

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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INTERIM AGREEMENT BETWEEN THE EUROPEAN COMMUNITIES AND PORTUGAL

Report of the Working Party

1. At the meeting of the Council on 12 November 1976 (C/M/117) the CONTRACTING PARTIES were informed that on 20 September 1976 the European Communities and Portugal had signed the following legal instruments, copies of which had been transmitted to the secretariat and circulated with L/4419:

- Interim Agreement between the European Economic Community and the Portuguese Republic, as well as the Final Act and the Annexes thereto.

2. At the same meeting, a Working Party was set up with the following terms of reference:

"To examine in the light of the relevant provisions of the General Agreement, the provisions of the Interim Agreement between the European Economic Community and the Portuguese Republic, signed on 20 September 1976, and to report to the Council." (L/4446/Rev.1).

3. The Working Party met on 22 and 24 June 1977 under the chairmanship of Dr. P. Tomić (Yugoslavia). It had available copies of the text of the instruments cited above, as well as the replies by the parties to questions which had been asked by contracting parties (L/4501).

4. In his opening statement, the representative of the European Communities (EC) outlined the context in which the 1976 Interim Agreement was situated. In order to strengthen co-operation links and in pursuance of Article 15 of the 1972 free-trade Agreement¹ (the clause providing for development of relations), on 20 September 1976 the European Economic Community (EEC) and the Portuguese Republic had signed an Additional Protocol to the 1972 Agreement; it was designed to improve the 1972 Agreement in the trade sphere and to extend it to new areas such as economic and industrial co-operation as well as labour and social security. On the same day a Financial Protocol had been signed which was designed to increase productivity, to

¹L/3781, L/3781/Add.1 and Corr.1

diversify the Portuguese economy, and to promote industrialization and the modernization of agriculture. The Interim Agreement, likewise signed on 20 September 1976, and which entered into force on 1 November 1976, was designed to implement the trade provisions of the Additional Protocol pending the entry into force of that instrument which was currently in the process of ratification by the two parties. The representative of the EC went on to summarize the main trade provisions implemented by the Interim Agreement in regard to industry and agriculture. With respect to industrial products of Portuguese origin that were subject to the general tariff dismantling arrangements, the final abolition of customs duties on imports into the EEC had been brought forward from 1 July 1977 - the date stipulated in the 1972 Agreement - to 1 July 1976. That provision had been implemented as an autonomous measure on the part of the EEC. The EEC import ceilings for eight textile products and for articles of cork had been increased for 1976 and were being raised by 5 per cent each year. The EEC had increased the zero-duty tariff quotas for certain categories of paper for the period 1 January 1976 to 31 December 1983. With respect to the treatment applicable by Portugal to imports of industrial products originating in the EEC, the representative of the EC mentioned certain measures that had been selected taking into account the difficulties facing Portugal's economy and its level of economic development. For certain industrial products, Portugal was authorized to slow down the rate of progressive elimination of customs duties (in relation to the time-table established in the 1972 Agreement), leading to duty-free treatment as from 1 January 1985 instead of 1 January 1980. In addition, Portugal could reimpose temporarily or maintain duties not exceeding 20 per cent for certain other products of the most vulnerable new industries. The duties thus applied were to be reduced progressively in accordance with a time-table, leading to full elimination by 1 January 1985. Furthermore, improvements had been made to the possibility granted to Portugal under the 1972 Agreement of increasing or reimposing customs duties in order to protect new industries. With respect to agriculture, the representative of the EC said that the EEC was applying tariff reductions to certain agricultural and preserved fishery products of Portuguese origin, in addition to the concessions already contained in the 1972 Agreement. Furthermore, as regards wine, the EEC had increased the volume of tariff quotas for Port, Madeira and Setubal muscatel and had speeded up the rate of tariff reduction for the last two types of wine. In conclusion, the representative of the EC underlined that in the view of the parties to it, the Agreement, which improved certain provisions of the 1972 Agreement, was fully consistent with the provisions of Article XXIV of GATT. Furthermore, in March 1977, Portugal had presented to the Community authorities an application for accession to the European Communities. That application was currently being examined by the Community authorities.

5. In his introductory statement on the scope and economic significance of the Interim Agreement, the representative of Portugal underlined that it had been negotiated and signed in the context of pronounced political instability together with a very difficult economic situation characterized by a high rate of unemployment and inflation, disequilibrium in the trade balance and the balance of

payments, a decline in production and increased external dependence. The signature of the Interim Agreement was an expression of economic solidarity on the part of the nine-member European Communities. That signature was also significant politically to the extent that conclusion of the Interim Agreement had become possible after certain objections of a political nature had receded that had prevented strengthening of relations between Portugal and the EEC. The objective of the Interim Agreement was to improve economic benefits under the 1972 Agreement and secure support by the Communities for the Portuguese democracy. The Additional Protocol and the Financial Protocol of 1976 had brought improvements in the economic benefits of the 1972 Agreement and extended them to other sectors such as financial, industrial and technological co-operation, labour and social security. In conclusion, the Portuguese representative said that Portugal and the EEC considered the Interim Agreement to be fully consistent with the provisions of Article XXIV of the General Agreement. Furthermore, the application for accession recently presented by Portugal reflected his country's intention of strengthening its economic and political links with the EEC countries and its desire to participate in the joint effort of building Europe.

6. One member of the Working Party stressed that his authorities continued to support the development of closer co-operation and economic ties between the EEC and Portugal. Nevertheless, they continued to hold the opinion that several aspects of the Agreement¹, which was first discussed in 1972 and 1973, did not conform with the requirements of Article XXIV and that it was viewed more as a preferential arrangement than as a free-trade arrangement.
7. One member of the Working Party expressed doubts as to the compatibility of the original Agreement with the requirements of Article XXIV. In this connexion, he expressed the opinion that an apparent strengthening of the preferential nature of the Interim Agreement called for a detailed examination in the GATT.
8. One member of the Working Party stressed that his authorities continued to have serious doubts as to the compatibility of the Agreement with the requirements of Article XXIV, although they welcomed the continued close economic co-operation between the EEC and Portugal.
9. One member of the Working Party said that the Interim Agreement constituted a development of the 1972 Agreement and that in order to judge its compatibility, account must be taken of Portugal's level of development. He realized that part of the trade flows had been left outside the coverage of the Agreement, for reasons concerning the production structure of Portugal, a country whose economy was mainly based on agriculture. It was to be hoped that the Interim Agreement would encourage Portuguese entrepreneurs to increase and further diversify their industrial production and their trade and that as a result the proportion not covered by the Agreement would diminish in relative terms. In his view, the Interim Agreement was consistent with the Article XXIV obligations.

¹For reasons of convenience, the term "the Agreement" is used in this report as designating the Agreement of 1972 and the Interim Agreement (of 1976) when referred to conjointly.

10. After the general discussion set out above, the Working Party proceeded to an examination of the Interim Agreement based on the questions and replies on more specific matters, as reproduced in document L/4501. The main points made during the discussion are summarized below.

I. TRADE COVERAGE

11. One member of the Working Party referred to the reply to question No. 3 and pointed out that only 5.4 per cent of the agricultural imports and only 68 per cent of the combined industrial and agricultural imports would enter the EEC from Portugal free of duties. In his view, Article XXIV:8(b) required that all the parties' mutual trade, with minor exceptions, had to be free of internal barriers. He said that the Agreement which virtually excluded an entire sector, such as unprocessed agricultural products, could not be said to cover substantially all the trade between the parties, and therefore did not meet the requirements stipulated in Article XXIV:8(b). He added that the special treatment of some agricultural products in the Agreement could not be justified under Article XXIV, which refers to the elimination of tariffs rather than to concessions of a preferential nature.

12. One member of the Working Party expressed the doubts of his government as to whether, in view of the limited trade coverage, the Agreement was compatible with the requirements of the General Agreement.

13. The representative of the EC said that the Interim Agreement had expanded the scope of the 1972 Agreement and that in fact the Agreement covered substantially all the parties' mutual trade. With regard to agricultural trade in particular, he said that the Working Party should not consider the issue on a purely theoretical basis but should consider the practical importance of that trade for all the trade covered. Although the treatment established under the Agreement in respect of certain agricultural products of particular export interest to Portugal did not at the present stage provide for the complete elimination of obstacles to trade, it nevertheless represented a significant move in that direction. In that sector, account had to be taken of the specific characteristics of agriculture. By entering into the Interim Agreement, the parties had manifested their continuing effort aimed at the liberalization of their trade with each other.

14. The representative of Portugal recalled that 97 per cent of the parties' total trade was covered by the Agreement and that 84 per cent of their agricultural trade was covered. In his view, those figures showed that substantially all the trade was covered by the Agreement and hence its consistency with the provisions of Article XXIV:8(b) of the General Agreement.

II. IMPORT DUTIES

15. One member of the Working Party noted that under the terms of the Interim Agreement the EEC could increase the duty-free quotas for certain imports from Portugal, and that by way of derogation from the 1972 Agreement, Portugal could apply a customs duty not exceeding 20 per cent on certain imports from the EEC.
16. The representative of Portugal said that the derogation in Article 6 of the Interim Agreement was designed to allow his country, which was not at the same level of economic development as that prevailing in the EEC, to protect certain fragile sectors of its industry in order to promote economic development.
17. One member of the Working Party said that the reply to Question No. 4 would seem to indicate that Portugal could discriminate among suppliers when applying the import surcharge and the import deposit scheme. In his view, such balance-of-payments measures would have to be applied equally to imports from all sources.
18. The representative of Portugal underlined that the import surcharge was applicable in the same way to imports from all sources. It was therefore non-discriminatory in character. He noted that the import surcharge had been extended through December 1977, with an adjustment of the percentage on certain products. He added that the derogation in Article 6 of the Interim Agreement had not yet been applied, and that, in any case, a discussion of the Portuguese balance-of-payments measures would more appropriately be held in the Balance-of-Payments Committee. It was the intention of the Portuguese Government to remove the products covered by Article 6 of the Interim Agreement from the list of products subject to the surcharge, as from the entry into force of Article 6 of the said Agreement.

III. RULES OF ORIGIN

19. One member of the Working Party, referring to the reply to Question No. 1, said that his authorities continued to be of the view that the rules of origin applicable to trade between the parties were in general more restrictive than those of the Stockholm Convention establishing the European Free Trade Association (EFTA) and were thus inconsistent with Article XXIV:5(b) of the General Agreement and prejudicial to his country's trade interests. Accordingly, his Government wished to reserve the right to return to this point if specific problems arose in his country's trade with either the EEC or with Portugal as a result of the rules of origin.
20. One member of the Working Party said that the rules of origin appeared to have an unreasonably high value requirement and were, in general, unduly complicated because of the several criteria used to determine origin and the

numerous certificates employed and were more restrictive than the original EFTA rules of origin. In his view, the rules of origin were incompatible with the requirements of Article XXIV:5(b). In this context he asked whether the parties presently contemplated any modification in the rules of origin.

21. The representative of the EC noted that Article XXIV:8(b) specifically referred to "trade between the constituent territories in products originating in such territories", which meant that a mechanism was necessary in a free-trade area for the determination of origin. The rules under discussion had been made as simple as possible, and certain modifications had already been made in them. Such action was taken whenever necessary. In his view it was unrealistic to attempt a comparison between the rules of origin of different free-trade areas, because each free-trade area had its own individual characteristics. With regard to Article XXIV:5(b) he pointed out that the provisions of that Article were not relevant since the customs and trade regulations with regard to third countries, to which those provisions referred, had not been modified by the Agreement.

22. The representative of Portugal noted that the Interim Agreement had not altered the rules of origin provided in the 1972 Agreement, which had already been examined by a working party.

23. Some members of the Working Party noted that although the Agreement had been examined by the GATT in 1972-1973, the earlier Working Party had reached no unanimous conclusions as to the compatibility of the rules of origin with the General Agreement.

IV. SAFEGUARD PROVISIONS

24. One member of the Working Party recalled the concern that his authorities had expressed with regard to the safeguard provisions when the 1972 Agreement was reviewed in the GATT. He added that his authorities sought an affirmation that any safeguard action taken by the parties would be in full conformity with GATT provisions and practices.

25. In his reply, the representative of the EC referred to the statements made during the examination of the 1972 Agreement, as recorded in paragraph 32 of the Working Party's report¹, and pointed out that in the course of that discussion the Working Party's attention had been called "to the omission of Article XIX from among those mentioned in Article XXIV:8(b), which required the elimination of certain 'other restrictive regulations of commerce' as between members of the free-trade area. His authorities, accordingly, were of the view that they were free to exempt these members from possible restrictions imposed under Article XIX".

¹BISD 20S/181

26. The member of the Working Party who had raised the question, referred to paragraph 33 of the report by the earlier Working Party and pointed out that his authorities still held the same view, namely that "the invocation of Article XXIV did not mean that other Articles of the General Agreement should cease to apply", and that they still could not agree that "the invocation of Article XXIV permitted the discriminatory application of Article XIX".

V. OTHER QUESTIONS

27. With respect to the reply to question No. 9(2), one member of the Working Party asked whether the representatives of the EC and Portugal could confirm that they would undertake to consult with a view to resolving specific difficulties for other GATT contracting parties which were traditional suppliers of kraftliner to the EEC, which might arise from the operation of increased duty-free quotas on this product.

28. In his reply, the representative of the European Communities referred to replies Nos. 9(1) and 9(2), pointing out that the volume covered by those quotas took into account both traditional trade flows in that sector and the establishment of new sources of supply in Portugal. Furthermore, the parties to the Agreement had undertaken to comply with the GATT rules on consultations.

VI. GENERAL CONSIDERATIONS

29. The Working Party could not reach any unanimous conclusions as to the compatibility of the Interim Agreement with the provisions of the General Agreement. Thus, it felt that it should limit itself to report the opinions expressed to the competent bodies of the CONTRACTING PARTIES.