations of commerce for agricultural products and they expected the new enlargement, like the accession of Greece, to result in trade diversion in favour of the members of the Customs Union. His authorities had undertaken a detailed econometric analysis to project the real, rather than just the nominal impact of enlargement on US exports. EC data were applied to commonly utilized models. Invariably, the conclusions showed that even nominal improvements in rates of duty would be offset by the effects of trade diversion (see Spec(87)2, Annex II).

20. The representative of the European Communities stated that since Article XXIV permitted the establishment of customs unions, the fact that the Spanish and Portuguese markets would be substantially opened was not diminished by the free access that the two countries would be giving to the EC/10, which was a requirement of Article XXIV. If instead of
enlarging the Community, which was not just an economic decision but also a political one, the parties had decided to establish a full free-trade area with Spain, and maintain the one existing with Portugal, both countries would have kept their external tariffs and the question of compensation would not have arisen. Therefore, enlargement was better for third countries than a full free-trade area. He did not think that it was necessary and appropriate for the Working Party to look at Greece's accession to the Communities which was not strictly relevant to its task. If one wanted to look at the past, one could look at what had happened when the Community had first been set up, or when it had expanded from 6 to 9 members. On the basis of experience, the Communities were entitled to argue that after the transitional period, there would be trade creation effects which would benefit third parties.

(b) Import duties

21. The representatives of the United States, Australia and New Zealand reiterated concerns about the damaging effects which the extension of the variable levy system to Spain and Portugal would have for their countries' exports of agricultural products. The representative of the European Communities replied that whenever bindings were withdrawn under the CCT/12, Article XXIV:6 renegotiations would be held.

(c) Quantitative restrictions

22. The representative of the United States, supported by the representative of Hungary questioned the assertion of the European Communities that the post-enlargement situation would be less restrictive than before. The representatives of Japan and Hungary indicated that in contravention of Articles XI and XIII a number of new discriminatory restrictions were imposed against products exported by their countries. The representative of Hungary recalled that when his delegation had in the Group on Quantitative Restrictions and other Non-Tariff Measures, raised the
question of the introduction of discriminatory quantitative restrictions as a result of Spain’s accession, the representative of the Communities had replied that this question had to be dealt with in the context of the Working Party. The representative of the European Communities replied that no new quantitative restrictions were imposed in Spain and Portugal after their accession, and he invited participants to supply lists of any restrictions which they claimed had been introduced. Some restrictions maintained in Spain and Portugal against imports from one contracting party, were based on bilateral agreements previously concluded with it, and which had not been questioned in the GATT. A comparison with the previous situation was misleading because the old trade régimes in Spain and Portugal had not been clear. Imports from state-trading countries had been subject to a specific régime in Spain, under which restrictions could be imposed. The Communities' specific trade régime for state-trading countries was covered by Protocols of Accession to GATT. The Communities were now moving towards a more transparent system whereby all specific régimes would be eliminated. The representative of Hungary rejected the Communities' assertion that the discriminatory trade régime applied by the Communities vis-à-vis Hungary was justified by Hungary's Protocol of Accession to the GATT. On the contrary, paragraph 4 of the Protocol called for the elimination of discriminatory quantitative restrictions not consistent with Article XIII and for the discriminatory element in these restrictions not to be increased. He repeated again that Article 117:3 of the Treaty of Accession allowed, and Article 117:5 required Spain to introduce discriminatory quantitative restrictions for Hungarian products which covered about a quarter of Hungary's exports to Spain.

23. The representative of Canada raised the question of whether duties and other regulations of commerce were in fact eliminated between the new members and the EC/10, and therefore of whether a customs union as defined in Article XXIV:8(a) was being established. The representative of the European Communities replied that all tariff and non-tariff barriers between
the constituent parts of the union could be abolished at the end of the transitional period.

24. The representative of the United States contested the European Communities' assertion that no new quantitative restrictions were introduced in Spain and Portugal. He pointed to his government's findings that in Spain, 241 tariff items were covered by post-enlargement quantitative restrictions, affecting about US$500 million of US exports to Spain. Of this trade, only about US$83 million had been subject to actual restrictions prior to enlargement. The rest had to be considered new restrictions on which the United States reserved its GATT rights. A note citing specific restrictions was also made available to the Working Party (see Spec(87)2, Annex III). He also referred to new agricultural restrictions in Portugal, such as those covering oilseeds and oilseed products. The representative of the European Communities replied that as provided for in the Treaty of Accession, the Portuguese oilseeds régime was transitional and that the objective was total liberalization.

(d) Other measures

25. The representative of the European Communities said that they had replied to some of the questions put under this section, even though they were not relevant to the exercise carried out under Article XXIV:5(a). The representative of the United States sought clarification from the Communities concerning certificates of origin and the dismantling of state monopolies in the acceding countries. The representative of the European Communities replied that certificates of origin might be required in accordance with Community legislation and that the dismantling of certain state monopolies carried out in accordance with the Treaty of Accession, would be favourable to third countries.

(e) Commodities
26. On the basis of the past experience obtained from earlier enlargements of the EC, the representatives of the United States, Australia and Canada expressed doubts about the contention the EC put forward in reply to their questions, that the implementation of the CAP in Spain and Portugal would not have significant effects on temperate agricultural production in those countries. The representative of the European Communities responded that the purpose of the meeting was not to examine the CAP, but to examine the incidence on Spain and Portugal of the totality of the Community's import regulations. The variable levies applied in Spain and Portugal since 1 March 1986, had replaced all existing quantitative restrictions and similar measures and were more transparent than the previous régimes. Spain's and Portugal's import requirements would continue to be met in large part from third countries. The representatives of New Zealand, the United States and Australia asked what were the expected effects on imports of income and price support measures. The representative of the European Communities replied that in view of the realities of the market there were constraints on production in the new member states and no Community incentives to encourage production. Assumptions made on the basis of past experience were flawed because the Communities had moved over the years from a situation of deficit in certain products to self-sufficiency which was reflected in internal debates about reform.

(f) Fisheries

27. In reply to questions from the representatives of the United States, Canada, New Zealand and Argentina which related to global fish quotas and the 15 per cent annual increase in imports from other member states required in Spain under the Treaty, the representative of the European Communities stated that the global quotas had been set for the transitional period, during which certain arrangements which had been incompatible with EC membership would be phased out. The 15 per cent figure was a purely procedural threshold for determining the Community authority
competent to take intra-Community safeguard measures in the case of a disruption of the markets of the new members.

(g) Oilseeds, oils and fats

28. The representative of the United States stated that the system of quantitative controls introduced in Portugal for oilseeds was more restrictive than the import régime which was in effect prior to enlargement. He also asked what could have been expected to happen in the absence of the quantitative controls whose objective according to the EC was to prevent disorganization of the market. The representative of the European Communities replied that the present system of quantitative controls was not substantially different from the previous one, except that it was more transparent. Its purpose was not to restrict imports but to control the marketing of a product which had to be subject to a special régime during the transitional period. Before accession, a balance had been maintained between the consumption of olive oil and other vegetable fats obtained from oilseeds. Dismantling immediately the régimes which had been in force for many years in Spain and Portugal, might have been disruptive and it had therefore been considered appropriate to adopt a five-year transition period, at the end of which the Community system would be applied, and there would be a variable levy for olive oils and duty-free entry without quotas for other oils. The introduction of production aids for oilseeds in both countries was not expected to change the situation which had prevailed before accession because of the limitations put on these aids.

(h) Grains, cereals

29. The representative of the United States stated that during the transitional period, the Communities would reserve to themselves a portion of a market which they had not had before. In the end, this market would be closed through the levies. They considered this to be a definite
worsening of the situation, in terms of Article XXIV:5. The representative of the European Communities replied that without this provision the Communities could have been excluded from the Portuguese market which was inconceivable for a customs union consistent with Article XXIV. However, this import requirement was temporary, and would be replaced by the variable levy at the end of a four-year transitional period. The introduction of the variable levy on imports of grains into Spain, which had occurred on 1 March 1986, was not expected to have substantial effects. However, the Communities were willing to negotiate the unbinding of the previously bound Spanish duties on maize and sorghum. In response to a question from the representative of the United States on the expected effect of the CAP on Spanish production of grain, the representative of the European Communities stated that such questions were not relevant to the Article XXIV:5 exercise being conducted by the Working Party. The representative of the United States took issue with the view that the extension of the CAP would not significantly change production in Spain and Portugal. The artificial incentives inherent in the CAP would have the same effects in Spain and Portugal as they had had in the rest of the Communities. This was a fact of which the Communities and the new member states had been aware in their deliberations leading to the Treaty. The artificially increased production would have damaging effects for third countries both in the EC markets and in third country markets.

(i) Fruits and vegetables

30. The representatives of Australia and New Zealand asked what were the expected effects of production aids and Community reference prices for fruits and vegetables. The representative of the European Communities replied that the production aids implemented during the transitional period were not comparable to the one in force before accession, and that a limitation had been put on their level during this period. At the end of the transition period, the Community-wide systems would apply. The reference price mechanism would have no effect on production and only
aimed at controlling imports at abnormally low prices. In response to a question from the representative of Brazil about imports of citrus and orange juice from third countries, he stated that the enlarged Communities' needs of these products would continue to be met with imports from third countries.

(j) **Sugar**

31. Replying to a question from the representative of Australia which dealt with sugar production in Spain and Portugal, and the effect on it of export refunds and production quotas, the representative of the European Communities stated that while she could not make definite forecasts, the conditions in the world market for sugar did not provide encouragement for additional production.

(k) **Meats and dairy**

32. Asked by the representative of New Zealand about the expected effects on production and trade of the support régime for sheepmeat and levies applied to imports of other meats and dairy products, the representative of the European Communities stated that given the market situation, increases in production could only result from increases in domestic demand. The levy system had been applied in Spain and Portugal since their accession and the Communities' bilateral agreements with third countries for the supply of dairy products, would be renegotiated to take the enlargement into account.

III. **Consistency of the terms of accession with the General Agreement**

33. **Article XXIV:7(a)** provides that contracting parties deciding to enter into a customs union, or an interim agreement leading to the formation of such a union, should make available to the CONTRACTING PARTIES such information regarding the proposed union as will enable them to make such reports and recommendations to contracting parties as they may deem.
appropriate. The representative of Japan considered that there existed some discrepancy between the information on discriminatory quantitative restrictions contained in the Official Gazettes of Spain and Portugal and the Official Journal of the European Communities. He therefore asked the Communities to clarify the situation. In the absence of such information, he considered that the Working Party could not draw conclusions. The representatives of Australia, New Zealand and the United States requested the European Communities to provide information on the effects of variable levies and the breakdown of increases of imports into Spain and Portugal from the other members of the Communities and countries with which the Communities had free-trade or association agreements. The representative of the European Communities considered that they had submitted enough material for the Working Party to reach conclusions.

34. Article XXIV:5(a) provides that the duties and other regulations of commerce imposed at the institution of a customs union or interim agreement in respect of trade with contracting parties not parties to such union or agreement should not on the whole be higher or more restrictive than the general incidence of the duties and other regulations of commerce applicable to the constituent territories prior to the formation of such union. The representative of the United States, supported by a number of other participants, explained that according to calculations made by his authorities, the global incidence of EC/12 duties would be higher after enlargement than prior to it. He stated that figures which only pertained to trade coverage were misleading if they were used to reach conclusions. He explained that the commonly used GATT approach is to measure changes in duties collected by multiplying the trade coverage for a tariff item by the change in duty for that item. As shown in the table annexed to this document, these calculations showed that the reductions in global nominal duties collected represented 737 million ECU and the increases amounted to 1.3 billion ECU. This indicated that as far as duties were concerned, the post-enlargement situation failed to meet the test of Article XXIV:5(a). Since by definition the nominal duties collected
effect vis-a-vis the EC/10 would be zero, there was a net global impairment of 649 million ECU.

35. The representative of the European Communities considered that the approach adopted by the United States was flawed. He pointed out that the duties applied by the EC/10 would remain unchanged but that this fact was not taken into account in the analysis of the United States. The United States therefore ignored the tariffs affecting 90 per cent of the total trade of the Communities the incidence of which had certainly not been raised and the fact that unbound tariffs could be raised at any time; although in tariff negotiations it was usual to look both at the volume of trade and at duty collections, this was not the case in Article XXIV:5(a) exercises which were of a broader nature. He considered that if a trade coverage method for assessing changes in duties were adopted, account would have to be taken of the total trade of the EC/12, in which Spain and Portugal only had a 7 per cent share and of the fact that increases in duties would affect less than 0.5 per cent of the Communities' total imports. This would be offset by the substantial tariff reductions taking place in Spain and Portugal, often from very high duty levels.

36. The representative of Canada considered that before Article XXIV:6 renegotiations had been concluded it would be difficult for the Working Party to reach conclusions on the incidence of tariff changes. However, the representative of the European Communities contended that his delegation had submitted to the GATT in December 1987, their new schedule of concessions and that outstanding matters would not affect the conclusions of the Working Party. In his view, the Working Party was therefore in a position to reach the conclusion that on the tariff side the terms of accession of Portugal and Spain to the Communities conformed with Article XXIV:5.

37. Referring to "other regulations of commerce", the representative of the European Communities argued that the information they had supplied indicated that there had been a substantial move towards liberalization as
a result of the accession of Portugal and Spain to the Communities. However, other members of the Working Party pointed to the replacement of import restrictions in agriculture by variable levies, which in their view would result in a higher degree of protection. Some participants considered that new quantitative restrictions, some of them discriminatory, had been introduced after accession, in contravention of Articles XI, XIII and XXIV:4 and concluded that the requirements of Article XXIV:5(a) had not been observed as far as "other regulations of commerce" were concerned. The representative of the European Communities considered that Article XXIV:4 contained an objective rather than an obligation; the import régimes and fiscal systems of the acceding countries would be liberalized and made more transparent, thus achieving a significant improvement in access into their markets; under the old Spanish import régime, the management of border measures had lacked transparency, and some exporters might at the time have felt free to export to Spain even though restrictions could have been imposed at any time; moreover, there had existed in Spain a specific régime for state-trading countries. Therefore, the Communities did not believe that new discriminatory quantitative restrictions had been imposed in Spain after its accession to the Communities. Furthermore, in the opinion of the European Communities, the objective of an Article XXIV:5(a) exercise was to make a global assessment of the incidence of measures on the trade of other contracting parties; the points made by participants in the Working Party all related to individual interests which did not come within its ambit and should be taken up in bilateral negotiations. In the view of the European Communities, the enlargement provisions were fully consistent with Article XXIV:5(a).

38. The European Communities also rejected the suggestion of the representatives of New Zealand and the United States that domestic subsidies be taken into consideration, on the grounds that they were not a regulation of commerce.
39. The representative of Hungary stated that prior to its accession to the Communities, Spain had not maintained discriminatory quantitative restrictions against his country, as was confirmed by five Spanish notifications. The EC had first stated that no new quantitative restrictions had been imposed in Spain after its accession. Later on they recognized the existence of a specific trade régime for Japan and some other contracting parties without giving any GATT justification. In another GATT forum, the EC recently stated that "... the introduction of new quantitative restrictions due to the accession of Spain and Portugal to the Community, ... had been made in order to align these two countries' trade régimes with the rest of the Community" (L/6282, para. 16). Article XXIV did not require a country which acceded to a customs union to align its trade régime with the more restrictive and discriminatory trade régime of the customs union.

40. The representatives of New Zealand and the United States, supported by other members of the Working Party believed that the effects of community preference had to be taken into account in an Article XXIV:5(a) exercise. With respect to duty changes, they argued that it was necessary to exclude preferential trade from the statistics to be used in assessing their impact. In their opinion, trade on preferential terms should not be included in the base for the assessment of the effect of a reduction of the m.f.n. rate to a rate higher than the preferential rate. Also, after the accession of Spain and Portugal to the Communities certain countries which had been m.f.n. suppliers would become preference receivers, but should not be credited with a benefit because their improved access to the Spanish and Portuguese markets would not be due to a reduction of the m.f.n. duty but to the preference obtained after enlargement. However, the representative of the European Communities, supported by the representatives of Finland on behalf of the Nordic countries and of Austria, stated that Article XXIV did not require that preferential trade be excluded from the assessment of the height of duties, since this provision only spoke of general incidence.
41. Article XXIV:8(a) provides that in a customs union duties and other restrictive regulations of commerce should be eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and substantially the same duties and other regulations of commerce should be applied by each of the members of the union to the trade of territories not included in the union. The European Communities argued that the Treaty of Accession of Portugal and Spain was a definitive agreement providing for the establishment of a full customs union at the end of a transitional period. In their view, the requirements of Article XXIV:8(a) would be largely fulfilled after seven years and totally achieved, even for sensitive products, after 10 years. However, the representative of Canada considered that the Treaty of Accession was an interim agreement under Article XXIV:5(c) which would result in a full customs union only once it was fully implemented. Therefore, and as provided for in Article XXIV:7(b), he considered that the parties to the agreement should not put it into force if they were not prepared to modify it in accordance with any recommendations that the CONTRACTING PARTIES might make if they found that the agreement was not likely to result in the formation of a customs union within the period contemplated. While not agreeing that the Treaty of Accession was an interim agreement, the representative of the European Communities acknowledged the right of the Working Party to make recommendations under Article XXIV:7(b).

42. Several representatives stated that there were other provisions of the General Agreement, such as Articles III, XI, XIII, XVI and XVII which were relevant to the Working Party. In particular they wondered whether in the opinion of the European Communities, Article XXIV provided a derogation from the obligations arising out of other GATT provisions. The representative of the European Communities considered that Article XXIV applied in the light of other provisions of the GATT. However, in his opinion, the Working Party's task was limited to making an assessment of the general incidence of measures as required by Article XXIV:5(a). The Chairman recalled that the
mandate of the Working Party "was to examine, in the light of the relevant provisions of the General Agreement, the provisions of the documents concerning the accession of Portugal and Spain to the European Communities, taking into account other relevant GATT documents and to report to the Council".

43. The representatives of the United States and Australia considered that in its final report the Working Party should reach conclusions and make appropriate recommendations as well as arrangements for reporting on the implementation of the terms of accession of Portugal and Spain to the European Communities. The representative of the European Communities did not object to providing the usual reports as was the practice in other cases. However, he did not think that it would be appropriate to innovate.
Annex

Note from the United States

An Overview of the Effect of Extending the Tariff System of the EC/10 to All Non-EC GATT Contracting Parties Trade with Spain and Portugal: (1983/84 Trade)

DUTIES COLLECTED BASIS*

(1) Global trade with Spain and Portugal where tariffs are decreasing

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<thead>
<tr>
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<th>Duties Collected or Foregone (millions of ECUs)</th>
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<tr>
<td>a. Bound</td>
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<tr>
<td>b. New Bindings</td>
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<tr>
<td>c. Unbindings</td>
<td>-0.7</td>
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<tr>
<td>d. Remaining unbound</td>
<td>0.1</td>
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(2) Global trade with Spain and Portugal where tariffs are increasing

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<tr>
<td>b. New Bindings</td>
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<tr>
<td>c. Unbindings</td>
<td>623.2</td>
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<tr>
<td>d. Remaining unbound</td>
<td>586.6</td>
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</table>

(3) Global trade with Spain and Portugal where tariffs remain the same

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<th></th>
</tr>
</thead>
<tbody>
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<tr>
<td>b. New Bindings</td>
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</tr>
<tr>
<td>c. Unbindings</td>
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</tr>
<tr>
<td>d. Remaining unbound</td>
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</table>

* The nominal duties collected effect vis-a-vis the EC/10 would be zero by definition.