This document compiles all information received to date by the Working Party, including the questions and answers in Spec(91)10 and Spec(91)85, the report by the European Communities in L/6974 and questions and answers received since the last meeting of the Working Party.

In order to facilitate the Working Party's assessment of this information, it has been sorted by topic, as listed below. Cross-references have been rectified to correspond with this document. The text of the report appears first in each section, followed by the questions and answers.

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I. GENERAL

(From L/6794)

At their Forty-Sixth Session in December 1990, the CONTRACTING PARTIES decided to grant a waiver for transitional measures adopted by the European Communities on German Unification (L/6792). That decision required, inter alia, that the European Communities submit a report in December 1991 on the use that has been made of this waiver. The following constitutes the required report.

The transitional measures adopted by the Community for the integration of the five new Bundesländer include tariff measures in favour of Bulgaria, Czechoslovakia, Hungary, Poland, Romania, the USSR and Yugoslavia for the period from 3 October 1990 to 31 December 1992. Council Regulation (EEC) No. 3568/90 of 4 December 1990 and Commission Decision No. 3788/90/ECSC of 19 December 1990 suspend customs duties, including any anti-dumping duties in force, on goods imported into the former German Democratic Republic (GDR) from the eligible countries up to a yearly maximum quantity or value laid down in the former GDR's trade agreements with the above-mentioned countries for 1990 (or 1989 in the case of Poland).

Commission Decision No. 3788/90/ECSC of 19 December 1990 extends duty-free admission to ECSC products. This applies to both steel and coal.

Thailand 1 (Spec(91)10)

What are the plans and/or measures that the European Communities intend to execute in bringing the waiver and derogations envisaged in the transitional measures into conformity with the General Agreement by 31 December 1992?

Due to the very nature of the GATT waiver Decision of 13 December 1991, the measures covered by this waiver are in conformity with the General Agreement. These measures will expire on 31 December 1992. Thus the common customs tariff will automatically apply from 1 January 1993 without any need for further action regarding conformity with the General Agreement.

Australia 8 (Spec(91)10)

What residual effects does the Commission expect will remain after the transitional period has expired on 31 December 1992, both in general and for each of the products listed in Question 7?

The Commission of the European Communities expects that there will be no residual effects after the transitional period has expired on 31 December 1992. As can be concluded from the first experience with the

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1OJ No. L. 353, page 1.
2OJ No. L. 364, Page 27.
use of this scheme (see Annex I), the dramatic shift of consumer preferences has greatly diminished East German demand for products originating in the beneficiary countries. While there exist no studies, it is probable that this tendency will be reinforced once the transitional measures have expired.

**United States 1 and 2 (Spec(91)10)**

1) The waiver contained in L/6792 does not specify the final EC legislation on tariffs and standards matters to be covered by the waiver. Please list the Council regulations that are, in the EC view, covered by the terms of the waiver in L/6792.

2) When were the trade preferences and relaxation of standards requirements referred to in L/6792 implemented?

1. Community legislative measures covered by GATT Decision L/6792 of 13 December 1990:

   a) on tariffs:


   b) on technical rules:


   Copies of the texts can be found in the Official Journal of the European communities ("OJ"), Nos. L 353 and L 364. The waiver further covers interim measures adopted in September 1990, which were later replaced by the above measures.

2. The trade preferences and the relaxation of technical rules referred to in GATT waiver Decision L/6792 of 13 December 1990 have been implemented since 3 October 1990.

**United States 15 (Spec(91)10)**

[Regarding Council Regulation (EEC) No. 3568/90 of 4 December 1990] Are the products described in this Council Regulation, i.e. the maximum quantities and values foreseen in the agreements listed in
Annexes I and II, the only products for which such transitional tariff preferences have been established?

Yes.

**United States 24 (Spec(91)10)**

Does the Regulation or any other EC legislation provide for expanding the tariff preferences established in this Regulation? What other transitional preferential trade measures are provided for in EC legislation?

No and no other.

**New Zealand 8 (Spec(91)10)**

What, if any, consumption aids were previously available in the former GDR which would have promoted imports/domestic consumption? What, if any, consumption aids still exist?

On the consumption aids granted in the former GDR one has to ask Germany. At present, no consumption aid exists on the former GDR territory.

**United States 4 (Spec(91)10)**

Will the reports to be made to the EC Council and Parliament concerning the operation of the Council Regulations and Directives and Commission Decisions required in the EC legislation provided to the Contracting Parties be made available to the contracting parties and to this Working Party when they are issued?

A report on the operation of the system established, the quantities of the products which have benefited from it and the stage reached in the renegotiation of outstanding arrangements (Art. 4 of Council Regulation (EEC) No. 3568/90), has to be submitted by the Commission by 1 October 1991 to the European Parliament and the Council, and will constitute the basis for the Community's Report to the Contracting Parties in December 1991.

**United States follow-up in Spec(91)85 to United States question 4 in Spec(91)10**

Why will the interim report to the European Parliament only form "the basis for" the EC report to the contracting parties on the operation of the transitional measures? Is there some reason why the contracting parties cannot be shown the report itself?

The earlier reply to this question was purely factual and intended as such. Reports to the European Parliament, like reports to parliaments everywhere in the world, are in the public domain and can be procured by or given to the contracting parties.
What procedures are being employed to convert the nomenclature of the former CMEA countries into the EC combined nomenclature for purposes of monitoring trade flows of products under the GATT waiver? Please provide a copy of the approximate concordance being used to convert the respective nomenclatures.

For the conversion of the schedules of the former CMEA countries into the EC Combined Nomenclature best efforts of customs officials with the aid of a conversion key supplied by CMEA countries have been used.

While the trade statistics provided by the EC in Annex II indicate both the CMEA and HS (4-digit) nomenclature numbers for each product, we would still appreciate a copy of the concordance, or conversion key, used for developing these statistics. Will the EC supply this document to the contracting parties?

Article 1, paragraph 1 states that the "essential elements" of the agreements listed in Annexes I and II, i.e., the agreements on products covered by the tariff and standards preferences, "shall be published in the Official Journal of the European Communities". Has the EC published these yet? Are they available to the contracting parties for their review in the context of this Working Party?

See I(2) Introduction at page 15.
II. IMPLEMENTATION OF TRANSITIONAL TARIFF MEASURES

From L/6974:

National Implementing Provisions

The German authorities have supplemented the relevant Community legislation with a series of special national rules for the application and effective monitoring of the transitional tariff measures. These rules comply with the provisions of Article 1(1) to (3) of the Regulation, which establish the terms for duty-free admission and ensure compliance with them. These German rules are listed in Annex I [of L/6974].

Procedures

The rules for the implementation of the transitional tariff measures impose the following conditions on duty-free admission:

(a) The goods must be listed in the protocols and agreements between the designated countries and the former GDR included in Annexes I and II to Regulation (EEC) No. 3568/90; the maximum quantities or values laid down in such protocols or agreements are valid for one year only and may not be exceeded. In accordance with Article 1(1) of the above-mentioned acts, lists of these goods were published in all the Community’s official languages.

(b) The goods must be consumed or processed in the new Länder. Where the goods undergo working or processing conferring Community origin in the new Länder, this end-use requirement is lifted.

(c) The goods must be entered for release for free circulation, i.e. they benefit from duty-free admission on release for free circulation on the basis of their end-use. An authorization is required for the release for free circulation of the goods concerned. Importers of agricultural products must obtain this authorization from the Federal Office for Food and Forestry in Frankfurt-am-Main, and importers of industrial products must apply to the Berlin branch of the Federal Office of Economic Affairs. Any importer within the meaning of Article 23(1) of the Federal Republic of Germany’s Foreign Trade and Payments Order

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3 Commission Regulation (EEC) No. 4142/87 of 9 December 1987 determining the conditions under which certain goods are eligible on import for a favourable tariff arrangement by reason of their end-use.
established in the Community may apply for an authorization. Receipt of the authorization commits the importer to ensuring that he complies with the conditions for duty-free admission, and in particular the prescribed end-use of the goods in the new Ländер. The importer is bound to keep records such as to enable the competent authorities to carry out any checks which they consider necessary to ensure that the goods are put to the prescribed end-use.

Checks on the whereabouts of the goods

On-the-spot checks on the whereabouts of the goods are the task of the main customs offices. More rigorous company audits are performed by the regional finance offices. Uncollected customs duties are payable where goods are shown to have been put to an end-use other than that prescribed. The importer may also forfeit his eligibility to make use of the duty-free admission procedures. Contravention of the end-use requirements may also result in the following sanctions:

(i) Article 370 of the Tax Code makes deliberate tax evasion punishable by up to five years in prison or an unlimited fine.

(ii) Article 378 of the Tax Code makes tax evasion through negligence a misdemeanour punishable by a fine of up to DM 100,000.

(iii) Offences concerning import duties and charges, e.g. the infringement of disclosure or notification requirements, a failure to keep records or to present end-use goods come under Article 148(a) of the General Customs Regulations and are punishable by a fine of up to DM 10,000.

Inspection measures on the spot under Article 18(3) of Council Regulation (EEC, EURATOM) No. 1552/89 have been carried out by the Commission’s services in Berlin, Magdeburg and Rostock from 10 to 14 June 1991 and these will be continued in 1992.

The main customs offices and the regional finance offices have been directed by the Federal Ministry of Finance to step up on the spot checks on the whereabouts of goods. At present national and Community checks are carried out on the whereabouts of about 15 per cent of all goods admitted duty-free, which represents about 900 checks. So far checks have revealed no instances of goods being put to an end-use other than that prescribed.

The initial obstacles to the application of these rules, such as the uncertainty about the legal rules and instruments, the lack of trained staff, frequent changes of staff, the lack of a co-operation structure, unfamiliarity with business practice, problems connected with the closure or restructuring of State-owned foreign trade organizations and the use of new administrative procedures, have been largely overcome.

German civil servants transposing Community law in the former GDR have greatly increased public awareness of the special rules through the
preparation of comprehensive and up-to-date teaching materials, information
events for officials in the new Länder, advisory and information work with
trade missions to Germany and trade promotion offices and delegations in
the relevant countries, advice to firms, publications and press releases to
the financial and daily newspapers.

These targeted measures have been backed up by Commission publicity
campaigns in the new Länder, which have mainly been organized by the
Bonn Delegation, the Berlin and Munich offices, and the Euro-Info centres
recently established in the Länder. Publication of the list of goods
eligible for duty-free admission has also played a very constructive rôle. The Official Journal containing the list can be obtained throughout the
Community and provides potential Community importers with detailed
information.

From Spec(91)10:

II(2) General Observations

Since a number of contracting parties (and notably Australia, question
No. 5) have raised questions linked to the management and the control of
the transitional tariff measures, the following observations give a
somewhat detailed reply to these aspects.

For the application and effective control of the transitional tariff
measures, a number of special national provisions have been adopted in
addition to the existing Community and national legislation. The
procedure, which will ensure that consumption and/or the required
processing will take place in the territory of the former GDR, is detailed
below.

(a) The goods must be listed in the agreements between the former GDR
and the countries named in the above-mentioned Regulation. The limits
regarding amounts or values contained therein must be observed.

(b) The goods must be cleared as imports under a favourable tariff
arrangement on the basis of their special end use. This clearance may be
done only by customs offices in the new federal States. Goods destined to
the former GDR, for which benefit is claimed under the transitional
measures and which enter the Community at another customs office, must be
transported under the normal Community transit procedure to a customs
office in the new federal States.

(c) The goods must be consumed in the new federal States or processed
there into originating products of the Community pursuant to Council
regulation (EEC) No. 802/68 (Official Journal of the European Communities

(d) Application must be made for authorization of the importation of
goods which come under the tariff suspension. In the application for
granting of authorization, the applicant must affirm that the prerequisites mentioned in para 1 above have been met and that he will fulfil the conditions mentioned in (b) and (c) above. Authorization for importation with tariff suspension is granted in the form of a certificate issued by the Federal Office for Food and Forestry, 6000 Frankfurt am Main 1, as regards goods of Chapters 1 to 24 of the Common Customs Tariff and by the Federal Office for Trade and Industry, Berlin Office, 0-1080 Berlin, as regards goods of Chapters 25 to 97 of the Common Customs Tariff.

(e) The above-mentioned certificate must be submitted to the Customs Office of clearance together with the declaration of the goods for importation under a favourable tariff arrangement on the basis of their special end use. The Customs Office grants the authorization of special end use provided for under Commission Regulation (EEC) No 4142/87 (OJ of the EC No. L 387 of 31 December 1987, p. 81) together with clearance (without collecting any security). The Customs Office of clearance imposes on the declarant in writing the obligations resulting from Article 3 of the above-mentioned Regulation, which insure the fulfilment of the prerequisites. In addition, the special prerequisites of b) and c) above are repeated. Over and above that, attention is also drawn to the fact that customs duties will fall due under Article 2 para. 1(e) of Council Regulation (EEC) No. 2144/87 (OJ of the EC No. L 201 of 22 July 1987, p. 15) if the obligations are not met. Moreover, in this connection the declarant is also informed that the failure to meet the obligations constitutes a contravention of administrative regulations which is subject to an administrative fine under the Fiscal Code. Non-compliance with the requirements of Commission Regulation (EEC) No. 4142/87 could also lead to a withdrawal of the importers end-use authorization.

(f) The auditors or the Federal Customs Administration (external auditing offices at the Regional Finance Offices and the Main Customs Offices) are instructed, as regards goods imported with tariff suspension, to conduct the audits required under Commission Regulation (EEC) No. 4142/87 within the periods (as a rule 3 years) prescribed by Council Regulation (EEC) No. 1697/79 (OJ of the EC No. L 197 of 3 August 1979, p. 1).

(g) The above-mentioned auditors are officials who are specially trained to examine and evaluate commercial books and other records. The audits, which are conducted at the business premises of the importers and if necessary the recipients of the goods, are up to date and as complete as possible. The audit results are always incorporated in an official report and evaluated by the Main Customs Offices.

(h) If in a specific case there is suspicion of irregularities in the prescribed end use of the goods, a special investigation service can immediately be assigned to the case as necessary.

(i) As regards the transitional measures in the harmonization of technical regulations under Council Directives 90/650/EEC and 90/657/EEC
(OJ of the EC No. L 353 of 17 December 1990, pp. 59 and 65), the competent surveillance authorities in the new federal States are informed of the importation of the goods concerned.

**United States 7 (Spec(91)10)**

How do the relevant German and other EC Member State authorities administer the preferences, i.e., how are these imports identified and distinguished from other imports from Yugoslavia and the former CMEA countries, and how is the level of such trade tracked to enforce the limits described in L/6792? What trade has entered under the tariff and standards preferences to date?

See II(2) General Observations at page 8.

**New Zealand 1 (Spec(91)85)**

We appreciate the extensive information provided in II: General observations on management and control of the transitional tariff measures. Safeguards would appear to depend on the audit system (paragraph 2, F and G), backed up by the possibility of administrative fines and withdrawal of end use authorization. In paragraph F, it is mentioned that audits occur as a rule every three years. Is it the intention to conduct audits in this particular case on a more regular basis to minimize possibility of circumvention?

A general change of the rule about the rhythm of investigations of firms (normally every three years) is not foreseen. For products imported duty-free in the framework of the transitional régime from COMECON countries and Yugoslavia, there will be additional investigations by the importers. Until now, about 20 per cent of these imports have been examined, without discovering irregularities.

**United States follow-up question, 25 November 1991**

At the last meeting, and in response to questions submitted in writing by New Zealand, the EC indicated that audits on safeguards regarding end use of the products covered by the waiver were being initiated. Can the EC give the Working Party a report on the progress and/or findings of these audits?

**Canada 8 (Spec(91)10)**

With reference to Article 3 of EC Regulation No. 3568/90 (transitional tariff measures for Eastern European countries), has the suspension of common customs tariff duties to date created any situations of substantial injury to EC producers which have resulted in any actions being taken to "restore the normal duty rate"? If so, please give details (on a tariff item basis).
No cases of "substantial injury to Community producers of like or directly competitive products" have been brought to the attention of the Commission.

**United States 6 (Spec(91)10)**

... If the preferential trade is not monitored by tariff line, how do German customs authorities, and the customs authorities of other EC Member States, determine what trade should receive the preferential treatment (when entering the former GDR) or be excluded from Community preference (when entering any other part of the EC from the former GDR)?

See II(2) General Observations and I(2) Introduction at pages 8 and 15.

Furthermore, in the period between German unification and the publication of the product lists (of Annex II), the tariff quotas are being administered by referring to the items contained in the annual trade protocols listed in Annex I of Regulation 3568/90. The product lists of these protocols have been published in early October 1990 in their original form by the German "Bundesstelle für Außenhandelsinformation" in Cologne.

**United States 21 (Spec(91)10)**

Also concerning Article 1, paragraph 2, the Regulation specifies that a license must be issued by relevant German authorities to certify that goods are eligible for preferential tariff treatment as provided in the Regulation. Could the EC further specify the procedures and criteria used for granting such a license, and identify the relevant German authorities? How will the relevant authorities determine that the import is a good covered by one of the agreements listed in Annexes I and II. How will the value/volume limits of the duty-free treatment be enforced? Does the EC envisage that such licenses could be granted for products falling outside the scope of the trade contemplated by the agreements in Annexes I and II to Council Regulation No. 3568/90?

See II(2) General Observations at page 8.
2.1 ORIGIN RULES AND PROCESSING REQUIREMENTS

**Australia 5 (Spec(91)10)**

What measures will the EC or German authorities take to ensure that goods covered by the transitional system are consumed in the territory of the former GDR and do not move into the rest of the EC? Will these measures have the same trade effect (vis-à-vis the territory of the EC without the former GDR) as did the former trade measures (import duties, including anti-dumping duties and the technical rules) that are now suspended? How will the new trade controls on goods originating in the CMEA countries affect third country trade with the EC?

See II(2) General Observations at page 8.

**Canada 2 (Spec(91)10)**

What measures do the EC and/or German authorities have in place in order to ensure that the final consumption and/or substantial further processing of the goods imported under waiver takes place in the territory of the former GDR? (i.e.: that products imported under waiver do not pass out of the territory of the former GDR without being consumed or undergoing the required transformation).

See II(2) General Observations at page 8.

**Canada 3 (Spec(91)10)**

What degree of transformation is being required (on a product basis) for goods to be allowed out of the former GDR territory?

Council Regulation (EEC) No 802/68, in particular Article 5, (see Annex) contains the provisions describing the requirements for processing goods to confer Community origin.

The procedure for the control of end-use provisions is set out in Regulation (EEC) No 4142/87 (see II(2) General Observations at page 8), which contains the requirements to ensure that goods enter into free circulation of the Community only after sufficient transformation.

**New Zealand 5 (Spec(91)10)**

With respect to Council Regulation 3568/90 Article 1 para 3, please specify and describe the measures that the Commission and the competent German authorities have taken and will take to ensure that the final consumption of the products in question, or the processing by which they acquire Community origin, takes place in the territory of the former GDR.

See II(2) General Observations at page 8.
United States 20 (Spec(91)10)

Article 1, paragraph 2 of the Regulation provides that the preferential tariff treatment may be granted only to those goods imported for consumption within the former GDR or "undergo processing conferring Community origin there". Please describe the process by which Community origin could be conferred. Please explain how "Community origin" conferred after importation through processing could be determined at the time of importation, i.e., in time to allow the product entry on a duty-free basis.

See reply to Canada 3.

United States 22 (Spec(91)10)

Article 1, paragraph 3 of the Commission decision notes that appropriate authorities may take "whatever measures are needed" to ensure that the products covered by the decision are either consumed or sufficiently processed on the territory of the former GDR. Please describe the nature of possible measures to be taken including any monitoring procedures that will be employed.

See II(2) General Observations at page 8.

United States 23 (Spec(91)10)

How will the EC ensure that goods are not being imported duty-free into the territory of the former GDR and then transhipped into another EC member state? In addition, how will goods which are first shipped into another EC member state and then sent into the territory of the former GDR be handled for the purposes of qualifying for the tariff and standards preferences?

See II(2) General Observations at page 8.

United States follow-up in Spec(91)85 to United States 20, 27, 28 and Canada 3 in Spec(91)10

The responses to these questions are inadequate. Reference to Community legislation that has not been provided to the members of the Working Party is not responsive to questions seeking a description, for the record, of how "Community origin" is to be conferred on the preferential trade. These questions relate to the use of the imports for production for trade in other parts of the EC and for export as well. It is not obvious how the rules of origin normally used by the EC in this regard can be applied to imports that cannot even be satisfactorily described by HS tariff number.

Please outline for the Working Party how the imports covered by the waiver can be "transformed" for trade outside the former GDR.
include reference to how derogation from the technical and health requirements in Council Directives 90/650, 90/654 and 90/657 might affect the use of such products in goods destined for sale in other parts of the Community or in third countries, whether or not they are covered by the waiver.

As far as Council Directive 90/654/EEC is concerned it has to be kept in mind that the existing Community legislation:

- prohibits the use of additives unless they are admitted;
- prohibits the use of "Candida" as it might cause health problems (allergies) for persons dealing with the substance during manufacturing processes.

The application of this existing EC legislation without any transitional period would have caused difficulties for the industry on the territory of the former GDR and would have been inadequate in the existing circumstances. The additives for the production of animal feedingstuff, mentioned in Directive 90/654/EEC and used in the former GDR, have, for example, not been prohibited because they were to be considered as dangerous, but because no request for admission within the EC has been submitted up to now. It cannot be excluded that Germany might ask for their admission which then would have to be examined according to the existing rules.

The European Communities have provided for a limited derogation from Community standards for this territory because the additives for the production of animal feedingstuff do not change the nature of the product for which they have been used.

The application of these substances cannot damage the health of the final consumer. It is the same for Candida, for plant-propagating material and derogations from plant health rules. Consequently, it can be stated that no legitimate interest of third countries exists to limit or to refuse the importation of such products.
2.2 MARKET ACCESS

(From Spec(91)10)

I(2) Introduction

A number of questions (see in particular United States, Nos. 5, 6, 11-14) refer to the Commission's "Information to Contracting Parties" of 6 December 1990, which contained a "Survey on products from Central and Eastern European Countries benefiting from transitional exemption of tariffs due to German unification (frequently referred to as "summary survey"). This informal document was circulated by the Directorate-General of External Relations in order to provide interested Contracting Parties with more substantive information as to the general trade volume involved, before the decision on the Community's waiver request.

This summary survey did not provide detailed information regarding specific products and tariff lines affected. This information is contained in Annex II [Spec(91)10], which provides the contracting parties with all information required. However, it has to be stressed that the information on tariff lines contained therein has only indicative character, given that it has been in many cases impossible to relate products expressed in the nomenclature of the CMEA to an exactly equivalent item in the Harmonized System.

The Community was unable to present this detailed information in January 1991, as had been expected. The transfer of nomenclature, its verification as well as the editing of the present product lists and their translation, required much more time than had previously been envisaged.

The enclosed revised product lists (Annex II) will shortly be published in the Official Journal of the European communities. This publication will be made available to the Working Party.

The texts of the Community's legislative decisions implementing the transitional measures which are covered by the GATT waiver (L/6792) appear in OJ Nos. L 353 and L 364.

United States follow-up in Spec(91)85 to United States question 8 in Spec(91)10

What status will Annex II have after it is published? Will the volumes and values listed become the definitive limit of the duty-free treatment, taking into account the other criteria described in the "General Observations" of Spec(91)10?

The European Communities published the content of Annex II on 10 June 1991 in the Official Journal C 151. The volumes and values listed therein are the definitive limits of the duty-free treatment. The procedures and controls detailed in Part II:2 of the Communication of the EC of 17 May 1991 (GATT Spec(91)10) apply to the importation of all goods contained in the list of products, provided they are imported according to Council Regulation (EEC) No. 3568/90 or Commission Decision (ECSC) No. 3788/90.
In information provided to the contracting parties on 6 December 1990, the EC Commission indicated that Germany would draw up a "detailed list of products which will contain explanatory indications with regard to the tariff positions of the goods in question" and that this list would be forwarded to the GATT Secretariat "at the latest in the course of January 1991". Has such a list been produced? Please specify the EC import tariff lines for which the tariff preferences covered by the waiver in L/6792 apply and the values and/or volumes of goods to be entered at zero rates of duty and which may be excused from certain EC standards regulations.

Yes, such a list has been produced (see already introductory remark No I.2 and Annex II). It contains the volume/value of all products benefiting from the transitional suspension of import duties.

Concerning the temporary exemption from the application of certain technical rules, a comparison should be made between the product lists of Annex II and the products covered by the annexes to the Council Directives 90/650/EEC and 90/657/EEC.

Do CMEA Nomenclature Categories 7 and 8 of the overall Summary Survey, i.e., "raw materials for the manufacture of food and allied products" and "food and allied products" include import data for agricultural goods not covered by the tariff and standards preferences, e.g., beef and grain and other imports subject to CAP levies and minimum import prices? Are there any other categories of goods previously exported by the former CMEA countries and Yugoslavia to the former GDR which may not be listed in Annex I?

CMEA Nomenclature Categories 7 and 8 of the summary survey included import data for agricultural goods not covered by the transitional tariff suspension since this summary was established on the basis of the annual protocols and could not yet reflect the final decisions on the exact wording of Council Regulation (EEC) No. 3568/90, adopted on 4 December 1990. Positions not covered by this legislation are marked with a "?" in the revised product lists contained in Annex II. These are the only goods exported by CMEA countries and Yugoslavia to the former GDR in 1990 (Poland: 1989), which are not listed in Annex II.

In the view of the EC, do the import values listed on the overall Summary Survey and in the individual lists (the summary surveys attached to the individual Protocols) that follow it account for the maximum value of trade that will be exempted from import duties and standards regulations, as contemplated in the waiver in L/6792? Do
the totals of the individual lists match the totals listed on the overall Summary Survey? Will these total values be converted to ECU for the purpose of administering the zero-duty tariff quotas?

As stated already above (see Introduction), the product lists contained in Annex II are the lists relevant for establishing the exact maximum value or volume for each individual product benefiting from the transitional tariff measures.

**United States 13 (Spec(91)10)**

Are the data contained in parentheses of the individual country lists to be interpreted as negative imports, i.e., exports, or are they sub-categories of the other numbers that immediately precede them?

See I(2) Introduction at page 15.

**United States follow-up in Spec(91)85 to United States question 13 in Spec(91)10**

We are still unclear as to the significance of the parentheses included on some figures in the summary data in Annex I to the original EC documentation. Are the data contained in these parentheses to be interpreted as negative imports, i.e., exports, or are they sub-categories of other numbers that immediately precede them?

The full meaning of the question is not understood since the table appears to the Community to be very clear.

**Canada 1 (Spec(91)10)**

Although the EC has provided a large amount of material to GATT members on measures being put into place during the transitional period relating to the unification of Germany, we are still left in a somewhat deficient position with regard to clear and specific information about access for individual products at the tariff item level of detail. In this context, would the EC please provide the Working Party with information in a more readily usable form, for example, a table or list which would show:

(a) HS number of the item;
(b) product description;
(c) type of measure involved (e.g.: tariff quota or QR);
(d) specific treaty/agreement involved;
(e) amount/value of allowable imports;
(f) countries which are allowed access to the quota;
(g) value of imports of each product into the former GDR from beneficiaries and other GATT contracting parties over the three-year period 1987-1989.

See I(2) Introduction at page 15 and in particular Annex II to Spec(91)10.
Canada follow-up in Spec(91)85 on Canada question 1 in Spec(91)10

Along with some other members of the Working Party, we believe that the request for historical trade data (for the items under duty-free preference under the waiver) is a fair question to which the EC should be willing to respond.

No reliable historical trade data for the former GDR exist.

New Zealand 1 (Spec(91)10)

Could the Community please supply tariff line data on a 10 digit level on the products affected by the waiver as the Community promised to do, by January 1991 at the latest, in its communication of 6 December in connection with the waiver request?

See I(1) Introduction at page 15 and Annex II to Spec(91)10.

New Zealand 2 (Spec(91)10)

If this data is still not available, would the EC please explain how in practice it has been implementing effectively tariff quotas since 3 October 1990 and how it will implement these measures in future?

See reply to United States 6.

New Zealand 3 and 4 (Spec(91)10)

Would the EC please supply a breakdown into the categories listed below by value and/or by volume of the aggregates listed in the summary survey annexed to the Community's communication of 6 December for: live animals, raw materials for the manufacture of food and allied products, and food and allied products of:

- WMP
- SMP
- Other milk and cream, concentrated
- Butter
- Cheese and curd
- Casein, caseinates and other casein derivatives;
  casein glue
- Apples
- Other fresh fruit
- Bovine meat
- Sheepmeat
- Hides, skins and leather
- Wool
- Vegetables.

Please provide a table for 1988, 1989 and 1990 comparing actual imports into the former GDR from these third countries, on the same
basis as the categories in question 3, with the maximum values and/or volumes contained in the trade protocols relevant for each year.

Annex II specifies the products and the amounts which are relevant in respect of the suspension of tariff duties.

In view of the profound changes which have taken place as a result of the integration of the territory of the former GDR into the EC, the imports in 1988, 1989 and in 1990 before 3 October cannot be taken as the basis of the estimation of GDR imports from CMEA member States and Yugoslavia under the preferential conditions established by Council Regulation (EEC) No. 3568/90.

**United States follow-up in Spec(91)85**

The United States delegation supports the request by New Zealand for trade data covering historical trade flows. The EC statement in its written responses that this information is not "relevant" needlessly undercuts the point made many times by the EC that the data confirm a downward trend in trade between the former GDR and the former CMEA members. The analysis of this data should be left to the contracting parties who have requested it.

**New Zealand 2 (Spec(91)85)**

In New Zealand’s question 4 in Spec(91)10, we sought information on imports into the GDR in 1988, 1989 and 1990 of the products listed in question 3, comparing these with the maximum values and/or volumes contained in the trade protocol relevant for each year. Could the EC now provide details sought in this question?

No details can be given. The structure of the annual protocols, which are not established on HS-nomenclature, does not admit the comparison of the real imports and the import possibilities for the mentioned products. A survey about the use of the annual protocols in 1988, 1989 and 1990 by products is not available. For the mentioned period, global statistics of external trade are available, which contain to some extent data about imports by countries and product groups.

**Cuba 8 (Spec(91)85)**

Can the EC guarantee that it will not reduce access to its market for other countries not included in the exemption which are former suppliers to the GDR of products such as sugar, tobacco, citrus fruits and nickel? If so, could it indicate how?

The great difference between the former GDR and the EC is that the latter, being a market economy, can hardly give any guarantees on trade levels or market access in quantitative terms. Even for the countries included in the exemption, there was no such guarantee. In spite of the possibilities offered to them, they could not achieve the same market penetration in
goods which they used to trade with the GDR because of the structural changes in their economy. How could the Community then provide such guaranteed market access to Cuba?

**Australia 7 (Spec(91)10)**

What quantitative effect does the EC expect the waiver to have on exports from and imports to the EC of:

- meat and edible offals (particularly beef and sheepmeat)
- vegetables, FCF and preserved
- cereals
- dairy products
- sugar
- wine
- hides and skins
- oil seeds and oleaginous fruit
- base metals ores and concentrates
- coal, coke and briquettes
- machinery and transport equipment
- internal combustion piston engines and parts
- ADP and office machinery and parts
- electronic machinery and apparatus
- motor vehicle parts and accessories.

Given the very feeble degree of utilisation of import quotas the Community does not expect (cf. Annex I) any negative effects to exports from other third countries.

**United States 9 (Spec(91)10)**

The summary data in Annex I of the information circulated by the EC to contracting parties on 1 December 1990 are listed in DM, which have been converted from "Transferable Rubles (TRs)" at the rate of 1:2.34. Are TRs still being used as the basis of valuation for trade that was previously conducted under the agreements covered by the waiver? Are TRs used to value balances of previous trade? What are the current rates of exchange between TRs, DMs, and the currencies of the former CMEA countries, e.g., the rate of exchange of the Polish Zloty with the DM and the TR?

Based on the rate 1 TRbl = 2.34 DM, the basis of valuation for trade contained in the product list is 1 TRbl = 1.13389 ECU. The European Community does not value balances of previous trade.

**United States (Spec(91)85)**

In the introduction to Annex II of Spec(91)10, it is stated that the value is noted in units of ECU 1,000, converted from the original Transferable Rubles (TR) at a rate of exchange of 1 TR to ECU 1.13389.
How does this rate compare with that being used to value existing balances in CMEA clearing arrangements in the various former CMEA countries?

The calculation of a level of "token entry" or "p.m." for duty-free treatment based on 1987-1989 trade, as provided for in note 2 of the introduction to Annex II, appears to be a departure from the description of trade coverage of the preferences as provided for in the waiver and in Council Regulation (EEC) No. 3568/90 of 4 December 1990. Can the EC representative explain the apparent contradiction?

(a) In the wake of the introduction of German economic and monetary union, the former GDR introduced, after consultation with the FRG, the conversion rate of DM 1 = TRbl 2.34 for foreign trade clearing operations. This decision of the GDR Council of Ministers reflected the inner-German conversion rate of DM 2 = DM 1 since TRbl 1 had previously been worth DM 4.68.

The determination of the value of existing clearing payment balances of the former GDR with former CMEA trading partners is a matter of negotiation between the FRG and former CMEA Member States.

(b) The language of Article 1(1), first alinea of Regulation 3568/90 is in fact unambiguous: "up to the maximum quantities or values established by the said agreements" (i.e. the agreements mentioned in Annexes I and II).

On the face of it, the expression "p.m." does not indicate a maximum quantity or value. Its presence indicates that trade in the product concerned was intended to be possible between the CMEA States involved, but that no specific quantity was planned and that therefore everything depended on the eventual contracts concluded between State-trading enterprises. This is almost equally true, however, for those products for which maximum quantities or values are mentioned in the protocols, as such quantities or values - as is clearly stated in the fourth preambular paragraph of Regulation 3568/90 - do not entail legally-binding obligations, but only have indicative value. In this sense the difference between a maximum and a "p.m." line in the annual trade protocols between CMEA countries is slight.

According to the fifth preambular paragraph the purpose of Regulation 3568/90 is to attenuate the impact of German unification on the agreements mentioned in Annexes I and II. This is a fortiori true for the Agreements of Annex I (the annual protocols), which will not be, and have not been, renewed after 31 December 1990. The idea was to avoid serious repercussions on enterprises in (former) CMEA countries and on the stability of
the economies of these countries. This principle has been retaken in the first ("... to take account ... of the legitimate expectations with respect to traditional trade flows...") and second considerations ("... to facilitate the adjustment of trade ... to the new situation") of GATT Council Decision L/6792 of 13 December 1990.

The Commission of the European Communities considers it therefore reasonable to give an interpretation of the words "maximum quantities or values" in relation to "p.m." - lines, which will take full account of this underlying purpose of the Regulation, i.e. to facilitate the continuation of traditional trade flows with a view to avoiding serious negative consequences for the economies of the former GDR and its European CMEA partners.

Seen in this perspective, a broad interpretation of the words "maximum quantities or values", when they have to be applied to "p.m." - lines in the annual trade protocols, has been made when establishing the product lists published in O.J. C 151 on 10 June 1991. An average figure of actual trade in such goods over the years 1987-1989 has been used in thirty-six cases to constitute such "maximum quantities or values".

**United States follow-up question 25 November 1991**

The OJ No. C.151 listing the product quantities and values covered by the trade preferences indicates on page 2 that "the agreed values have been converted into ECUs at the rates of: 1 transferable ruble (equal to) ECU 1.33389. How did the EC arrive at this rate of conversion? Isn't that a rather overvalued rate to assign, given that actual trade among former CMEA countries is now conducted in hard currency and at real rates of exchange?"

**New Zealand 6 (Spec(91)10)**

Do all products (except beef, veal and live animals which are not pure-bred bovine breeding animals) covered by the annual protocols between the former GDR and the third countries mentioned in the GATT waiver enjoy duty-free access to the territory of the former GDR? If not, please specify which products do and which do not (to the same level of detail as question 3 above) and the reasons for duty-free status exclusion/inclusion in respect of each product category.

See Annex II to Spec(91)10.
2.3 UTILIZATION OF TRANSITIONAL MEASURES

From L/6974:

Take-up of the duty-free admission facilities

1. Actual imports

In the period from 3 October 1990 to 30 June 1991 goods valued at DM 374 million benefited from the tariff suspension and entered the former GDR duty-free: DM 245.5 million during the final quarter of 1990 and DM 128.5 million in the first half of 1991. However, only a very small proportion of the potential for duty-free admission offered by the goods protocols was actually used (an average of 3.8 per cent in the last quarter of 1990 and barely 1 per cent in the first six months of 1991).

While Bulgaria and Romania made relatively more extensive use of the transitional rules, the USSR and Poland made comparatively little use of them (see Annex 2). However, the opposite applies when overall imports are compared with the volume of trade in the past. While the volume of trade with the USSR and Poland was in each case maintained at about a third of the previous year's level, trade with Bulgaria and Romania was down to about 4 per cent and 14 per cent respectively (see Annexes 3 and 4).

In absolute terms, the goods protocols offered in the period from 3 October to 31 December 1990 potential duty-free admission worth DM 6,542.5 million; actual imports totalled DM 1,869.6 million. The potential for duty-free admission in the first half of 1991 amounted to DM 13,096.1 million compared with actual imports totalling DM 3,741 million. Actual imports fell on average by 72 per cent from past levels. In the last quarter of 1990, 13 per cent of overall imports were admitted duty-free under the special rules, against 3.4 per cent in the first half of this year.

When considering the volume of duty-free imports, it should be borne in mind that some of the goods eligible for duty-free admission and some covered by the "overall imports" heading are zero-rated anyway in the Common Customs Tariff (CCT). This is particularly true of raw materials. It is not possible to separate the goods which are zero-rated in the CCT from the rest. The same applies to imports under the Generalized System of Preferences (GSP) and the Cooperation Agreement with Yugoslavia.

2. Grounds for the low take-up

The principal reason for the limited take-up of duty-free admission and the low volume of overall imports is the steep decline in traditional imports from the countries concerned into the new Länder. All sectors are affected, apart from oil, natural gas and electricity. In 1990 actual imports into the new Länder from the eligible countries totalled DM 15.2 billion. This is DM 12.4 billion or 45 per cent down on 1989. Of
this slump in imports, about DM 10.6 billion fell away in the second half of the year. The downward trend in overall imports into the new Länder was even more pronounced in the first half of 1991. The available figures for overall imports in the first six months of 1991 are far lower than those for the same period of last year.

The downturn in overall imports in the second half of 1990 was triggered by the move to restructure the former GDR’s command economy on market principles following economic and monetary union. Radical restructuring in the new Länder, accompanied by a considerable reduction in production capacity and factory closures, together with the introduction of payment in convertible currencies rather than the transferable ruble in trade with the former COMECON countries, are the primary causes of the widespread breakdown of traditional trade relationships.

This is compounded by the fact that the countries concerned are themselves in the grip of more or less intensive political and economic reform, which inevitably affects bilateral trade relations. They therefore have very limited reserves of foreign currency with which to pay for imports.

The limited take-up of duty-free admission facilities is also a consequence of the reduction of the former GDR’s dependence on trade with the COMECON countries and its rapid integration into the Western trading system. In these circumstances imports from the East are competitive only where they are vital to the maintenance of production or comparable in price and quality to Western products.

(From Spec(91)10)

The Community would from the outset point out that the economic impact of the transitional measures after the first months of experience appear to be quite limited.

Participants will find in Annex I an overview of effective utilisation of duty-free import possibilities into the territory of the former GDR, based on preliminary data.

These figures show that very low percentage utilisation has occurred of the duty-free quotas in the fourth quarter of 1990 (overall average only 3.8 per cent and in trade with individual partners never higher than 10 per cent). Even if all imports in that quarter from CMEA partners are considered, it is clear that current trade levels are only about 30 per cent of the levels envisaged for the tariff quotas (and in many cases substantially less than that).

The real additional impact of the specific transitional measures resulting from German unification is difficult to estimate. The fact that imports from the countries in question already benefit from the existing GSP facilities (Poland and Hungary: GSP from 1.1.1990, CSFR: GSP from 1.1.1991), as well as (in the case of Yugoslavia) the duty-free provisions of the Cooperation Agreement, has to be taken into account.
It should be borne in mind that column 4 contains both products which are dutiable as well as those which are duty-free under MFN provisions in the customs tariff.

**United States 3 (Spec(91)10)**

Please provide data, at least at the one-digit level of description, on the third country trade with the former GDR since unification, including trade with the former CMEA countries and Yugoslavia.

See Annexes I and IV to Spec(91)10.

**United States follow-up in Spec(91)85 to United States question 3 in Spec(91)10**

Annexes I and IV do not provide the import data at the one-digit level of disaggregation, as requested. We would appreciate the EC's co-operation in this matter. Will the EC provide this data?

It is not entirely understood what is meant by the expression "one-digit level of disaggregation".

**United States follow-up question 25 November 1991**

In a written question to the EC in March of 1991, the United States requested "data, at least at the one-digit level of description, on the third country trade with the former GDR since unification, including trade with the former CMEA countries and Yugoslavia". We are seeking some information on the disposition of trade under the preferences, by definition at the one-digit statistical level in either the SITC, CCCN, or HS nomenclature.

Is the data provided in the Annex to Spec(91)85 responsive to the United States request for a reformulation of the trade numbers provided in Annexes I and IV to the Spec(91)10 document? Is the data broken out by one-digit import categories?
III. IMPLEMENTATION OF TRANSITIONAL STANDARDS PROVISIONS

Hong Kong D (Spec(91)10)

What precisely are the derogations from "certain standards and norms" contemplated under the preferential arrangements subject to the waiver? What is the relation of such derogations to the EC's obligations under the Agreement on Technical Barriers to Trade?

These derogations would be an exception to the obligation stipulated in Article 2.1 of the Agreement on Technical Barriers to Trade that "products imported from the territory of any Party shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country in relation to such technical regulations or standards". The Community considers that this exception is covered by the waiver which it has requested.

United States follow-up in Spec(91)85 to Hong Kong question D in Spec(91)10

The EC response to this question appears to state that derogations from national treatment of imports required under the Standards Code are covered by the waiver contained in L/6792. However, L/6792 explicitly grants the waiver only on the provisions of Article I of the General Agreement. In addition, in its response to question United States 32, United States 33 and United States 35, the Community appears to acknowledge that the derogations from technical and health requirements provided for in Council Directives 90/650, 90/654 and 90/657 are not totally covered by the waiver, i.e., at least to the extent that they apply to imports not covered by preferences.

Could the EC please elaborate on its justification under the General Agreement and the Standards Code for the discrimination in the application of the "technical rules" covered by these Directives?

In so far as Hong Kong has argued that a separate waiver under the Standards Code is necessary, the EC has replied during the meeting of 28 May 1991 that, since the Standards Code does not provide for the possibility of a waiver, a reasonable legal interpretation of the waiver contained in L/6792 would require that it is considered to cover also the Standards Code, in so far as this Code forms a further development of those GATT Articles covered by the waiver.

In so far as the United States seems to argue that there is something amiss with the waiver in so far as the derogation from technical and health requirements in Council Directives 90/650 and 90/657 applies to imports not covered by preferences, this is incomprehensible, since it was clearly stated in the reply to United States 32 (Spec(91)10, page 31), that such derogation can only be extended to products covered by tariff preferences. In so far as Annex I(2) and Annex II.I.I.b of Directive 90/654 refer to the "limits of traditional trade flows" instead of the products covered by
preferences, there is no difference in practice between these two categories, since the only imports in the GDR of plants not complying with the EC plant health standards and of seeds not certified according to EC standards came from CMEA Member States and were covered by quantities listed in trade protocols.

Finally, in so far as any aspect of the derogation from technical and health requirements were not to be covered by the waiver in L/8792 and individual contracting parties might wish to insist on an alleged right to import goods below EC standards but in conformity with GDR standards into the five new States of Germany, the Community would be willing to consult on any specific problems that might arise, but it is convinced, at the same time that, in practice, such wish will hardly exist and that the actual problems will be minimal.

As far as Council Directive 90/654/EEC is concerned it has to be kept in mind that the existing Community legislation:

- prohibits the use of additives unless they are admitted;
- prohibits the use of "Candida" as it might cause health problems (allergies) for persons dealing with the substance during manufacturing processes.

The application of this existing EC legislation without any transitional period would have caused difficulties for the industry on the territory of the former GDR and would have been inadequate in the existing circumstances. The additives for the production of animal feedingstuff, mentioned in Directive 90/654/EEC and used in the former GDR, have, for example, not been prohibited because they were to be considered as dangerous, but because no request for admission within the EC has been submitted up to now. It cannot be excluded that Germany might ask for their admission which then would have to be examined according to the existing rules.

The European Communities have provided for a limited derogation from Community standards for this territory because the additives for the production of animal feedingstuff do not change the nature of the product for which they have been used.

The application of these substances cannot damage the health of the final consumer. It is the same for Candida, for plant-propagating material and derogations from plant health rules. Consequently, it can be stated that no legitimate interest of third countries exists to limit or to refuse the importation of such products.

United States 35 (Spec(91)10)

How does the EC justify under the provisions of the General Agreement the exemption provided for in these Directives of German production in
the former GDR from the standards requirements applied to imports from third countries not subject to Council Regulation (EEC) No. 3568/90?

To the extent that this matter may be outside the scope of the waiver the Community would be willing to consult on any specific problems that might arise.

**United States** follow-up question in Spec(91)85 to United States question 35 in Spec(91)10

The EC did not respond to the question. How can such derogations be justified under GATT Articles and the Standards Code?

See reply to Hong Kong D in fine.

In the face of continued objections against the Community's reply to question Hong Kong D, the Community believes it is important to emphasize once again the practical lack of importance of this matter. As the Community has said before, it is highly unlikely that any contracting party which is not a beneficiary of the regime for which the waiver has been granted would insist on a supposed right to import goods below EC standards but in conformity with GDR standards into the five new States of Germany. In the unlikely event of such a right being claimed, the Community would be open for consultations.

**United States** 31 (Spec(91)10)


Please elaborate on the provisions in these Directives that relax Community health and safety or other standards for production in the former GDR or in trade between the former GDR and its CMEA trading partners, e.g., what products are covered, and what is the nature, in general, of the differences between EC regulations and those currently in force in the former GDR?

According to Articles 1 of the Directives 90/650/EEC and 90/657/EEC the Community has authorized the German authorities to allow for the relaxation of Community standards for those products which fall under the scope of the directives contained in the annexes of the above-cited directives (see Annex III of Spec(91)10).
The main differences between EC regulations and those currently in force in the former GDR concern the design, composition, labelling and marketing of industrial products. Adjustment periods have been considered necessary for those East German products which do not comply with EC regulations but the withdrawal of which from the markets of the new Länder would impose an excessive burden on those concerned.

As far as Directive 90/654/EEC is concerned only two possible exemptions concern imports from the CMEA trading partners of the former GDR:

- A derogation of Council Directive 77/93/EEC (harmful organisms) may be accepted by the Commission and after consultation of the Member States in order to fulfil possible contractual obligations of the former GDR concerning the imports of products which do not meet the requirements of this Directive. Until the present no request has been submitted to the Commission.

- Further derogations may concern the marketing conditions laid down in the Community directives for plant-propagating material. They have been accepted in order to respect the production needs of undertakings in the former GDR. Germany has admitted the importation of seeds of maize (corn) and sunflowers which are not certified according to EEC rules into the territory of the former GDR and ensures that the seed is not introduced into parts of the Community other than this territory (on controls see reply to United States 37: plant-propagating material).

**United States 32 (Spec(91)10)**

Does this preference cover the same trade as the tariff preferences or does it cover additional imports into the former GDR from its CMEA trading partners?

According to Articles 1 para. 3 of Directives 90/650/EEC and 90/657/EEC German authorities may extend derogations to products imported into the territory of the former German Democratic Republic only to those which are covered by the tariff preferences.

**United States follow-up in Spec(91)85 to United States questions 31 and 32 in Spec(91)10**

We would appreciate further information on the "adjustment periods" which are envisaged and any other elaboration which the EC can provide on the "design, composition, labelling and marketing of industrial products". Based on the EC's reply, we presume that only the imports listed in Annex II would benefit from a temporary relaxation of Community standards.
Is it the intent of the EC and Germany that the extension of these Council Directives to imports into the former GDR covered by Council Regulation (EEC) No. 3568/90 be covered by the terms of L/6792? Is there any additional similar EC legislation that provides for "the derogation from certain standards and norms" currently in effect? Does the EC believe it to be covered by the waiver in L/6792?

In answer to first question see reply to United States 1, (Spec(91)10). No additional similar EC legislation exists.

Which German authorities may extend the derogations of these directives to products covered by Council Regulation (EEC) No. 3568/90? Have such derogations been granted thus far, and if so, to what extent?

German authorities which may extend derogations from EC Directives to products covered by Council Regulation (EEC) No. 3568/90 are the same as those which may extend derogations under Article 1 of Directive 90/650/EEC.

According to Articles 3 para. 2 of the Directives 90/650/EEC and 90/657/EEC, the Federal Republic of Germany shall first report on the application of the measures taken pursuant to these Directives on 31 December 1991; this report shall include information on the granting of derogations.

In the response to this question, the EC indicates that it does not intend to tell the contracting parties about standards derogations granted under Council Directives 90/650 and 90/657 until December 1991. Can we infer from this that the EC is not monitoring derogations under these Directives? Why has the EC refused to give this information to the contracting parties?

Note: In the view of the United States, the matters discussed in the EC's reply to United States questions 31 through 34 are within the scope of the Working Party. While we appreciate the EC's willingness to consult on individual problems which may arise, we would appreciate a more thorough response to these questions at this meeting.

As is clear from the earlier reply to United States 34, the monitoring of the derogations under Directives 90/650 and 90/657 is based on the reporting requirements imposed on the FRG by Article 3 paragraph 2 of both Directives. Article 6 of Directive 90/654 imposes a similar reporting requirement on the FRG. The results of the monitoring are set out in the report to the Parliament and the Council.
As to the note added to this question, the EC is not aware of having suggested that questions 31 through 34 were outside the scope of the Working Party.

With regard to animal nutrition law, two derogations have been granted to Germany:

- the first derogation concerns the possibility to use three additives in conditions not provided for in Council Directive 70/524/EEC on additives in animal foodstuff. In the conditions in which they are used, these three growth factors do not alter the characteristics of the animal products and, therefore, present no risk to the safety of consumers;

- the second derogation concerns the use of yeasts of the "Candida" type as ingredients in foodstuff for animals. In this case there is no risk to the consumer since the only potential danger is to workers producing or handling the product;

- while this argument is equally valid for BST and the hormones authorized in the United States, it should be noted that, with regard to the use of additives on ingredients in animal feed, many third countries have rules which are different from these in the EEC but that this has not, up to now, caused obstacles to trade; the only reason which could lead to restrictions or a ban on imports would be the presence of residues dangerous to health, in the products to be consumed.

Moreover, it should be stressed that these two derogations expire:

- on 31 December 1992 for the three additives "Olaquindox", "Nourscothrcine" and "Ergambur"; and

- on 31 December 1992 for the "Candida" yeasts.

On the basis of Directives 90/650 and 90/657 certain categories of good, produced in the new Länder, are entitled to a temporary easing of Community standards. This exemption will end before 31 December 1992 (with the exception of certain pharmaceutical specialities and veterinary medicines which are entitled to an easing of the standards until 31 December 1995). Goods which do not conform to Community law may not be sent outside the territory of the new Länder.

These exemptions have been utilized as follows:

- with regard to products produced in the new Länder, there is a clear tendency to adapt to Community standards. The authorities in the new Länder have not found any cases of breach of the prohibition on sending these goods outside the ex-GDR;
- with regard to products imported from the former COMECON countries which do not conform to Community law there has also been a clear tendency to adapt to Community standards. The competent German authorities have not received any requests of licences to import non-conforming products.

- with regard to agricultural products imported into the new Länder, it has not been possible to quantify exactly the use of exemptions from Community law, as the import licenses for agricultural products do not allow a distinction to be made between conforming and non-conforming products. However, the quality of imported agricultural products has already attained a high level.

Having regard to the restructuring of the former COMECON countries towards a market economy it can be expected that the tendency to conform to Community standards will intensify with the possible exception of some small- and medium-sized producers which need a transition period.

**United States** follow-up question in Spec(91)85 to United States question 1 and 2 in Spec(91)10:

In this response, the EC lists the legislation covered by the waiver, omitting Council Directive 90/654/EEC of 4 December 1990 (OJ L 353, vol. 33, 17 December 1990, pages 48-56). It appears that this Directive proposes to relax Community provisions on the quality and health of certain animal and vegetable products produced and sold in the former GDR through December 1992. Does this response mean that there will be no relaxation of the requirements outlined in this Directive for imports covered by the waiver?

As far as Council Directive 90/654/EEC is concerned:

In the reply to United States Question 31 the two possible exemptions concerning imports from some of the CMEA trading partners of the EC have already been indicated.

One of these exemptions i.e. Directive 77/93/EEC is a purely theoretical one, for no request has been submitted.

The derogations concerning importations of plant-propagating material originating from some Eastern European countries will not affect the imports from other third countries, which will generally fulfil the standards laid down in the relevant Community Directives.

Already during the meeting of 28 May 1992, the EC representative said that the omission of Directive 90/654/EEC from the answer to these questions was an oversight and that the reply to United States 31 (Spec(91)10, page 31) made this clear. Further details of this Directive have been covered in the additional reply to Hong Kong D.
Under what circumstances can products produced in the former GDR or imported under the terms of L/6792 which benefit from the relaxation of Community standards provided for in these Directives be exported from Germany with a "made in Germany" label and without reference to the fact that they are not fully subject to EC standards regulations and directives?

According to Articles 2 para. 2 of the Directives 90/650/EEC and 90/657/EEC the German authorities shall take all measures necessary to ensure that products which qualify for derogations under Article 1 are not placed on the market in the territory of the Community other than the territory of the former German Democratic Republic.

How can Germany "take all measures necessary to ensure that products not complying with the Community Directives...are not placed on the market" elsewhere in the Community, as provided for in Article 2 paragraph 2 of 90/650/EEC and 90/657/EEC, and Article 5, paragraph 1 of 90/654/EEC, if such measures "shall not give rise to any additional controls or formalities at frontiers between Member States"?

Controls are exercised on the market (see EC Directives 90/650/EEC and 90/657/EEC). As far as Directive 90/654/EEC is concerned:

Only minor derogations have been accepted in the veterinary sector, for animal feedingstuffs, plant-propagating material and plant health.

Veterinary sector: A provisional measure permits East-German slaughterhouses not to meet the requirements for a licence according to Community standards as laid down in Council Directive 71/118/EEC.

However, no control problem exists, since each product has to bear a specific mark referring to the East German slaughterhouse. The mark is different from the mark attributed by licensed slaughterhouses. The national supervision authorities can therefore easily identify chicken slaughtered in East German slaughterhouses not complying with EC standards, should an attempt be made to market them outside former GDR territory.

Animal feedingstuffs: Germany is authorized to maintain former GDR regulations permitting the use of a limited number of additives in animal feedingstuffs (Directive 70/524/EEC) as well as the use of protein products obtained from yeast of the Candida Genus (Directive 82/471/EEC). It may also admit derogations from the labelling provisions for the above mentioned additives and yeast of Candida Genus as well as for compound and straight feedingstuffs (Directives 70/524/EEC, 77/101/EEC, 79/373/EEC, 82/471/EEC). Effective control can
be ensured by the national supervision authorities. The producer, the additives and in many cases the ingredients have to be indicated on the labelling. Derogation and origin can therefore easily be identified.

**Plant-propagating material:** Germany is authorized to allow a number of derogations from the marketing conditions laid down in the Community directives.

There is no control problem, since products not complying with Community standards cannot be "EEC"-certified. They consequently cannot bear a reference to "EEC rules and standards" and must be labelled differently. Such products would be easily identifiable if an attempt were made to market them outside the ex-GDR territory.

**Plant health legislation:** Germany is authorized to allow derogations from Council Directive 88/362/EEC (pesticides).

The control is effected by national authorities, who regularly take samples of products before their transformation. The specific measures taken by Germany enable the national German authorities to verify on the territory of the Federal Republic of Germany that no product, whose commercialisation is limited to the former GDR is marketed elsewhere.

**United States 38 (Spec(91)10)**

Article 3, paragraph 1 of 90/650/EEC and 90/657/EEC states that the rules, regulations, and control measures to be taken in this regard should have been notified to the EC Commission by 31 December 1990 and "immediately" published in the Official Journal. Will the EC provide the published texts to the Contracting Parties in the context of this Working Party review? Is there any such provision for publication in the case of 90/654/EEC?

Council Directive 90/654/EEC does not provide for publication of notification in the Official Journal. Nevertheless the information of the Member States and the European Parliament is provided for. The Commission is preparing a report which shall be presented in the near future. [Submitted to the Working Party as Spec(91)86]

**United States 39 (Spec(91)10)**

Article 3, paragraph 2 of 90/650/EEC and 90/657/EEC refers to reports on the application of these measures to be provided through 31 December 1995. In addition, the time limits for the derogations provided for in the Annex to 90/654/EEC in some cases go beyond December 1992. Is it the intent of the EC to continue to exempt the imports into the former GDR contemplated in Council Regulation (EEC) No. 3568/90 from normal EC standards requirements after the expiration of the waiver contained in L/6792 in December 1992?
The answer is negative.

**United States 40 (Spec(91)10)**

Does the authority granted in Article 4, paragraph 1 of 90/650/EEC and 90/657/EEC, and Article 3, paragraph 1 of 90/654/EEC to "take measures involving adjustments to fill obvious loopholes and technical adjustments" include authority to expand the scope of the relaxation of standards regulations provided for in these Directives?

Reply as far as Directive 90/654/EEC is concerned:

If necessary the scope of the relaxation of standards may be expanded, but only within the limits of Article 3(2) of Council Directive 90/654/EEC. As far as Council Directives 90/650/EEC and 90/657/EEC are concerned, no such authority is provided for.

**United States follow-up in Spec(91)85 to United States question 40 in Spec(91)10**

Articles 4, paragraph 1 of Council Directives 90/650 and 90/657 appear to provide for "measures involving adjustments to fill obvious loopholes and technical adjustments". Does this provision include authority to expand the scope of the relaxation of regulations covered by the Directives?

**United States 41 (Spec(91)10)**

What access will the Community's trading partners have to the committee described in Article 5 of 90/650/EEC and 90/657/EEC to ensure that their rights under the General Agreement and other multilateral instruments and institutions are protected in the course of its deliberations?

The general rules of access to Commission committees apply.

**United States 5 (Spec(91)10)**

... Please specify the EC import tariff lines for which the tariff preferences covered by the waiver in L/6792 apply and the values and/or volumes of goods to be entered at zero rates of duty and which may be excused from certain EC standards regulations.

Concerning the temporary exemption from the application of certain technical rules, a comparison should be made between the product lists of Annex II and the products covered by the annexes to the Council Directives 90/650/EEC and 90/657/EEC.
United States follow-up in Spec(91)85 to United States question 5 in Spec(91)10

The EC's answer to this question is not fully responsive. An informal comparison of the product categories listed in the Directives concerning derogation from EC standards to the list in Annex II cannot have the same value to this review as a list provided by those familiar with the operation of the Directives in the context of the transitional measures. We request again that the EC specify the tariff lines where such derogations will be permitted.
IV. TRADE AGREEMENTS BETWEEN THE FORMER GERMAN DEMOCRATIC REPUBLIC AND THIRD COUNTRIES

From L/6974:

Renegotiation of outstanding arrangements

Most of the agreements concluded by the former GDR with other countries have been rendered redundant by German unification and the incorporation of the GDR’s territory into the European Community, and indeed often as a result of the political and economic upheavals in East, South-East and Central Europe.

In a Note Verbale of 19 October 1990 the Commission notified all States with which the Community had diplomatic relations of its intention in principle to enter into consultations on agreements that fell within the Community’s competence. In so doing, it ruled out any automatic continuation of the agreements, only pronouncing on the immediate legal succession (in the context of the negotiations on adjustment) in the case of fisheries agreements.

German government officials are currently conducting consultations with all former countries that had agreements with the GDR in order to identify lapsed and redundant agreements and see what the consequences of the continuation of others would be.

Commission representatives have been taking part in these consultations since July. Once these consultations have been completed, the Commission will have to examine what the consequences would be in cases where one or both parties intend to continue application of certain agreements that fall within the competence of the Community.

From Spec(91)10:

II. General Observations

1) The unification of Germany represents the integration of new territory into the Federal Republic of Germany and, therefore, also into the European Community. On 3 October 1990 German Federal legislation and European Community law were immediately applied to the territory of the former GDR. This includes treaties concluded by the Federal Republic of Germany and by the European Community. In former times the corollary of the extension of FRG and Community treaties to the former GDR territory would have been the total extinction of all treaties concluded by the former GDR. Both the FRG and the EC believe that this is too draconian and not entirely compatible with the importance attached to the continuity of treaty relations by modern international law. Hence the openness of the FRG and the Community to discuss and, if necessary, renegotiate former GDR treaties. A renegotiation is always necessary, especially in the economic field, as the context of
these agreements, with the disappearance of the socialist planning system, will no longer be the same. In the specific case of the yearly trade protocols with CMEA countries and of a number of selected long-term agreements of the former GDR, the EC has gone beyond its general willingness to discuss former GDR treaties and has taken certain autonomous measures in order to provide for a smooth transitional period during which trade flows can be adapted. This is presently covered by the waiver.

The Community wishes to emphasize that all this is fundamentally different from an accession to a customs union as foreseen in Article XXIV of the GATT. There is no accession but integration of two States, one of which was not even a Contracting Party. Therefore, other contracting parties held no GATT rights vis-à-vis the GDR and hence the integration of the GDR into the FRG has not led to the increase of any duty above its GATT-consolidated level. In this respect there cannot arise any GATT claims against the Community after German unification.

Australia 1 (Spec(91)10)

In the EC’s request for a waiver under Article XXV:5 (L/6759) it is stated that the maximum quantities and values mentioned in the agreements between the former GDR and its CMEA partners do not constitute legal obligations to export or import these quantities (paragraph 4). It is also stated that some of the agreements are to be renegotiated at the Community, German or private level (paragraph 3). In these renegotiations, what criteria will the Community and Germany be adopting in deciding what levels of trade are to apply in the future? Will they attempt to assess the levels of trade that would have been obtained in the absence of the trade distortions resulting from the waiver provisions and use these as a target?

The Member States of CMEA had concluded between them five-year trade arrangements (1986-1990) which were an integral part of their five-year planning cycle. These agreements were given greater precision in so-called yearly protocols (see Annex I to Reg. 3568/90). Nevertheless the quantities laid down in these yearly protocols were not legally binding on the States concerned; they needed to be complemented by agreements and contracts between state-trading enterprises of both parties. These yearly protocols have run out on 31.12.1990 and will not be renewed.

Some of the longer-term agreements listed in Annex II to Reg. 3568/90, however, may be renegotiated either between private enterprises or at government level. Such renegotiation, if it takes place, will need to take account of the disappearance of the socialist planning system; in fact the adaptation to market conditions will be the major object of such renegotiations. Therefore, neither the Community, nor Germany, nor European industry, will attempt to establish theoretical levels of trade (long-term arrangements on individual projects of industrial co-operation
are currently being reviewed and might, in case of their continuation, eventually require Community action regarding the trade policy framework. It is the Community’s avowed goal to have the distortions resulting from the CMEA trade system disappear. The waiver, far from itself creating such trade distortions, provides the former GDR and its traditional trading partners with a breathing space during which a somewhat "softer landing" can be managed than would otherwise be the case.

Australia 4 (Spec(91)85)

Regarding the longer-term agreements listed in Annex II to Regulation 3568/90, we note from the EC’s response to our question 1 in Spec(91)10 that their stated intention is that distortions resulting from the CMEA trade system should disappear. Presumably, this intention will be reflected in the EC’s attitude to renegotiating the longer-term agreements.

- Are the agreements between the former GDR and third countries referred to in Commission Regulation 3775/90 to be renewed?

- If so, will they be renewed on commercial terms?

- Finally, can the refund supplement from German national funds result in total refund for exports of products from the former GDR under these agreements exceeding the amount of export refund fixed by the Community?

- Since Article 1, paragraph 1 of Regulation 3775/90 covers only agreements concluded by the Government of the former GDR before 3 October 1990, it can be excluded that new derogations of that kind might occur.

- Due to the exceptional difficulties on this specific market, Germany was authorized to grant national refunds for the exports of 10,000 tons of sheepmeat according to agreements concluded before 30 June 1991 (Regulation 139/91).

- Generally, only a supplement to the export refunds can be granted from German national funds for exports of products from the former GDR. However, in some of the cases where no Community refund is paid (sheepmeat), a national refund can be granted.

- Since Germany is authorized to grant a supplement to export refunds, the total refund exceeds the amount fixed by the Community.

The agreements relating to agricultural products mentioned in Article 1, paragraph 1 of Regulation No. 3775/90 cannot be renewed as such, since they applied to only a very limited part of the EEC. It is furthermore, highly
unlikely that they will be renegotiated on commercial terms and applying to the EEC as a whole, since there is no economic or political reason to do so. So far, none of these agreements have been renegotiated.

**Australia follow-up question 13 February 1992 on Australia question 4 in Spec(91)85**

We would appreciate clarification on the issue of the level of national refunds on products (such as sheepmeat) from the former GDR and how these compare with the EC's normal refund.

A comparison of export refunds for sheepmeat exported out of the new Länder with the "normal EC refund" is not possible because the Commission had neither calculated nor set up "normal refunds".

**Canada 5 (Spec(91)10)**

Has the EC (or any part of it) become the legal successor with respect to the receipt of any benefits contained in trade or commercial agreements formerly in existence between the former GDR and its trading partners in Eastern Europe? If so, please provide details (on a tariff item basis).

In theory the EC could be the legal successor with respect to the receipt of any benefits contained in trade or commercial agreements between the former GDR and its trading partners. In practice, however, the EC has subjected such succession to renegotiation because of the special character of the agreements concluded between state-trading countries. Therefore, the Community has not succeeded to any such benefit, as the agreements concerned are de facto suspended until negotiations for their replacement will have been concluded.

**Canada follow-up in Spec(91)85 on Canada question 5 in Spec(91)10**

With reference to the renegotiation of trade agreements which existed between the former GDR and its trading partners, does the EC envisage that any of the contents of the new agreements between the EC and former CMEA member States will contain terms that will require a waiver from any GATT Articles (for any of the GATT members involved)? If so, please give details.

No.

**Canada 6 (Spec(91)10)**

Please give details of the policy which is being followed with respect to the completion of outstanding purchase commitments which were made by responsible state-trading agencies of the former GDR Government. In cases where the terms of access for such imports have been impaired
by the fact that EC policies now apply to them, are derogations being made available in order to make the fulfilment of such purchase commitments economically feasible?

At present there are no longer any outstanding purchase commitments by state-trading agencies of the former GDR. It bears repetition that the quantities laid down in the yearly trade protocols and other trade agreements with the CMEA partners of the former GDR do not create legal obligations for the delivery or purchase of the quantities listed.

United States 16 (Spec(91)10)

The regulation indicates that long-term cooperation and investment agreements between the former GDR and Czechoslovakia, Poland and the USSR will be renegotiated at various administrative levels. The regulation notes that this renegotiation will take "some time". Can a more specific timeframe for the renegotiation of these long-term agreements be given? Have such negotiations commenced? What new time limits are contemplated for the implementation of the agreements and the completion of the projects contained in the agreements? If these agreements call for government-guaranteed exchanges of lists of goods at zero rates of duty, how can the provisions of such new agreements be reconciled with the General Agreement?

See reply to Australia 1. It is not possible to give a specific time-table for the renegotiation of the long-term agreements. Some discussions between German and Soviet authorities have started, but it is not yet possible to forecast any results. As has been said in the reply to Australia 1, new agreements, whether renegotiated at the Community, government or at the industry level, will have to work in a market economy context and therefore will not provide for government-guaranteed exchanges of goods. This does not preclude Community action regarding the trade policy framework necessary for the continuation of these agreements within their previously agreed time period of validity.

United States follow-up in Spec(91)85 to United States question 16 in Spec(91)10

Please explain what is meant by "the trade policy framework necessary for the continuation of these agreements...". Is the Community willing to submit the results of renegotiated agreements, in so far as such agreements include government and government-sanctioned actions, to the contracting parties for review of GATT consistency?

United States 17 (Spec(91)10)

Both the annual Protocols and the longer-term agreements call for "reciprocal deliveries" of goods at zero rates of duty. The waiver from GATT obligations contained in L/6792 does not cover exports from
the former GDR to former CMEA countries. Is the expectation of the EC or of Germany that exports from the former GDR will continue to enter Eastern European import markets on a duty-free basis, notwithstanding that the legal basis for such treatment ceased to operate with unification? Does the EC contemplate expanding the terms of this waiver to cover such trade as well? Could the EC and Germany report on the current tariff treatment accorded to exports from the former GDR to the former CMEA countries and Yugoslavia?

See reply to Canada 5. Trade from the former GDR to its former CMEA partners will be regarded and treated as trade originating in or coming from the Community. There will thus be no special duty-free treatment. The EC does not contemplate to expand the terms of the waiver.

**United States** follow-up in Spec(91)85 to United States question 17 in Spec(91)10:

We understand that Hungary currently grants duty-free treatment to imports from the former GDR contemplated by the agreements and protocols covered by the waiver. Does the Community have any knowledge of this treatment? Is this part of any bilateral trade agreement currently in force or under negotiation between Hungary and the Community?

**United States** 18 (Spec(91)10)

The Council Regulation states that the "maximum quantities or values mentioned in these agreements do not entail legally-binding obligations between the parties". The waiver in L/6792 states, however, that "granting temporary preferential treatment to the above-mentioned countries by the European Communities is necessary to take account ... of the legal obligations of the former German Democratic Republic (GDR) vis-à-vis these trading partners...". Please explain the apparent contradiction of these two statements.

The nature of the obligations of the former GDR vis-à-vis its traditional trading partners of the CMEA in the context of the annual trade protocols is explained in reply to Australia 1. These obligations did not relate to the precise maximum quantities or values mentioned in the agreements with these partners, but to the conditions under which this trade took place, viz. absence of customs duties. This absence was inherent of the whole CMEA trade system. For the agreements listed in Annex I to Regulation (EEC) No 3568/90, these obligations lasted until 31.12.90; for those listed in Annex II they last until a date specified in the agreement or until its expiry. There is, therefore, no contradiction between the statements quoted in this question.
United States follow-up in Spec(91)85 to United States question 18 in Spec(91)10

Did the former GDR have agreements with countries other than the former CMEA countries and Yugoslavia that contemplated duty-free treatment on products that are now dutiable when imported into the EC? If so, please elaborate, and outline, why these products do not receive similar treatment.

The duty-free treatment of certain imports into the GDR was never explicitly granted in the agreements with other CMEA countries or with non-CMEA countries which applied certain aspects of the so-called socialist planning system; it was simply inherent in this system. As has been explained earlier, this absence of duties was not consolidated in the GATT and no GATT rights can be derived from it.

The special autonomous treatment for the European CMEA partners and Yugoslavia, for which the waiver in L/6792 was requested and obtained, was granted in the light of the considerable interdependence and simultaneous efforts at economic and political restructuring in these neighbouring economies and with a view to providing them, if possible, with a "soft landing". Other countries which had some agreements with the GDR, which are comparable to those between the GDR and its East European CMEA partners (one may think here of Angola, Mozambique, Cuba, Nicaragua, Vietnam, China and Laos), were not dependent to the same degree on trade relations with the GDR and were not engaged in comparable efforts at restructuring and, therefore, were not in need of a transitional régime as offered to CMEA countries of Central and Eastern Europe and Yugoslavia.

Cuba 1 (Spec(91)85)

Considering the volume of trade between Cuba and the former GDR and the fact that the two countries had concluded bilateral trade agreements providing for duty-free entry of specific goods up to a maximum quantity or value, as well as long-term co-operation agreements, can the non-inclusion of Cuba among the beneficiaries of the transitional measures adopted by the EEC be considered discriminatory treatment?

Cuba 2 (Spec(91)85)

To what extent is such action justified in light of the basic GATT principle of elimination of discriminatory treatment in international trade?

The Commission would like to point out that GATT provisions, in particular Article XXIV:6, are not applicable to the case of German unification. Unification led to an extension of the application of the treaties establishing the European Communities without a third State joining the Communities. Furthermore, any access facility that third countries may
have had to the former GDR's market cannot be considered as a benefit accruing to them directly or indirectly under the GATT, as the GDR was not a contracting party of it. Similarly, the Community has not increased any rate of duty inconsistently with the provisions of Article II of GATT, as the import régime applied by the GDR's State-trading system was not consolidated in the GATT.

The Commission would also like to stress that the transitional tariff measures adopted by the Community (Council Regulation (EEC) No. 3568/90 of 4 December 1990 and Commission Decision (ECSC) No. 3788/90 of 19 December 1990) in favour of European Member States of the Council of Mutual Economic Assistance (CMEA) and of Yugoslavia are strictly autonomous measures. Moreover, these measures are covered by the waiver decision granted by the GATT Council on 13 December 1990 (L/6792).

Cuba 3 (Spec(91)85)

In the light of the objectives of the General Agreement as set forth in its Preamble, i.e. that it is directed to the substantial reduction of tariffs and non-tariff barriers affecting trade among contracting parties, how are the new barriers erected towards Cuban exports to the former territory of the GDR, by virtue of previously existing trade flows, to be interpreted?

Cuba has no GATT rights vis-à-vis any GDR tariff. Moreover, it is obvious that the Community cannot maintain forever a special tariff zone in the former GDR. Hence the general Community régime for external trade will have to be applied also at the external borders of the former GDR. Although tariffs may be higher than in the former GDR, almost all products can be freely imported without restrictions related to their being listed or to the quantities mentioned in the CMEA trade protocols.

Cuba 9 (Spec(91)85)

Does the EEC intend to adopt additional measures to maintain levels of trade with other former trading partners of the GDR which did not benefit from the transitional measures covered by the exemption?

There exists no legal obligation for the European Communities to provide Cuban products with preferential conditions of market access in order to take account of traditional exports to the former GDR. Furthermore, it should be noted that the benefit of the GSP was extended to the former GDR on 1 July 1990.

United States 10 (Spec(91)10)

Approximately what portion of total GDR imports, prior to unification, with the countries listed in the overall Summary Survey of Annex I, is accounted for by the totals listed for each country on this page?
While the Commission considers that this question has no relationship to the Waiver Decision of Contracting Parties of 13 December 1990, it would nevertheless like to provide contracting parties with some general information regarding the importance of trade of the former GDR with CMEA countries. The following estimates are based on the annual trade protocols for 1990:

Breakdown of GDR-CMEA trade volume for 1990
(CMEA trade represented about 65% of total trade of the former GDR)

<table>
<thead>
<tr>
<th>TRADE PARTNERS</th>
<th>Total trade volume (mio TRbl)</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>USSR</td>
<td>13 200</td>
<td>55.4</td>
</tr>
<tr>
<td>Czechoslovakia</td>
<td>2 900</td>
<td>12.2</td>
</tr>
<tr>
<td>Poland</td>
<td>2 500</td>
<td>10.5</td>
</tr>
<tr>
<td>Hungary</td>
<td>2 000</td>
<td>8.4</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>1 400</td>
<td>5.8</td>
</tr>
<tr>
<td>Romania</td>
<td>1 100</td>
<td>4.6</td>
</tr>
<tr>
<td>Cuba</td>
<td>568</td>
<td>2.4</td>
</tr>
<tr>
<td>Vietnam</td>
<td>140</td>
<td>0.6</td>
</tr>
<tr>
<td>Mongolia</td>
<td>30</td>
<td>0.1</td>
</tr>
<tr>
<td>TOTAL</td>
<td>23 838</td>
<td>100.0</td>
</tr>
</tbody>
</table>

(Source: The European Community and German Unification, Commission of the EC, Bulletin of the EC, Supplement 4/90, 1990, p. 52.)
V. TRADE IN NON-AGRICULTURAL PRODUCTS

5.1 COAL AND METALS

(From L/6974)

Commission Decision (ECSC) No. 3788 cf 19 December 1990 extends duty-free admission to ECSC products. This applies to both steel and coal.

**Australia 1 (Spec(91)85)**

Australia requests figures on the levels of utilization of duty-free import quotas, and the value of these imports, for individual items. In particular:

- coal, coke and briquettes (for coal separating figures for lignite from those for black coal);
- iron ore;
- non-ferrous metals and alloys ...  

The annexes to Spec(91)85 contain the import figures for the last quarter of 1990 and the first half of 1991 for the use of transition regulations (customs exemption for imports from the previous COMECON countries and Yugoslavia in the accession area). These annexes are in most cases listed according to group of goods.

Iron ore is according to the common customs tariff exempted from customs duties; a claim on the special regulations is thus inapplicable.

Imports of "Non-ferrous metals and alloys" liable to customs duties from USSR, Poland, Czechoslovakia and Hungary did only take place on a small scale (see details in the enclosed table).

For coal see the reply below to Australia question 2 in [Spec(91)85].

**Australia 2 (Spec(91)85)**

Regarding the coal industry:

- What has been the total production and consumption of coal in the New Länder?
- What has been the level and source of coal imports by this region?
- Are there any forecasts available for coal production, consumption and imports for future years?
Will there be any trade measures, arising from the waiver or otherwise, favouring coal suppliers from former CMEA countries in the period after 31 December 1992?

Will there be any residual impact on coal imports after 31 December 1992 resulting from the duty-free access available to CMEA coal exporters in the period till the expiry of the waiver?

The enclosed list gives an account of the development of the coal situation during the last years (production, consumption, import and export) in the accession area.

The demand for lignite briquettes will, during the next few years, be considerably lower; according to present estimates it will, until the year 2000, be reduced to less that 8 million tons per year. The production of lignite will in the same period be expected to fall well below 150 million tons.

The strong downward tendency of the consumption of coal (including coal briquettes) will probably continue until the middle of the 90s. However, from this time onwards, an increase of consumption of about 7 million tons per year will be expected until the year 2000. This follows from the expectation of an increased industrial use of coal and the intended construction of coal power stations.

No regulations favour coal deliveries from the previous COMECON countries in the accession area. Since 3 October 1990 the coal deliveries in the accession area are exempt from customs duties and exempt from quantitative limitations regardless of their origin (Regulation No. 29 amending the Regulation on Customs Tariffs of 29 November 1990 ([Bundesgesetzblatt 11, page 1467]). This Regulation has no time-limit.

United States 25 (Spec(91)10)

[Regarding the Commission Decision No. 3788/90/ECSC of 19 December 1990] What products from what former CMEA countries or Yugoslavia are covered by the anti-dumping duty suspension provided for in Article 1? How will the suspended anti-dumping duties be reinstated at the end of the transitional period, e.g., will the cases be reviewed?

Participants will find in Annex V [of Spec(91)10] a provisional list of anti-dumping duties. These duties have been suspended during the transitional period.
Will the licenses referred to in Article 2 be issued by the same relevant German authorities as those issued to trade the tariff preference granted in Council Regulation (EEC) No. 3568/90?

Yes.

How will German authorities ensure that final consumption of the products covered by this Decision occurs only in the former GDR. How will eventual sufficient processing to confer Community origin be established at the time the tariffs and anti-dumping duties are exempted, i.e., at the time of initial importation?

See II(2) General Observations at page 8.

Regarding the same Decision, to the extent that they differ from the rules applied in the case of products subject to Council Regulation (EEC) No. 3568/90, please describe the rules of origin to be applied to those imports.

The rules are not different. See for the rest reply to Canada 3 [Spec(91)10].
5.2 TEXTILES

Hong Kong A (Spec(91)10)

In respect of textiles and clothing imports benefiting from the transitional tariff exemption, can the EC please provide, if possible, details of the import tariff lines, values and/or volumes of such imports? If information on the basis of tariff lines is not available, can information then be provided which is at least sufficiently detailed to give other contracting parties a more precise picture of the nature and product coverage of textiles and clothing imports under the waiver?

See Annex II [Spec(91)10].

Hong Kong B (Spec(91)10)

How are such textiles and clothing imports identified and distinguished from other imports from the beneficiary countries, and how is the level of such trade monitored to enforce the limits set out in the relevant trade protocols?

See II(2) General Observations at page 8.

Hong Kong C (Spec(91)10)

How will the EC ensure that products - particularly textiles and clothing products - entering the EC from beneficiary countries are consumed or sufficiently processed in the territory of the former GDR and not transported into another member state?

See II(2) General Observations at page 8.
VI. AGRICULTURAL PRODUCTS

Introduction (From L/6974)

Council Regulation (EEC) No. 3568/90 of 4 December 1990 suspends duties on both industrial and agricultural products. However, agricultural products listed in Annex II to the EEC Treaty are subject to levies and other compensatory amounts and, where appropriate, the application of reference or minimum prices.

The suspension does not apply to imports of beef or live animals, other than pure-bred breeding stock.

New Zealand question 31 January 1992 concerning L/6974

Could the Community please confirm whether any agricultural products are included in annex 4 under item 10 'Various products'? If so, what is the value of these products for each of the two periods covered in the annex?

Thailand 2 (Spec(91)10)

Please explain current arrangements on agricultural trade, if any, between East Germany and Eastern European Countries. What would happen to these arrangements after 31 December 1992?

There are no arrangements on agricultural trade between the former GDR and Eastern European countries.

Australia 2 (Spec(91)10)

How will deliveries of EC agricultural products to former CMEA countries under aid programmes, sales under derogation, or barter or counter-trade arrangements affect the EC's obligation to fulfil the requirements of the agreements between the former GDR and former CMEA countries?

The delivery of EC agricultural products to former CMEA countries under aid programmes, sales, exempted sales, or barter or counter-trade arrangements is not affected by the suspension of import duties as provided for in Council Regulation No 3568/90.

Australia 6 (Spec(91)10)

Paragraph 10 of the EC's request for a waiver (L/6759) states that, "such duty-free treatment shall be designed ... to maintain the status quo in a sense that already existing trade facilities or trade flows may be continued and are not intended to raise barriers or create undue difficulties for the trade of other contracting
parties*. In the light of this stated intention, what measures will the EC take to ensure that rising agricultural surpluses in the GDR, as a consequence of the application of the CAP and the continued duty-free access of agricultural commodities from former CMEA countries into the territory of the GDR, do not result in:

(A) displacement of agricultural products from the territory of the former GDR into the territory of the EC as it stood before German unification;

(B) reduction in export opportunities of third countries to the EC as a result of rising EC surpluses;

(C) increased EC exports displacing third country exports to third markets?

See II(1) General Observations at page 37.

Agricultural products:

Before unification, the Government of the GDR had already taken steps to adapt its agricultural production to the conditions of the Common Agricultural Policy (CAP). Since 3 October 1990 further steps have been taken in order to set up the mechanisms of the CAP in this territory. On a medium-term basis this will not lead to rising surpluses but to a significant reduction of agricultural production of milk (introduction of milk quotas), cereals and potatoes (set aside of 600,000 ha.), pigmeat and beef.

The agricultural surpluses existing on the day of unification on the territory of the former GDR will be removed by exports following agreements concluded by the GDR Government before 3 October 1990 with different Eastern European and other third countries (see reply to question 7 of New Zealand).

As a consequence of the setting up of the economic and social union between the GDR and the FRG, free trade in goods between the GDR and the Community was established. Due to the preference given to products not originating from the GDR by its consumers, imports from market-economy countries into the GDR increased significantly. The problems resulting from this situation for East German producers led to considerable exports of live animals to the EC in the second half of 1990. Economically these exports were counterbalanced by increased imports into the GDR. This territory will remain an interesting and growing market for products originating from the EC and third countries. It will improve rather than reduce the possibilities for third countries to market their products within the EC. It can also be stated that, as a result of the measures indicated above, the agricultural production on the territory of the former GDR will not reduce the export opportunities of third countries on the world market in general.
Concerning the responses to Australia 2 and Australia 6, the EC's failure to describe more fully the implications of its legislation providing aids for German production is disappointing. The provision of subsidies in the former GDR will certainly impact on its trade position and the competitiveness of third country trade. These aids are part of the transitional package through which this territory is to be incorporated in the EC and by extension in the GATT system. As such, they appear to qualify for examination under the terms of reference of the Working Party, even if they are not covered by the waiver in L/6792. We respectfully resubmit the questions for response and urge the Community's co-operation and responsiveness on this point.

The EC have replied to questions 2 and 6 submitted by Australia.

As far as agriculture is concerned the following is a more detailed reply to Question 2:

The delivery of EC agricultural products to former CMEA countries under aid programmes, sales, exempted sales, or barter or counter-trade arrangements is not affected by the suspension of import duties as provided for in Council Regulation No. 3568/90.

The trade agreements between the former GDR and its CMEA partners and Yugoslavia did not constitute legal obligations for trade in specific quantities of goods. Only in order to protect legitimate expectations the EC suspended customs duties for imports from the CMEA Member States and Yugoslavia into the former GDR-territory in various sectors including agricultural goods in so far as trade existed in the past.

With regard to Question 6, the Community's principal aim is to adapt the production in the former GDR to the conditions laid down in the Common Market organizations.

This led to a reduction of the production and limits the commercialization of East-German products in other parts of the Community. Consequently the export opportunities of third countries to the EC and to third markets will not deteriorate. This is also the case in the sheepmeat sector.

The measures taken both by the GDR before unification and by the EC after 3 October 1990 have already been indicated in the reply given to Question 6.

Stocks existing on the day of unification are covered by the export agreements concluded by the GDR before 3 October 1990. Most of the obligations resulting therefrom have been fulfilled. Certain difficulties exist only in the beef sector.
[Regarding the Council Regulation (EEC) No. 3577/90 of 4 December 1990 concerning the transitional measures required in the agricultural sector] Article 4 of this Regulation permits Germany to grant compensatory aid to agricultural incomes in the former GDR through 31 December 1993. Please describe the scope and nature of the aid contemplated in this Regulation, for what products, and at what level.

Not covered by the waiver (not relevant).

The EC avers that compensatory aid to agricultural income under its transitional legislation is "not covered by the waiver (not relevant)". Although it may not be covered by the waiver, *per se*, such aid certainly could have widespread implications for the competitiveness of contracting parties' agricultural trade in the former GDR. Inasmuch as the WP's formal name is "Working Party on German Unification - Transitional Measures Adopted by the European Communities", and the WP's terms of reference are "to examine the matter in light of the relevant provisions of the General Agreement and in light of the waiver Decision in L/6792, and to report to the Council", this matter is within the WP's purview.

Article 4(1) of Council Regulation No. 3577/90 of 4 December 1990, on the transitional measures and adjustments required in the agricultural sector as a result of German unification, states that aid may be introduced in the ex-GDR to compensate for agricultural income losses incurred there as a result of the switch to CAP. The aid must be degressive and anyway be repealed by the end of 1993.

Article 4(2) of the same Regulation states that the Article 93(3) procedure applies to such aid, implying an examination of its compatibility with the common market having regard to Article 92 of the EEC Treaty.

The aid concerns measures to resolve the debt problem required if agriculture in the ex-GDR is to adjust to the requirements of a market economy and the CAP. It is also clear that farmers based there are suffering from an acute liquidity shortage which is preventing the necessary investments from being made.

The most important of the measures taken up to now serve to back up the adjustment aid measure totalling ECU 1.46 billion introduced by the GDR authorities in 1990 which was designed to boost farmers' liquidity, in that the ex-GDR has already begun to apply the CAP, and thus be exposed to its constraints, as of the date of introduction of economic, monetary and social union with the Federal Republic of Germany.
Without further adjustment aid, a high percentage of farmers will face bankruptcy, many of whom after restructuring of the holding and resolution of their pre-unification debt problem would otherwise be viable. These bankruptcies will in turn lead to the destruction of productive assets of economic value.

Therefore authorization was requested by the German authorities to grant a further aid of ECU 583 million for 1991 in the form of grants, of which:

- ECU 388 million aid to adjust to the drop in prices and to ensure solvency;
- ECU 194 million less-favoured area supplements.

This aid has now been paid.

The adjustment aid serves also to offset non-payment to the ex-GDR holdings of the socio-structural income compensation aid.

The less-favoured area aid constitutes the continuation until 1992 of an aid granted by the GDR; eligible holdings have a legal entitlement to this aid. It will range from ECU 24 to ECU 126/ha, which approximates to the mean compensatory allowance payable to eligible West German holdings.

The legal basis of the measure is an "aid guideline" (Förderricht-linie) which will allow rapid disbursement of half of the aid ahead of adoption of the corresponding draft German Regulation amending the conditions of the scheme as it was introduced in 1990 by the GDR authorities.

In conclusion, this measure may be considered compatible with the common market and so enjoy the waiver provided for by Article 92(3) of the EEC Treaty.

**United States follow-up question concerning subsidies, 25 November 1991:**

The United States remain interested in receiving a description from the EC, for the Working Party record, of the scope, nature, and future implications of its legislation providing aids for German products in the former GDR. Some of this may be covered in the most recent submission. We will have definitive views on this at the next meeting.

The United States believes that these measures are not covered by the waiver contained in L/6792, and we believe the EC shares this view. The terms of reference for this Working Party, however, are not limited to reviewing the operation of the waiver. The aids are part of the transitional package through which this territory is to be incorporated in the EC and by extension the GATT system. As such, they qualify for examination under the terms of reference of the Working Party.
Canada 4 (Spec(91)10)

Please give details of the "plan" referred to in Article 2 of Council Regulation No. 3575/90, covering structural fund operations in the territory of the former GDR.


New Zealand 4 (Spec(91)85)

What is the extent of additional national subsidies and size of public stocks taken over from the agency of the former GDR under EC Council Regulation 3577/90 of 4 December 1990, Article 6?

Eight-hundred-and-forty thousand tons of cereals have been taken over by the Community on a depreciated value.

United States follow-up in Spec(91)85 to United States question 38 in Spec(91)10:

Please indicate how soon the reports referred to might be available.

As for the Report by the Commission of the European Communities to the Member States concerning the transposition of transitional measures for the integration of the new Länder of the FRG into the Community's agricultural sector:

The regulations and directives adopted by the European Communities, which are intended to foster the integration of the new Länder of the FRG into the common agricultural policy arrangements, include for Germany a series of obligations to provide information which must be complied with at various times. In this way, the Commission, the other institutions of the Community and the Member States are to be kept informed of the measures taken in Germany.

1. Under Article 10 of the Council Regulation (EEC) No. 3577/90 of 4 December 1990 on the transitional measures and adjustments required in the agricultural sector as a result of German unification (OJ L 353, 17 December 1990, page 23), Germany must notify to the Commission, at the earliest opportunity, the measures taken pursuant to the authorizations provided for in the Regulation. The Commission, for its part, is required to inform the Member States.

The Commission is also required to make a report under Article 6 of Council Directive 90/654/EEC of 4 December 1990 on the transitional measures and the adjustments required to the Directives on plant health, seeds, plants and animal feedingstuff and to the veterinary
and zootechnical legislation as a result of German unification (OJ L 353, 17 December 1990, page 48).

In so far as the adjustments and interim rules in the agricultural element of the "German unification" package were to be supplemented by or transposed into national law, this has been achieved in principle through the German Government’s Regulation of 18 December 1990 governing transitional arrangements for the implementation of Community law (BGBl.1, page 2915). This Regulation was notified to the Commission on 11 January 1991 and had been the subject of consultations with the Commission before it entered into force. The German measures do not go beyond the limits laid down by the authorizations in the above-mentioned Community legal instruments.

2. Under Article 4 of Commission Regulations (EEC) Nos. 3780/90 and 3781/90 of 19 December 1990 laying down detailed rules for the implementation of Council Regulation (EEC) No. 3576/90 as regards the temporary suspension of the import compensation mechanism and of customs duties on fruit, vegetables and wine products originating in Spain and Portugal released for consumption in the territory of the former German Democratic Republic (OJ L 364, 28 December 1990, pages 11, 14), the quantities of products benefiting from suspension in the previous month are to be notified on a monthly basis. The Commission will inform the Member States of the notifications it receives, through the Management Committees of the market organizations concerned.

3. Further obligations involve reports which Germany is required to make at a later date. The Commission will inform the Member States at the appropriate time.

Canada 7 (Spec(91)10)

Could Council Regulation No. 3570/90 (derogations with respect to agricultural statistical survey) have the effect of impairing the accuracy of the EC’s international trade statistics for agricultural products? Please provide comments.

Council Regulation (EEC) No 3570/90 is not relevant to the waiver Decision of the Contracting Parties of 13 December 1990. The Community considers therefore that it is not relevant to the work of the Working Party.

Canada follow-up in Spec(91)85 on Canada question 7 in Spec(91)10

Canada believes that the Working Party has a legitimate interest in the accuracy of international trade statistics which relate to the subject matter under review, and believes that the European Communities should be willing to respond to the question.

No reliable historical trade data for the former GDR exist.
New Zealand 7 (Spec(91)10)

We note that Commission Regulation 3775/90 P4 refers to the need to guarantee performance of agreements concluded by the former GDR with third countries prior to unification, and authorizes Germany to supplement or grant in its entirety export refunds for, among other things, milk and milk products, beef and veal and sheepmeat. Could the Community please list the 'third countries' in respect of which these agreements or arrangements have applied or do apply, the volumes and/or values of products covered, the number of these agreements or arrangements honoured since 3 October 1990 and the products affected, and the number of agreements or arrangements outstanding and the products affected?

Countries:

The agreements concluded by the GDR before 3 October 1990 concern mainly exports to the USSR and to Romania; but other third countries, including other Eastern European Countries are also involved.

Products:

<table>
<thead>
<tr>
<th>Product</th>
<th>Volume</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cereals</td>
<td>1,391,000 t</td>
</tr>
<tr>
<td>Flour</td>
<td>117,800 t</td>
</tr>
<tr>
<td>Butter</td>
<td>94,000 t</td>
</tr>
<tr>
<td>Whole milk powder</td>
<td>6,000 t</td>
</tr>
<tr>
<td>Pigmeat</td>
<td>145,000 t / 190,000 t</td>
</tr>
<tr>
<td>Cows</td>
<td>4,540 t</td>
</tr>
<tr>
<td>Beef</td>
<td>178,300 t / 192,840 t</td>
</tr>
<tr>
<td>Sheep</td>
<td>6,680 t</td>
</tr>
<tr>
<td>Sheepmeat</td>
<td>10,000 t / 16,680 t</td>
</tr>
<tr>
<td>Poultry meat</td>
<td>10,000 t</td>
</tr>
<tr>
<td>Potatoes</td>
<td>200,550 t</td>
</tr>
<tr>
<td>Apples</td>
<td>20,000 t</td>
</tr>
</tbody>
</table>

The competent authorities in the German Ministry for Agriculture will try to provide for more detailed information on the value of the treaties and all the countries concerned as soon as possible.

Further details, especially on the quantities which have already been exported, can also be given by Germany (a significant quantity of beef and cereals has not yet left the EC; the situation is different for pigmeat and butter).

United States follow-up in Spec(91)85 to New Zealand question 7 in Spec(91)10

For how long does the EC intend to "guarantee performance" of the agreements referred to in this question?
New Zealand 3 (Spec(91)85)

We look forward to receiving the additional information from Germany in response to our original question 7.

Exports of milk products from the ex-GDR.

On the basis of commercial agreements between the governments of the USSR and the ex-GDR, the following quantities had to be delivered to the USSR:

- 77,000 tons of butter;
- 9,000 tons of whole milk powder.

The sales price for butter was DM 2,085 per ton f.o.b., and for whole milk powder DM 1,872 per ton f.o.b.

The delivery contract was totally settled by end of June 1991.

For the reduction of butter surplus in the GDR the export refunds for butter had been fixed by tender procedure. In case of adjudication the butter had to be exported within ninety days.

The EC took over refunds of DM 4,119.81 per ton of butter in accordance with Article 1, paragraph 1 of Regulation (EEC) No. 2762/90. The surplus amount had to be paid by the German Government.

Fifteen thousand tons of butter had been exported before 31 December 1990. For exports of 2,000 tons of butter the export license of ninety days was extended until the end of January 1991.

New Zealand follow-up question 31 January 1992

New Zealand would be grateful: (i) if the Community could please clarify the apparent difference between the figure of 9,000 tonnes WMP listed in the reply (Spec(91)85) to New Zealand's additional question No. 3, and the figure of 6,000 tonnes WMP listed in the Community's reply (Spec(91)10) to New Zealand's initial question No. 7; (ii) to know whether the exports of butter and WMP referred to in the Community's reply (Spec(91)85) to New Zealand's additional question No. 3, were made under the terms of the IDA including the derogation from the IDA minima which was in force for part of the period mentioned in the Community's reply.

9,000 t of whole milk powder had to be delivered to the USSR. This is the amount indicated in the reply to New Zealand question 3. The amount of 7,000 t mentioned in the reply to New Zealand question 7 did not contain all the applications for an export licence. (The confusion is apparently due to the fact that there was a first quantity of 7,000 t, which had to be delivered before the end of December 1990 and another 2,000 t to be delivered before the end of June 1991).
The discrepancy between the 77,000 t of butter to be delivered to the USSR indicated in the reply to the New Zealand question 3 and the 94,000 t of butter indicated in the reply to New Zealand question 7 can be explained. Contracts were concluded with the USSR for 77,000 t. In addition export licences have been granted in the framework of a tender opened for export out of ex-GDR to third countries (including the USSR).

The sales did not undercut the minimum prices fixed in the International Dairy Agreement.

**Australia 1 (Spec(91)85)**

Australia requests figures on the levels of utilization of duty-free import quotas, and the value of these imports, for individual items. In particular: ...

- cereals (wheat).

For import of grain there are no transitional measures.

Hungary is the only Member State of the former CMEA, entitled to duty-free imports of wheat into the former GDR. At present no duty-free imports of wheat take place.

**United States follow-up questions, 25 November 1991**

The EC has stated in its new response to Australia's first written question, that "for import of grain, there are no transitional measures". Yet grain imports from Hungary, Romania, and Yugoslavia, are clearly included by the EC in C/151, listing the goods and quantities covered by the transitional measures. Can this apparent discrepancy be explained?

The EC has stated in its new response to Australia's first written question, that "Hungary is the only Member State of the former CMEA entitled to duty-free imports of wheat into the former GDR". On what basis is Hungary "entitled" to ship wheat duty-free into the former GDR?

According to Article 1 paragraph 1 of Council Regulation No. 3568/90 (OJ No. L 353, p.1) to which the list of products in OJ No. C 151 of 10.6.1991 refers, the normal import levies for agricultural commodities (products mentioned in Annex II of the Treaty of Rome) remain applicable. This means in the case of the extremely small quantities of cereals mentioned in the OJ list, that they would have been, if imported, subject to the normal import levies. In practice there were no transitional measures for the import of cereals. There have been so far no cereals import in the framework of the OJ list.
Australia 3 (Spec(91)85)

In the EC's response to our earlier question 6 (page 9 of Spec(91)10) they claim that, in the medium term, there will be significant reduction in agricultural production. This seems possible in the case of milk, cereals and potatoes because of quotas and set asides. However, no production controls are mentioned in relation to pork and beef. The EC states that there has been considerable export of live animals from the former GDR to the EC in the second half of 1990, and also to the USSR (answer to New Zealand question 12). Australia is concerned that beef exports from the former GDR to the EC could lead to rising stocks in the EC and the possibility of it disposing of these stocks on export markets (e.g. Eastern Europe and the USSR).

- Australia would appreciate figures on the levels of exports of beef from the New Länder to the EC, and figures of these exports as they stood before unification.

We also note that under Commission Regulation 3775/90 the GDR is to export between 178,300 and 192,840 tons of beef to former CMEA countries (answer to New Zealand question 7, page 17 of Spec(91)10).

- How much beef has been sold under this Regulation? Are deliveries of agricultural products from the New Länder to the USSR under FRG/EEC aid programmes counted separately from exports under this Regulation? If so, what have been the levels of aid deliveries for the items covered by this Regulation?

The Commission does not have in its possession specific statistics on trade between the five new German Länder and the other Member States of the Community. Consequently, it cannot answer the question on comparing the export figures as from mid-1990 in relation to those recorded during the previous years.

Regulation (EEC) No. 3775/90 does not contain any obligation for exporting beef. The objective of this regulation is to allow that sales contracts concluded before the day of unification can be carried out under the terms as agreed between the two parties involved. The support by the Community in this corresponds to the normal level of export refund applicable throughout the Community. The implementation of this regulation is not connected to specific aid programmes.

Australia follow-up question 13 February 1992 on Australia question 3 in Spec(91)85

We are still not clear about how the transitional measures will affect beef and we would appreciate any further details available on trade in beef in relation to the following.
We are disappointed that no figures are available for levels of exports of beef from the new Länder to the EC (our new Question 3). Furthermore, we note that the Commission has been unable to provide statistics for imports of beef into the former GDR in response to New Zealand's new Question 2. The lack of this information represents a large gap in our and others' understanding of the possible trade impacts of the transitional measures on beef.

While Regulation 3775/90 contains no obligation to export beef, as requested in our supplementary Question 3, we would appreciate figures for the amount of beef that has been sold and to which countries under this regulation given that potential export volumes are between 178,300 and 192,840 tons. We note for example, that in their response to New Zealand's original Question 13, the Commission states that beefmeat production is still high and that the production will mainly be exported to the (then) USSR.

In their additional replies to Australia's initial Questions 2 and 6, the EC state that "certain difficulties exist only in the beef sector" in respect of stocks existing on the day of unification. We would be interested in further elaboration on what these particular difficulties are.

Replies by the EC:

(i) Figures of exports of beef from the new Länder to the EC are not available. There are figures of beef imports of the EC Member States in 1989 and 1990 from the ex-GDR (see Annex 1).

(ii) On the basis of Article 3 of Regulation No. 3577/90 Germany had been allowed to pay supplementary amounts for exports of agricultural products out of the ex-GDR, which were exported after 3 October 1990, in cases where the authorities of the ex-GDR had guaranteed a special restitution to the exporter before 3 October 1990. This action concerned about 180,000 t beef of which 140,000 t to the ex-USSR, 20,000 t to Romania and 20,000 t to other third countries (mostly Eastern countries).

(iii) The "certain difficulties" occurred for a time in veterinary problems on exports to the ex-USSR.

New Zealand 9 (Spec(91)10)

What was the level of milk and milk product production in the former GDR in 1990? What is the expected level of production for 1991 and 1992 from the former GDR?

Milk deliveries to dairies in 1990: 7,742,700t.
Milk deliveries to dairies in 1991: the deliveries may amount to estimated 6.600,000 t.

**New Zealand 10 (Spec(91)10)**

Please provide a breakdown of this production into the relevant categories listed in Question 3 above.

Only estimated figures for 1990 production are available:

- **Cheese**: 154,100 t
- **Butter**: 255,000 t
- **Condensed milk**: 46,800 t
- **Skimmed milk powder**: 125,500 t

**New Zealand 11 (Spec(91)10)**

What stocks existed in the former GDR at 3 October 1990? What stocks currently remain? To the extent that stocks have been reduced, what are the 'detailed rules' mentioned in Council Regulation 3577/90 Article 7 which have been applied for reducing these stocks? How is it proposed to deal with remaining stocks?

Stocks existing in the former GDR territory on 3 October 1990:

1. **Butter**:
   - Private stocks: 46,620,050 t

2. **Skimmed milk powder**:
   - Private stocks: 5,182 t

3. **Cheese**:
   - Private stocks: 8,424 t

4. **Beef and animals**:
   - Private stocks: 1,256 t
   - Animals: 5,348,300 (3.10.1990), 4,926,800 (3.12.1990)

5. **Pigmeat and animals**:
   - Private stocks: 861 t
   - Animals: 8,839,700 (3.10.1990), 8,742,200 (3.12.1990)

6. **Sheepmeat and animals**:
   - Private stocks: 27 t
   - Animals: 1,865,400 (3.10.1990), 1,448,300 (3.12.1990)
   (essentially, GDR production was based on wool)

The Commission is at present preparing a regulation in order to determine the stock exceeding the normal carry-over stock and the quantities which
have to be disposed of by Germany at its own expense. Detailed figures have not yet been adopted.

It can, however, be expected that the quantities mentioned in the export agreements concluded by the GDR before 3 October 1990 concerning deliveries of products to a number of Eastern European countries are generally higher than the excess stocks.

**New Zealand 12 (Spec(91)10)**

**How is it proposed to dispose of current production from the former GDR: Within the former GDR, within the EC, exported? If this is to be exported, will this be to central European markets or other new markets?**

As indicated above the excess stocks existing on the day of unification have been exported. The current production, which has been heavily reduced, will be mostly disposed of in Germany: Consumption in the former GDR has stabilized on a level equivalent to the EC in general.

**New Zealand 13 (Spec(91)10)**

Please answer questions 9-12 in respect also of meat products.

On the production:

<table>
<thead>
<tr>
<th>Year</th>
<th>Sheepmeat</th>
<th>Beefmeat</th>
<th>Pigs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>31,000 t</td>
<td>513,000 t</td>
<td>13,773,000 heads</td>
</tr>
<tr>
<td>estimate 91</td>
<td>[26,000 t]</td>
<td>[430,000 t]</td>
<td>[10,000,000 heads]</td>
</tr>
<tr>
<td>estimate 92</td>
<td>[20,000 t]</td>
<td>[400,000 t]</td>
<td>[10,000,000 heads]</td>
</tr>
</tbody>
</table>

A more detailed breakdown is not possible.

On exports see reply to question 7.

On the disposal of the current production:

**Sheepmeat:** Germany was authorized to export up to 10,000 t sheepmeat from former GDR with the aid of national export refunds provided contracts were agreed before end June 1991. Other than above exports will be within EC.

**Beefmeat:** The current production is still high due to the adaptation of the agriculture on the territory of the former GDR to the system of the CAP (e.g., slaughtering of cows as a result of the introduction of the milk quota system). The production will mainly be exported to the USSR.

**Pigmeat:** The current production is below consumption. Therefore it is used in Germany.
New Zealand 5 (Spec(91)85)

In answer to question 13, the EC has stated that contracts for the subsidized export of sheepmeat must have been agreed before 30 June 1991. However, EC Commission Regulation 3775/90 of 19 December 1990, Article 1.2 restricts national export refunds for sheepmeat exports for which agreements were concluded by the former GDR before 3 October 1990 or where a specific refund was guaranteed in writing by the former GDR before 3 October 1990. The validity of the export licences and advance fixing refund certificates issued by the former GDR can be extended to 30 June 1991 (3775/90 Article 2.3), but how can refunds legitimately be provided in respect of contracts concluded after 3 October 1990?

Regulation (EEC) No. 139/91 of 21 January 1991, which allowed Germany to pay an export refund out of national means for a maximum of 10,000 tons of sheepmeat, is based on Regulation (EEC) No. 3577/90 of 4 December 1990, especially on Article 3. In accordance with this Article, supplementary measures can be taken in view of a harmonized integration of the ex-GDR into the CAP. Those measures can be taken until 31 December 1992. Granting national export refunds in the sense of regulation (EEC) No. 139/91 is one of these measures.

New Zealand 6 (Spec(91)85)

What is the destination of the 10,000 tonnes of sheepmeat exports?

Regulation (EEC) No. 139/91 does not contain specific provisions on the countries of destination. Most of the sheepmeat will be exported to Eastern European countries. Export licences for 1,896 tons for live animals and for 250 tons for meat are given for the following destinations: Lebanon, Syria, Hungary, Austria and the USSR.

New Zealand follow-up questions 31 January 1992

New Zealand appreciates the further information supplied by the Community in Spec(91)85. This information raises some supplementary points on which New Zealand would appreciate clarification.

(a) Commission Regulation 3775/90 Article 1 authorized Germany to grant supplementary national refunds on sheepmeat exports for which agreements were concluded by the former GDR before 3 October 1990.

(b) The Community's reply in Spec(91)10 to New Zealand's initial question 13 said that Germany was authorized to export up to 10,000 tonnes of sheepmeat with the aid of national export refunds provided contracts were agreed before end June 1991.
The Community's reply (Spec(91)85) to New Zealand's additional questions 5 and 6 said that, on the basis of Regulation 3577/90, Germany was allowed, as a supplementary measure, to pay national export refunds for a maximum of 10,000 tonnes of sheepmeat exports and that those measures could be taken until 31 December 1992.

In light of the above, could the Community please clarify: (i) the quantities, destinations and prices of contracts on which national export refunds have been, or will be eligible to be, granted under (a) and, separately, (b) above; (ii) indicate whether payment of refunds remains outstanding for any product eligible for national export refunds under (a) or (b) (i.e., how many contracts are not yet delivered); and (iii) whether any national export refunds are expected to be granted under (c) in addition to those already identified under (b), and if so what volume of product is expected to be affected?

We continue to look forward to a response on one aspect of New Zealand's initial questions 12 and 13: whether the meat exports identified by the Community in its subsequent reply (on sheepmeat), in Spec(91)85, are to new markets.

Total exports of live sheep and sheepmeat from the former GDR with export refund: 20,575 t. The sheep concerned are residual from the demise of the wool sector.

Form of export: +/- 12,500 t frozen meat and +/- 8,000 t live animals.

Country of destination: | USSR | 7,000 t |
| Lebanon | 6,000 t |
| Syria | 4,500 t |
| Jordan | 1,000 t |
| Saudi Arabia | 1,000 t |

Minor quantities were exported to Hungary, Bulgaria, Turkey, Austria and Yugoslavia.

The total level of support was 32 MDM equal to DM 1,560 per ton approximately. The German authorities have indicated that the range of restitutions was given depending largely on quality (the poorer the quality the higher the refund).

Exports took place in the period 3 October 1990 to 31 December 1991.

Please provide a table comparing exports of live sheep from the former GDR to the EC (under Commission Regulation No. 19/82 on imports of sheepmeat and goatmeat from certain non-member countries) in 1988, 1989 and 1990 with total sheep flock numbers in the former
GDR for those years and with total production of sheepmeat in the former GDR for those years.

<table>
<thead>
<tr>
<th>Year</th>
<th>Flock size (000)</th>
<th>Production</th>
<th>Exports to EC(*)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>2.700</td>
<td>19.000 t</td>
<td>2.250 t</td>
</tr>
<tr>
<td>1989</td>
<td>2.603</td>
<td>20.400 t</td>
<td>2.400 t</td>
</tr>
<tr>
<td>1990</td>
<td>2.448</td>
<td>31.000 t</td>
<td>[2.400 t]</td>
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(*) excluding inter German trade
(All tonnages are in carcass weight equivalent)

Finland on behalf of Norway (Spec(91)10)

Based on a long-term trade agreement with the GDR, Norway exported an annual quantity of 10,000 tonnes hardened marine fats free of duty to this country. With the German unification, the Common Customs Tariff of the European Community became applicable, and hardened marine fats (HS 15.16), which are not included in the Free Trade Agreement Norway-EC, had to face a customs tariff of 17% which acted prohibitively.

The above problem has been raised with German authorities. Norwegian authorities have asked for a duty-free quota in order to continue exports of hardened marine fats. The matter is still under consideration.

It would be appreciated if the EC could comment on the possibility of setting up an arrangement allowing annual exports of 10,000 tonnes hardened marine fats from Norway free of duty into the territory of the former GDR.

The European Community is not aware of any agreement which allowed Norway to export 10,000 tonnes of hardened marine fats free of duty to the former GDR.

On possible Norwegian GATT rights, the Community would like to refer to the reply to General Observations point 1 in Spec(91)10. As to possible rights of Norway under treaty succession, it is not open to Norway to rely on such rights after having formally rejected the Community's viewpoint on treaty succession and having opted for automatic extinction of the treaties of the former GDR on 3 October 1990.

United States follow-up question (Spec(91)85)

Please explain why the long-term agreement of Norway with the former GDR providing for imports of a certain quantity of hardened marine fats free of duty has not been accorded the same consideration as the
now-defunct agreements and protocols that underlie the preferences granted for imports from the former CMEA countries and Yugoslavia?

The European Community already stated in Spec(91)10, page 14, that it was not informed of the existence of an agreement between Norway and the former GDR providing for the imports of 10,000 tons of hardened marine fats. This position has not changed; despite diligent research no such agreement has been found among the hundreds of GDR-Agreements which are now in the possession of the Commission.

As was explained in II(1) of Spec(91)10, the European Community was willing to take certain autonomous measures in favour only of certain traditional trading partners of the former GDR in Europe. Norway is not in this group of countries and, for reasons related to its own position in this matter, cannot avail itself of the EC's willingness in principle to discuss the fate of treaties concluded by the former GDR.
VII. OTHER ISSUES

United States 29 (Spec(91)10)

[Regarding the Council Regulation (EEC) No. 3571/90 of 4 December 1990] Please describe the trade provisions, if any, of this Regulation, which concern the extension of the Common Fisheries Policy to the former GDR.

This Regulation does not contain any trade provisions. It is not covered by the waiver granted by the CONTRACTING PARTIES on 13 December 1990 and is not relevant to the work of the Working Party.

Australia 4 (Spec(91)10)

Will the transitional measures adopted by the EC be consistent with Article XV:4 of the General Agreement?

Yes. Since all transactions between East Germany and CMEA Member States now take place in hard currency, it is impossible to see how there could be a possible infringement of Article XV:4.

Australia 3 (Spec(91)10)

Will the EC notify all counter-trade and barter agreements entered into with former CMEA countries that affect or could potentially affect trade in the goods covered by the transitional system?

The European Communities have not entered into any counter-trade or barter agreements with member countries of the CMEA. Therefore, there is no need for any notification.

The goods covered by the transitional scheme are those included in the annual trade protocols 1990 (Poland: 1989), concluded between the seven beneficiary countries and the former GDR, as well as those covered by three long-term agreements on industrial co-operation concluded with the USSR. The latter provide for quantities in 1991 and 1992, in addition to those already contained in the annual protocols (for details, see introduction of Annex II). These protocols and long-term agreements served as a reference to determine precisely the volume and the value of the products concerned (i.e. the tariff-free quota).

United States 14 (Spec(91)10)

In the individual lists of Annex I which follow the overall Summary Survey (the summary surveys attached to the individual Protocols), there are categories listed as "patents, licenses, know-how;" "assembly works;" "major overhaul;" various forms of "job-processing;" "exchange of consumer goods;" "domestic trade's exchange of consumer goods;" "unspecifed items;" "special imports;"
"services" in various fields; and "ship repair". Does trade in these categories benefit from the transitional exemption of tariffs and standards regulations referred to in L/6792? If not, will the EC provide new data on the amount of trade subject to the preferences?

Services have traditionally constituted an important part of counter-trade clearing agreements and protocols, which was accordingly reflected in the summary survey. However, since services as such are not subject to any tariffs or technical rules, they are not included in the product lists contained in Annex II (marked with a "?").

Cuba 4 (Spec(91)85)

Does the EEC consider that the transitional measures adopted in favour of the Eastern European countries are consistent with Article XXXVI of the General Agreement, in particular paragraphs 2 and 4, taking into account Cuba's dependence on exports of a limited range of primary products, of which it used to export to the GDR some that were fundamental for its revenues, such as sugar and tobacco, among others?

Cuba 5 (Spec(91)85)

Could the EEC indicate how it would fulfil the commitment in Article XXXVIII:1(b) to "refrain from introducing, or increasing the incidence of, customs duties or non-tariff import barriers on products currently or potentially of particular export interest to less-developed contracting parties"?

Cuba 6 (Spec(91)85)

How would the new barriers faced by Cuban exports destined for the former territory of the GDR be justified in the light of the commitments adopted by Ministers in the Punta del Este Declaration, including the standstill commitment?

Cuba 7 (Spec(91)85)

To what extent has the EEC taken account of Cuba's trade interests in applying these measures? Are its actions in keeping with the provisions of Article XXXVII:3(c)?

The commercial links between the former GDR and its trade partners were based on traditional trade flows and also political imperatives. No precise engagement, formally notified under the GATT provision, existed between the former GDR and Cuba.
Following the German unification a choice was made by the EEC. It was decided to honour certain of these traditional non-formal "engagements" towards the other Eastern European countries, in order to support the process of democratic changes they have started and which involve great economic and political costs.

In order to face this exceptional situation and contribute to the stabilisation of democratic regimes, the EEC took certain transitional measures. These transitional measures concern a positive exception or a positive discrimination towards these Eastern countries.

Given the export pattern of the countries in question these positive exceptions may only partly affect Cuba's export interests in sugar and tobacco.

We do not consider that these transitional measures, which are politically and economically justified, are contrary to the provisions of Article XXXVI paragraphs 2 and 4.

The Community does not consider that new duties or new non-tariff barriers have been introduced. However the German unification might influence the incidence of tariff and non-tariff barriers to imports of third countries.

The former GDR will adopt EEC's engagements concerning duties and tariffs, including the autonomous preferential treatment given under the Generalized System of Preferences. Moreover following German unification, but also the changed situation in Europe, the pattern of trade in general will change and the situation will be globally modified. Therefore it has still to be proved that the incidence of tariffs will be increased.

We can assure our trade partners that the measures taken were limited to what is strictly necessary, taking into account the very special political and economic context of German unification.

We do not consider that new barriers have been introduced. We are therefore in accordance with the standstill commitments and if there is an incidence, then it certainly does not go further than what is necessary to remedy the specific political and economic situation of German unification. It is therefore in accordance with point (ii) of the standstill commitment in the Punta del Este Declaration.

We have taken Cuba's interests into consideration. We consider that they will balance with the GSP preferences, with the provisions for tropical products in the Uruguay Round and with the changes in the trade pattern in Europe in general.
### IMPORTS 1989

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## IMPORTS 1990

**MEAT OF BOVINE SPECIES, FRESH OR CHILLED (0201)**

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(000 'kgs)
## IMPORTS 1990

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**Base year 1989**

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