

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## ARTICLE XXIV - THE RELEVANCE OF VARIABLE LEVIES

The following communication, dated 13 February 1981, has been received from the Special Trade Delegate of Australia, with the request that it be circulated to contracting parties.

Working Party on Accession of Greece to the  
European Communities. Request by Australia for  
the Establishment of a Panel in Respect to the  
Relevance of Variable Levies to Article XXIV

The Working Party's examination of the conformity of the provisions of the documents concerning the accession of the Hellenic Republic to the European Communities with Article XXIV of the GATT has, as in the case of the Working Party on Accessions to the European Communities in 1972/73, become deadlocked on the question of the relevance of measures applied under the EEC's Common Agricultural Policy.<sup>1</sup>

The EEC has maintained that the Working Party has no mandate to examine the effects of its Common Agricultural Policy on trade with third countries and has refused to comply with requests by members of the Working Party for detailed information on issues related to that policy and its operation. In particular, the EEC has stated that its variable levies on agricultural products are not "duties" or "other regulations of commerce" in terms of paragraph 5 of Article XXIV of the GATT and are therefore not relevant to the CONTRACTING PARTIES' consideration of its regional arrangements under that Article. It has also argued that variable levies are not quantifiable because of their variable nature.

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<sup>1</sup>This Working Party held nine meetings between March 1972 and February 1973. It has not however completed its work or reported to the CONTRACTING PARTIES. Throughout the course of its meetings the EEC maintained the same position in relation to agriculture and variable levies as is outlined in this note. The deadlock on this issue has been one of the main reasons why the Working Party has not concluded its examination of the accession agreements.

The EEC has also taken the view that the Working Party's task is to make a 'global judgement' under Article XXIV:5 and that it should not look at developments in particular sectors or on particular products.

A number of contracting parties, including Australia, has taken the view that all protective measures, including all measures affecting trade in agricultural products, are relevant to the CONTRACTING PARTIES' examination of EEC arrangements in relation to the calculation of the 'general incidence' of 'duties and other regulations of commerce' under Article XXIV:5. In particular, they have noted that variable levies are a significant barrier to trade in the agricultural sector, effectively prohibiting the import of a wide range of agricultural products<sup>1</sup> at all times other than in the extremely rare circumstances in which world prices exceed Community prices. These countries have noted that these levies are commercial regulations operated by the EEC and applied to imports at the border. They have therefore argued that they must fall within 'duties and other regulations of commerce' as specified in Article XXIV:5 and consequently must be considered in the CONTRACTING PARTIES' examination of the general incidence of these measures in the terms of that Article.

These countries have requested that the EEC provide adequate information on variable levies, including the ad valorem equivalents of these measures, in order to allow the CONTRACTING PARTIES to complete their examination of EEC arrangements. It was pointed out that information on variable levies is regularly published by the EEC. Moreover the EEC has as recently as 1971 provided the CONTRACTING PARTIES with calculations of ad valorem equivalents of variable levies.<sup>2</sup> As noted above the EEC has, however, refused to comply with requests for such information in the context of the CONTRACTING PARTIES' consideration of its regional arrangements under Article XXIV of the GATT.

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<sup>1</sup>Products subject to variable levies in the EEC include beef, veal, pork, sheepmeat, lard, poultry, eggs, butter, cheese, cream, milk and other milk products, sugar, wheat, oats, barley, wheat flour, rice, rye, corn, sorghum and other grains.

<sup>2</sup>See COM.AG/W/68/Add.3.

In these circumstances Australia requests the establishment of a Panel of experts to make a definitive determination on the following questions:

- (1) Are 'duties and other regulations of commerce' in the agricultural sector relevant to an examination of the general incidence of such measures under Article XXIV:5?
- (2) Do variable levies constitute 'duties and other regulations of commerce'?
- (3) If variable levies are determined to constitute 'duties and other regulations of commerce' by what means should the incidence of such measures be calculated so as to reflect their effect on trade in a range of market circumstances?
- (4) Are the parties to the Agreement required, under Article XXIV:7(a), to provide the CONTRACTING PARTIES, on their request, with information on such measures, including ad valorem equivalents of variable levies, in order that the Working Party may undertake an examination of the incidence of 'duties and other regulations of commerce' prior to and following enlargement of the European Communities?

Australia further requests that the Working Party on Greek accession to the EEC postpone the conclusion of its work until this Panel has reported back to the GATT Council.