

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## WORKING PARTY ON FOURTH ACP-EEC CONVENTION OF LOME

### Questions and Replies

In GATT/AIR/3395 and GATT/AIR/3468 contracting parties were invited to submit written questions relating to the Fourth ACP-EEC Convention of Lomé. The questions received were transmitted to the Parties to the Convention. This document reproduces the questions and the replies.

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#### Question

1. Are there any plans to extend the benefits provided to ACP countries under the Lomé Convention to non-ACP developing countries?
2. To what extent does the Lomé Convention limit the possibility for trade liberalization of the EEC market for non-ACP countries?

#### Reply

The Lomé Convention is a complex agreement between the European Community and 69 developing countries which includes rights and obligations by all sides not only in the trade area but in a range of other development areas. The Lomé Convention itself is restrictive concerning the possibility of enlarging it to other developing countries outside its zone of application.

However, that does not mean that the European Community is prevented by the Lomé Convention from extending trade benefits to non-ACP countries. Under the Generalized System of Preferences of the European Community, the least developing countries (LLDC) enjoy already in practical terms the same benefits as the ACP countries and, in order to help the international struggle against drugs, the EEC has extended some of the benefits enjoyed by LLDCs under its GSP to Bolivia, Colombia, Ecuador, Peru, Honduras, Costa Rica, Guatemala, El Salvador, Nicaragua and Panama. Moreover, over the years, the EC has gradually improved its market access for all developing countries under its GSP.

Within the context of the Uruguay Round negotiations, the Community is engaged in a liberalization process in terms of market access for all products on an m.f.n. basis; in some cases, the Community's offered reductions go further than the initially agreed objectives. Increased efforts have been made in the EC offer on tropical products which are of particular interest to developing countries but which are also very important for the ACP countries. For some of these products, a total exemption of duties is offered. Following the Montreal Agreements, the EC has already autonomously implemented a part of this offer.

Question

3. Does the EEC consider that the Lomé Convention contributes to a trend towards compartmentalization of trade relations and of moving away from global forms of trade liberalization?

Reply

Multilateral trade liberalization is the cornerstone to the EC's external trade policy. Particular trade regimes, based on a number of historical, economical and cultural reasons, must be subordinated to it. This is why there is a clearly detectable trend in the EC external trade policy of moving from different trade regimes to their harmonization under the m.f.n. treatment, and taking into account the particular needs of the less developed countries. This trend is clearly confirmed by the statistical data from the external trade of the EC. Developing countries from any area of the world compete successfully in an open EC market and capture substantial market shares, in some cases in very few years. This happens either to individual ACP or non-ACP countries, showing in factual terms that the trade regime of the Lomé Convention is far from contributing to the trend cited in the question.

Moreover, within the context of the Uruguay Round negotiations, the EC has proved its attachment to multilateral and global forms of trade liberalization by its increased contribution not only in terms of market access but also in the other negotiated sectors.

Question

4. Does the EEC consider that the provisions of the Convention relating to rules of origin might be restrictive in their operation and tend to discourage investment in ACP countries from sources other than the EEC?

Reply

The rules of origin of the Convention do not discriminate between investments from any source. In fact, these rules confer preferential originating status to products that are wholly obtained or sufficiently processed in the territory of the ACP States, irrespective of the nationality of investors.

The only partial exception concerns the high seas fishing industry to which the territorial principle cannot apply and as an alternative to it the nationality of fishing vessels, owners, managers and crew is taken into account. However, also in this specific context, third countries' ownership and crew members are allowed up to a maximum of 50 per cent, and chartering of third countries vessels is allowed in certain cases.

Question

5. How have the EEC and ACP countries ensured that the Convention does not impair the rights of contracting parties under the General Agreement?

Reply

By opposition to customs unions or interim agreements leading to the formation of a customs union (see Article XXIV:6), Article XXIV does not request any positive action from the members of a free-trade area vis-à-vis third contracting parties. The only obligation imposed on the functioning of a free-trade area is that the duties or other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area to the trade of contracting

parties not included in such area shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area. The implementation of the Lomé Convention has not resulted in higher duties or in more restrictive regulations of commerce vis-à-vis third countries. Therefore, the Parties to the Convention consider that, by meeting the above-mentioned requirement, they totally fulfil their obligations under GATT and that it is not requested under the General Agreement to take any other measures with respect to third contracting parties which are not members of the Lomé Convention.

Question

6. What was the total value and percentage of imports into the EEC of products originating in ACP countries in each of the three most recent years for which statistics are available, in the following categories:

- Total imports;
- Industrial imports (excluding petrocarbons);
- Petrocarbons; and
- Agricultural imports.

Reply

See Statistical Annex, page 12.

7. For each of the categories of imports into the EC from the ACP countries referred to in the previous question, what value and percentage in each of the three most recent years for which statistics are available:

- were eligible for duty-free treatment under m.f.n.;
- were eligible for duty-free treatment, preferential tariffs, or reduced tariffs under the GSP;
- were subject to customs duties including levies having equivalent trade effect; and
- were subject to quantitative restrictions.

Reply

See Statistical Annex, page 12.

Question

8. Do the EEC and ACP countries undertake to notify GATT of changes to the Convention or measures taken pursuant to the Convention?

Reply

The Lomé Conventions have not been significantly altered once they have been signed by the Parties. The Parties to the Lomé Conventions have always notified GATT of the successive Conventions which have been the object of proper scrutiny under GATT Working Parties.

Question

9. Do EEC and ACP countries undertake to periodically submit reports on the Convention to allow periodic review of the implementation of the Convention?

Reply

Yes.

Question

10(a) Article 168:2(d), does it allow for the EEC to alter treatment of imports from ACP countries when the EEC is adopting a common market organization for any given product?

Reply

Article 168:2(d), first indent, addresses the issue raised in the above sub-question, i.e. the case where the EC subjects one or more products to common organization of the market. The same paragraph provides that, in such a case, the provision of subparagraph (a) of Article 168:2 shall be applicable. Subparagraph (a) provides, depending on the circumstances, for two possible treatments:

- either duty-free importation, or
- more favourable treatment than that granted to third countries benefiting from the most-favoured-nation clause for the same product.

Consequently, while changes in the treatment of imports from ACP countries may be possible, they are limited to those mentioned above, which remain within the conditions set up by Article XXIV. In addition, they are subject to prior consultation of the ACP-EEC Council of Ministers.

Question

10(b) What is this Article's operative relation with articles in Chapter 2 of the same Title (Articles 182, 183 and 184)?

Reply

Chapter 2 relates to two products (rum and bananas) which are of particular interest for both EC and ACP producers.

Articles 182 and 183 pursue different objectives.

- Article 182 refers to the particular treatment granted to rum in derogation from Article 168:1. The application of this treatment is nonetheless limited until the establishment of a common organization of the market in spirits, by which time Article 168:2(d) will apply.
- Article 183 refers to a particular commitment undertaken by the EC vis-à-vis the traditional ACP suppliers of bananas, in addition to the general treatment granted to the product in accordance with Article 168. The scopes of application of Article 168 and Article 183 are consequently clearly separate.

Question

10(c) In which manner are the rights of third GATT contracting parties taken into account in the instances contemplated under Article 168:2?

Reply

None of the provisions of Article 168:2 is intended to affect the rights of GATT contracting parties which are not members of the free-trade area established by the Lomé Convention. Those contracting parties remain subject to the treatment applicable under GATT to trade with contracting parties not members of the free-trade area.

Question

11. Please explain the compatibility of Article 169 with the General Agreement and in particular with Articles XI and XIII.

Reply

Paragraph 1 of Article 169 provides that in principle no imports of products originating in ACP States shall be submitted to any quantitative restriction or measures having equivalent effect. This principle is clearly in conformity with Article XI of GATT.

The provisions of paragraph 2 of Article 169 provide that the general principle expressed in Paragraph 1 applies without prejudice to the important arrangements for the products listed in Annex II attached to the EEC Treaty. Exceptions referred to in this paragraph (i.e. imports arrangements) only apply within the framework of the Convention and, therefore, only to trade in goods originating in the parties to the free trade agreement. As a result, they are of no consequence on contracting parties not members of the free-trade area. Moreover, it should be recalled that Article XXIV, under which the Convention is being justified, does not request that all restrictive regulations of commerce be eliminated, but that they are eliminated on substantially all the trade between the constituent territories in products originating in those territories.

With respect to Article XIII requirements in general, it is the opinion of the Parties to the Lomé Convention that it is eligible for the benefit of Article XXIV, which provides for an exception to GATT requirements, including the obligations resulting from Article XIII:1. Consequently, from a general point of view, if quantitative restrictions otherwise applied to imports into the EC are not applied to imports of goods originating in ACP countries, such a differential treatment is justified as a basic requirement of a free-trade area under Article XXIV:8 which provides for the elimination of restrictive regulation of commerce within the area. As a result, the Parties to the Convention consider that the EC is generally entitled not to apply quantitative restrictions applicable to trade with third contracting parties to trade of ACP countries.

With respect to the compatibility of the provisions of Article 169 of the Lomé Convention with Article XIII of GATT, it should be recalled that restrictions referred to in Article 169:2 would be only applied to trade of parties to the free trade agreement.

Question

12. Safeguard provisions in Articles 177 to 180, how do they take other GATT contracting parties into account?

Reply

The safeguard provisions only apply to trade within the free-trade area in goods originating in the free-trade area, they do not apply to trade of the EC with contracting parties not members of the free-trade area. This said, the provisions of Articles 177 to 180 are precise and transparent in their application.

Question

13. How do the provisions of Lomé IV affect in particular imports of bananas from Lomé member countries?

Reply

Under the Lomé IV Convention (Article 168:2), bananas from ACP banana producing countries can enter the EC market duty-free.

Question

14. In light of specific provisions on bananas in the Convention, what treatment is then given by the EEC to imports of bananas from non-Lomé GATT contracting parties?

Reply

Since 1 July 1993, all imports of bananas into the EC are subject to the provisions of Regulation (EEC) No. 404/93 of 13 February 1993, establishing a common market organisation for bananas.

Question

15. Through what measure or measures are banana imports from Lomé member countries preferred to imports from Latin American banana exporting countries?

Reply

Under the Lomé IV Convention, bananas from the ACP producing countries enjoy a duty-free access to the EC market. The provisions pursuant to which this preferential access is granted are Articles 168, 183 and Protocol 5 of the Lomé Convention.

Question

16. What justification does the EEC claim for any such preference?

Reply

This preferential treatment results from the establishment of a free-trade area under the provisions of Article XXIV of GATT, in conjunction with Part IV (in particular Article XXXVI:8).

Question

17. Clarification/details are asked for on the provision/provisions of the General Agreement under which Lomé IV is sought to be justified.

Reply

The Parties to the Convention consider that, like the previous Lomé Conventions, Lomé IV is justified under the provisions of Article XXIV of GATT, in conjunction with Part IV (in particular Article XXXVI:8). This legal basis was never rejected by any working party on Lomé Conventions.

Question

18. Clarification/details are asked for on the effect of Lomé IV on trade of third countries with the Communities.

Reply

The trade statistics figures clearly show that the Lomé Convention have not had any negative effect on the trade of third countries with the EC.

In 1980, total imports of the EC from the outside world were put at some 270 thousand million ECU. Total imports from class 1 countries (industrialised countries) reached some 134 thousand million ECU (almost 50 per cent of total imports) while total imports from the developing countries reached some 115 thousand million ECU, which represented some 42.5 per cent of the total imports. Imports from ACP countries were put at some 19 thousand million ECU (just 7 per cent of total imports).

Five years later, in 1985, the respective figures were:

Total imports: 400 thousand million ECU

Imports from industrialised countries: 223.5 thousand million ECU (56 per cent)

Imports from developing countries: 139 thousand million ECU (35 per cent)

Imports from ACP countries: 26 thousand million ECU (6.5 per cent)

Finally, the latest figures, corresponding to 1992, are:

Total imports: 488 thousand million ECU

Imports from industrialised countries: 288 thousand million ECU (59 per cent)

Imports from developing countries: 146 thousand million ECU (30 per cent)

Imports from ACP countries: 18 thousand million ECU (3.7 per cent)

Question

19. The text of the Fourth Lomé Convention explicitly refers to a co-operation agreement between the ACP countries and the European Community, which is altogether different in nature and content from what has been recognized as a free-trade area within the meaning of Article XXIV of the General Agreement. How do the Parties justify the application of these provisions in the case of the Lomé Convention?

Reply

From a formal point of view, there is no provision in Article XXIV which requires that an agreement should be expressly called a free-trade area treaty. Moreover, the provisions of the Lomé IV Convention relate to several fields, in addition to trade in goods, which often fall outside the scope of free-trade area arrangements within the meaning of GATT (e.g., technical assistance). Therefore, it was considered more appropriate to refer to a co-operation agreement.

In substance, it should be recalled that trade in goods is only one aspect of the Convention, but that this part of the successive Conventions has never been considered by the working parties which reviewed them as not fulfilling the requirements of Article XXIV with respect to free-trade areas. Given the fact that the Lomé IV Convention is by no means more restrictive on exports from ACP countries than the previous Conventions, there is no reason why it should not be considered as meeting the requirements of Article XXIV of GATT. Any other interpretation would impair the basis for closer cooperation between developed and developing countries set up in the Convention.

Question

20. At the time of the examination of the Second Convention of Lomé, the Parties stated that it was difficult to guarantee that other countries' trade would never be affected in the case of an agreement which complies partly with Article XXIV of the General Agreement (document L/5273, page 4). To what do the Parties ascribe the expression "which complies partly", and how do they believe the trade of other developing countries with the EEC has been affected?

Reply

The expression "which complies partly" related to the Lomé II Convention which, while having identical basic features as the current Lomé IV Convention, did not cover as many sectors of activity or products. Moreover, it should be recalled that the Community does not request reciprocity regarding market access commitments. This is why the Parties to the Convention claim as a legal basis for the Lomé Conventions Article XXIV in conjunction with Part IV of the General Agreement.

The Parties to the Convention do not believe that "trade of other developing countries with the EC has been affected". The statement referred to in the question was only justified by prudence, as effects on trade with other developing contracting parties cannot be completely ruled out by the time a free-trade area is created.

Question

21. On previous occasions the Parties have stated that the basis of the compatibility of their commitments under the Lomé Convention with their obligations under the General Agreement lies in the provisions of Article I(2), XXIV and XXXVI. In this context, in the opinion of the Parties, does each of these provisions constitute a justification in and of itself alone, or must it be understood that only a joint interpretation of these provisions would make it possible to justify the Lomé Convention with respect to the General Agreement?

Reply

The Parties to the Convention consider that this question is no longer relevant in the present situation. The conditions which applied on "previous occasions" no longer apply.

Question

22. Would the Parties agree to recognize that Part IV does not constitute a legal ground for permitting discrimination among developing countries?

Reply

Part IV of the General Agreement is not invoked by the Parties to the Convention with respect to the Lomé IV Convention in order to justify discrimination among developing countries, but to justify the fact that, under Article 174:1 of the Fourth Lomé Convention, the Community did not ask for reciprocity in the concessions. The preferential treatment granted to ACP countries is justified under Article XXIV through the establishment of a free-trade area.



Question

23. From a trade perspective, describe the differences between Lomé III and Lomé IV. We understand that access, either in the form of elimination of tariffs or liberalization of quotas, is improved for some forty ACP products.

Reply

There have been very few changes in the trade regime between Lomé III and IV. Council Regulation 715/90 of 5 March 1990 (O.J. of the EC L84 of 30 March 1990) contains improvements for some forty ACP products, either in terms of elimination of tariffs or liberalization of tariff quotas. The sectors concerned are beef and veal, sheepmeat and goatmeat, poultry meat, milk products, pigmeat, oils and fats, cereals, rice and fresh and processed fruits and vegetables.

Question

24. It is our understanding that the basic principles undergirding the trade arrangements of the Lomé Conventions - free access and non-reciprocity - have not been modified. Therefore, why has the Community not sought a waiver from Article XXV obligations for the Lomé Convention as the U.S. did for the Caribbean Basin Initiative?

Reply

The Parties to the Convention consider that there is no reason to request a derogation of GATT obligations under Article XXV. The Lomé IV Convention is in full conformity with the general principles of GATT and is entirely consistent with Article XXIV taken in conjunction with Part IV of the General Agreement. Moreover, the Convention reflects a wide-ranging agreement subscribed to by equal partners with long-standing historical links. The Convention has followed a contractual approach and did not constitute a unilateral offer of preferential trade treatment.

Question

25. How are the rules of origin applicable to ACP countries different from those applicable to other countries?

Reply

The basic structure of the rules of origin of the Lomé Convention is the same as that which can be found in corresponding provisions of other Community preferential agreements.

All such rules define as originating products (for the purpose of applying the preferential treatment of the agreement) those goods that are either entirely obtained in the territory concerned or sufficiently processed there, when third countries' raw materials, parts or components are used.

This similarity reflects the principle that rules of origin are aimed at giving a technical, neutral definition of originating products.

The definition of "sufficiently processed" products may vary for certain goods in the different agreements in order to take into account specificities like the cost structure or the manufacturing technologies prevailing in the countries in question.

Furthermore, the Lomé Convention rules include, like the Community GSP scheme, a detailed procedure for temporary derogations from the basic rules aimed at facilitating new investments.

Question

26. At the Working Party for Lomé III, the EC representative said that the Lomé III Convention had "followed a contractual approach and did not constitute a unilateral offer of preferential trade treatment". If Lomé is not a unilateral arrangement, then does it apply to substantially all the trade between the constituent territories as described in Article XXIV:8? (Note: if Lomé is not compatible with Article XXIV, then with what part of GATT is it compatible?)

Reply

The Parties to the Convention consider that the Lomé IV Convention meets all the conditions mentioned in Article XXIV with respect to free-trade areas, including the one concerning the elimination of duties and other restrictive regulations of commerce to substantially all the trade between the constituent territories. The absence of reciprocity is justified on the basis of Article XXXVI:8 of GATT.

Question

27. Please provide the following trade statistics:

- ACP exports to the EC
  - (a) What was the total value and percentage of imports into the EC of products originating in ACP states in each of the three most recent years for which statistics are available, in the following categories:
    - (i) total imports;
    - (ii) industrial imports (excluding petrocarbons);
    - (iii) petrocarbons;
    - (iv) agricultural imports.
  - (b) For each of the categories of imports into the EC from the ACP countries referred to in question (a) above, what value and percentage in each of the three most recent years for which statistics are available:
    - (i) were eligible for duty-free treatment under m.f.n.;
    - (ii) were eligible for duty-free treatment, preferential tariffs, or reduced tariffs under the GSP;
    - (iii) were subject to customs duties including levies having equivalent trade effect;
    - (iv) were subject to quantitative restrictions.
- ACP imports from the EC
  - (a) What was the total value and percentage of imports into ACP states of products originating in the EC in each of the three most recent years for which statistics are available, in the following categories:
    - (i) total imports;
    - (ii) industrial imports;
    - (iii) agricultural imports

- (b) What was the value (and percentage of total imports) in respect of the following categories of imports into the ACP states of products originating in the EC in each of the three most recent years for which statistics are available?
- (i) imports of products on which customs duties and levies were not imposed on an m.f.n. basis;
  - (ii) imports of products on which customs duties and levies were imposed on an m.f.n. basis;
  - (iii) imports of products on which preferential treatment was granted on a non-m.f.n. basis.

Reply

See Statistical Annex, page 12.

STATISTICAL ANNEX

	1990 1	2	1991 1	2
Total imports by the EEC from ACP States (without NAMBIA)	19,254,533	100.00%	18,293,484	100.00%
Imports from ACP States receiving duty-free treatment under m.f.n.	12,493,476	64.89%	11,342,891	62.01%
Imports from ACP States eligible for GSP treatment (full exemption or reduced tariffs)	1,321,149	6.86%	1,301,586	7.11%
Imports from ACP States admitted under the Lomé Convention	6,366,817	33.07%	6,859,780	37.50%
of which				
- agricultural products (chap 01-24)	4,346,966	22.58%	4,735,476	25.89%
- industrial products (chap 25-98)	2,019,851	10.49%	2,124,304	11.61%
Imports from ACP States still subject to customs duties, levies or charges having equivalent effect	356,767	1.85%	65,483	0.36%
Imports from ACP States of chapter 99	36,074	0.19%	24,285	0.13%

Column 1 = total imports

Column 2 = per cent in total imports from ACP countries

Unit = 1,000 ECU