

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/4369

5 July 1976

Limited Distribution

## REPORT OF THE WORKING PARTY ON THE ACP-EEC CONVENTION OF LOMÉ

1. The text of the ACP-EEC Convention of Lomé was communicated to GATT and circulated to contracting parties in July 1975 under cover of documents L/4193 and L/4198. A Working Party was appointed by the Council at its meeting in July 1975 with the following terms of reference:

"To examine, in the light of the relevant provisions of the General Agreement, the provisions of the ACP-EEC Convention of Lomé, dated 28 February 1975, and to report to the Council."

2. The Working Party, which was open to all contracting parties indicating their wish to serve on it and ACP States not contracting parties wishing to participate in an observer capacity<sup>1</sup>, met on 24 and 25 June 1976 under the chairmanship of Ambassador G.L. Easterbrook Smith (New Zealand). In addition to the text of the Convention, the Working Party had available questions submitted by contracting parties on the Convention and the replies thereto provided by the parties to the Convention. The questions and replies had been circulated as document L/4325.

3. In an introductory statement, the representative of the European Communities, recalling the essential elements of the Convention as well as the economic and political context in which it was placed, said that the Community believed that it, together with its partners, had created in the Lomé Convention an effective instrument for economic co-operation between developed and developing countries which would contribute towards a more equitable international economic order. While the Lomé Convention represented a continuation of experience under previous Conventions, it contained new elements resulting from changes in the position of the developing countries and the will of the Community to respond as far as possible to such changes. It was part of an effort which the different developed countries were making in several international fora. The Community was engaged in co-operation efforts in favour of all developing countries through diverse and complementary measures: its GSP had been progressively adapted to meet the needs of developing countries in general; the EEC was participating in international commodity agreements and in the

---

<sup>1</sup> A list of representatives has been circulated as document Spec(76)21.

provision of food aid; and financial aid and technical assistance had been made available to a large number of developing countries. Within this evolving context, the Lomé Convention was a diversified instrument and the most comprehensive in so far as its field of application was concerned. The forty-six ACP countries contained approximately 15 per cent of the population of developing countries, but accounted for only 10 per cent of their GNP, and included nineteen countries which figured on the list of least developed countries.

4. He stated that the trade provisions of the Convention, which were the subject of the work of the Working Party, must be considered from several angles. Firstly, they constituted an instrument complementary to others in the Convention and should be examined in this context. Also, the Convention had been concluded between countries with particular historical, economic and trade links, and its trade provisions succeeded those which had existed on the one hand between the Europe of Six and a section of the ACP countries and on the other between the United Kingdom and Ireland and other ACP countries. They represented the adaptation to a single régime compatible with the normal functioning of the customs union of the nine member States of the Community, of the particular régimes that the Nine had been applying respectively to different ACP countries. In this context, under the new Convention, the Community had complied with the obligation to eliminate customs duties and other restrictive regulations of commerce with respect to substantially all trade with the ACP. In the light of their development needs and the principles of Part IV of the General Agreement, the Community had not demanded reciprocity in its trade with the ACP. The Community was convinced that the Convention was in conformity with the obligations of contracting parties and fully responded to the objectives which governed the GATT. It requested, therefore, that the Convention be examined in the light of the totality of the objectives of the General Agreement and as a positive contribution towards the creation of a more just and balanced world economic order. The Community was prepared to co-operate fully in the examination of the Convention and to furnish periodically all relevant information on its implementation. In conclusion, he stated that the Community requested all its GATT partners to approach the work of the Working Party in the same spirit and believed that such an approach could be a positive factor in international economic relations.

5. The spokesman for the ACP countries stated that in the view of the ACP countries the Convention was compatible with the objectives and principles of the General Agreement and at the same time represented an advance towards the realization of a more equitable form of co-operation between developed and developing countries. Although the terms of reference of the Working Party focussed on consideration of the trade arrangements of the Convention, the Convention was more than that, providing a basis for co-operation in diverse fields between countries of different economic strengths and at greatly different levels

of economic development. It was to be noted that the ACP included a majority of the least developed countries as well as a number of island and land-locked countries. Many ACP countries had suffered prolonged drought, for example in the Sahel regions, and all had been affected in one way or another by the recent economic crisis. Also relevant to the negotiation of the Convention was the enlargement of the European Communities, for without the trade provisions of the Convention it was likely that traditional trading links would have been severed thus creating severe difficulties for developing countries now parties to the Convention. The ACP countries considered the Lomé Convention a sound and equitable basis on which to build stronger and more self-assured economies and a step in the evolution towards a new international economic order.

6. A member of the Working Party welcomed the Convention as representing an imaginative and realistic model for co-operation between developed and developing countries, which introduced significant new features including the arrangement for the stabilization of export earnings of ACP signatories, industrial co-operation, etc. This member, while noting the EEC's determination to contribute to the development efforts of the ACP countries in keeping with the international community's aspirations towards a more just and balanced economic order, expressed the hope that the provisions of the Lomé Convention would be implemented in a manner which did not work to the disadvantage of non-ACP developing countries. He stressed the need for similar efforts to look at the problems and requirements of other developing countries so that all developing countries could benefit from close economic co-operation with the EEC and hoped that the Convention could be regarded as a first step towards this end which could be emulated. He also expressed the view that the Community's relationship with the ACP States must proceed in step with the evolution of its relationship with the rest of the developing world and that the two sets of relationships were not only complementary to each other but also mutually reinforcing.

7. Another member of the Working Party felt it was desirable to re-state his country's position on those preferential arrangements which might have the effect of compartmentalizing trade relations and of moving away from global forms of trade liberalization. His authorities believed that there were innovative features in the Convention, as had been indicated at the meeting of the Council in July 1975. However, with regard to the trade provisions which were the concern of GATT, his authorities had some reservations as to the compatibility of the Convention with the provisions of the General Agreement as cited in the reply to Question 1 in document L/4325. It was also difficult to judge at this stage whether the trade provisions would jeopardize future trade liberalization in the interests of all developing countries. In this connexion, it was hoped that the EEC would take fully into account the trade interests of third developing countries with a view to securing a reasonable balance of benefits. This could be done, for example, in the

course of the multilateral trade negotiations and through progressive improvements in the GSP.

8. One other member of the Working Party noted that as the Lomé Convention was a reflection of today's needs and represented a courageous and constructive effort to develop trade and economic relations between developed and developing countries, it could be expected to be examined not only in a positive spirit but on its own merits taking into account Part IV and the objectives which generally motivated the General Agreement.

9. After introductory statements by parties to the Convention, and general statements from some other members of the Working Party, members proceeded to an examination of the provisions of the Convention taking into account the questions and replies circulated in document L/4325.

10. A member of the Working Party expressed the view that the provisions in the convention on rules of origin, which were exhaustive and complicated, might be restrictive in their operation and tend in particular to discourage investment in the ACP countries from sources other than the EEC. They might also lead to an increase in the cost of development especially in the least developed of ACP States. This member commended the Convention for providing for the elimination of reverse preferences, which were featured in the Yaoundé Conventions, and urged the ACP countries parties to the Convention to remove as soon as possible all remaining reverse preferences.

11. The representative of the EEC explained that rules of origin which were characteristic of arrangements of this kind were necessary in order to limit the benefit of free access to products originating in countries which were parties to the Convention. Those in this Convention differed only slightly from the rules contained in the Yaoundé Conventions because of the enlarged basis of the new Convention. The contribution of rules of origin to enlarging opportunities for further industrial development in the ACP countries was more significant than the possibilities of distortion in import sources.

12. A member of the Working Party asked questions concerning reverse preferences, including the names of the ACP countries which were still extending reverse preferences to the EEC, the reason why these countries were still extending reverse preferences in spite of Article 7 of the Convention, and the intentions of such ACP countries regarding the withdrawal of reverse preferences in the future. The representative of the ACP countries stated that the Convention did not require them to grant reverse preferences. At the same time, Article 7 of the Convention accommodated a historical situation in which prior to the enlargement of the EEC some ACP countries granted preferences to the original six members of the EEC and

others to the United Kingdom. In view of their obligation under the Convention not to discriminate as between EEC member countries, he would expect ACP countries progressively to eliminate those preferences which remained, as they adjusted to the new trading relationships created by the Convention. Indeed some ACP countries had already notified the EEC that they would not extend Commonwealth Preferences to Community States.

13. The representative of the EEC observed that, while ACP countries were in the process of examining their positions on reverse preferences, the overall tendency was evidently in the direction of an elimination of such preferences. One ACP country had recently notified the EEC that it would not continue its preferences. He indicated that parties to the Convention which were contracting parties were likely to be in a position to provide appropriate information to the contracting parties in this respect when they made periodic reports on the operation of the Convention.

14. Two members of the Working Party referred to the possibility that certain provisions of the Convention in their operation might adversely affect the interest of non-ACP developing countries and to the need, in that event, for appropriate remedial action by the EEC. One of these members said that from the point of view of existing commercial and trade links the countries covered by the EEC's Joint Declaration of Intent (JDI) were in a position similar to that of the Commonwealth countries which were now ACP countries. He hoped the EEC would make a comparable effort to tackle the problems faced by JDI countries.

15. The representative of the Community emphasized that in the development of its external policy, the Community had not ignored non-ACP countries. The EEC continued to make improvements in its GSP scheme and to enter into bilateral arrangements involving trade co-operation and aid. It had made an active effort to evolve solutions for JDI countries and would continue to explore possibilities for ensuring further balance in its economic relations with developing countries, including the JDI countries, in particular through the multilateral trade negotiations.

16. One member of the Working Party asked whether the reply of the parties to the Convention to the question concerning reverse preferences in respect of customs duties also applied to quantitative restrictions since Article 7(1) of the Convention referred to obligations "in respect of imports" rather than specifically to tariffs; that was to say, was it correct that ACP countries were not required to eliminate quantitative restrictions in favour of the EEC? In response, the spokesman of the ACP stated that ACP countries applied quantitative restrictions on a uniform across-the-board basis for balance of payments or development reasons and that the Convention did not affect this. The representative of the European

Communities said that, since the EEC was obliged under Articles 2 and 3 of the Convention to eliminate practically all tariffs and quantitative restrictions on imports from ACP countries and since under Article 7(1) ACP countries were not required to assume in respect of imports of products originating in the Community obligations corresponding to the commitments entered into by the Community in respect of products originating in the ACP countries, they were not bound to eliminate quantitative restrictions on imports from the Community.

17. Another member of the Working Party said that from the reply to question 16 he took it that quantitative restrictions not applied by the EEC to imports from ACP countries may continue to apply to imports from other developing countries. He was confident, in the light of previous statements by the representative of the European Communities, that any resulting problems for countries such as his own would be examined sympathetically, for example in the context of the Joint Declaration of Intent annexed to the Treaty of Accession or in the MTN Sub-Group "Quantitative Restrictions", and that appropriate solutions would be found. In response, the representative of the European Communities said that much had already been done in respect of the Joint Declaration of Intent and that this effort would continue.

18. One member of the Working Party stated that although the STABEX system had been described as being principally an aid mechanism, it could have an affect on trade to the detriment of third countries. STABEX operations could, for example, stimulate production, thus tending to aggravate rather than alleviate situations of over-production and declining prices. In addition, beneficiaries could use STABEX funds to subsidize production for export. Moreover, these funds could enable ACP countries to maintain their production capability for the commodities covered while other suppliers would be forced to shoulder adjustments to world market conditions. He stated that his country would therefore like to urge the EEC and the ACP countries to implement the STABEX scheme in a manner which did not stimulate inefficient production of commodities, thus creating a situation which might result in the further deterioration of export earnings. He asked whether the parties to the Convention would be prepared to report to the CONTRACTING PARTIES any expansion of coverage of the STABEX scheme.

19. In response, the representative of the European Communities said that the STABEX scheme had been conceived so as to avoid such negative effects. The purpose of the scheme, which had been designed to stabilize export earnings on an ex post basis, was not to subsidize excess or inefficient production. In the near future, the EEC Council of Ministers would be called upon to pronounce on the proposals made by the Commission on the application of the STABEX scheme over the last year. The amount involved, representing both grants and loans, would be about 60 to 70 million units of account. The provisions governing the STABEX

scheme were specific and the product coverage was spelt out. It was unlikely that in the next few years significant changes would be made, but were this to be the case, the Community would be prepared to inform the CONTRACTING PARTIES of such changes.

20. One member of the Working Party noted that in the reply to question 33 on the communication by the parties to the Convention of their customs tariffs to the GATT, it was stated that ACP States would continue, for their part, to fulfil their GATT obligations in this regard. He asked whether this meant that ACP countries which were not contracting parties might not make their customs tariffs available to the GATT. In this connexion, he drew attention to a recent Working Party on a free-trade area agreement between a contracting party and a non-contracting party, in which the non-contracting party concerned had not provided the required information. He believed that in such cases the GATT contracting party which was a party to the agreement under examination should be prepared to provide such information. He recalled that this position had also been strongly taken by the EEC. He asked, therefore, whether, if some ACP countries were not prepared to make available their customs tariffs, it was the intention of the EEC to supply such tariffs to the CONTRACTING PARTIES. In response, the representative of the European Communities stated that there was a substantive difference between the Lomé Convention and the agreement referred to: the former did not require the ACP countries to give preferences to imports from the Community, while the latter had been put forward as an integral free-trade area agreement. Thus, in respect of the Lomé Convention there could be no justification for demanding such information.

21. A member of the Working Party noted, with reference to question 32, that the parties to the Convention were prepared to provide the CONTRACTING PARTIES with periodic reports on the implementation of the Convention. He suggested that reports be presented annually. In reply, the representative of the European Communities recalled that the GATT Council had adopted a procedural decision which stipulated that reports made in the context of regional trade arrangements should be made every two years. As long as this decision remained valid he considered it reasonable that it should apply to the Lomé Convention. The spokesman for the ACP countries said that, while they were not undertaking any obligations additional to those under the General Agreement, the ACP secretariat in Brussels would do its best to provide information in response to any question addressed to it by a contracting party.

22. One member of the Working Party noted that, in response to questions 42 to 47, it was stated that every effort would be made to provide the statistical information required to the extent that it was available at the earliest possible date. He enquired when this information might be available. The spokesman for

the ACP States stated that they had run into practical problems in compiling the statistics requested. He hoped that by the time the first report was made to the CONTRACTING PARTIES on the implementation of the Convention, it would be possible to provide statistics covering the first year of operation of the Convention.

#### Concluding remarks

23. The parties to the Convention considered that the Convention was compatible with their obligations under the General Agreement, in particular the provisions of Articles I(2), XXIV and XXVI, which had to be considered side by side and in conjunction with one another, as reflected in their replies to Questions 1 and 2 in document L/4325. Since the objective of the Convention was to implement actions and measures aimed at improving standards of living and the economic development of less-developed countries, it could not but be in line with the objectives pursued by the GATT, in particular those defined in Part IV.

24. Some members of the Working Party considered that the Convention might be looked at in a dynamic perspective taking into account Part IV and the overall objectives of the General Agreement. However, one member said that such a pragmatic approach should not involve the risk of erosion of the provisions of the General Agreement. Developments under the Convention might be re-examined in the future in the light of the activities of the parties to the Convention.

25. While acknowledging the positive objectives of the Convention and the existence of historical and trade links between the parties to the Convention, one member of the Working Party noted that ACP countries were not required to assume, in respect of imports of products originating in the EEC, obligations corresponding to the commitments entered into by the EEC as might be expected in any regional trading arrangement. He also noted the lack of universality in the treatment applied to developing countries by the EEC. In his view, this indicated that the Convention had a number of elements which constituted significant exceptions to fundamental provisions and principles of the General Agreement. He asked how the Working Party might proceed to show that the Convention was acceptable to the international trading community and to render it compatible with the General Agreement. Another member also expressed hesitations about taking a position on whether the Convention was fully compatible with the GATT. This member suggested that information on further developments in the course of the periodic reports might serve to establish its compatibility with the General Agreement and that contracting parties might await such reports.

#### Conclusions

26. There was wide sympathy in the Working Party for the view that the purposes and objectives of the Convention were in line with those embodied in the General Agreement including Part IV inasmuch as the Convention aimed at improving the

standards of living and economic development of a significant number of less-developed countries including a number of the least-developed among them. The parties to the Convention supported by some members of the Working Party stated that the trade commitments in the Convention were compatible with the relevant provisions of the General Agreement taken as a whole and with its objectives. Some other members considered it doubtful that it had been established that the Convention was fully justified in terms of the legal requirements of the General Agreement. The Working Party noted that the parties to the Convention were prepared to supply information on a periodic basis and to notify any changes to the Lomé Convention. It was understood in the Working Party that the Lomé Convention would in no way be considered as affecting the legal rights of contracting parties under the General Agreement.