

# GENERAL AGREEMENT ON

RESTRICTED

## TARIFFS AND TRADE

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Spec(87)31  
26 June 1987

### Working Party on the Accession of Portugal and Spain to the European Communities

MEETING OF 15 MAY 1987

Chairman: Ambassador F. Jaramillo (Colombia)

Note by the Secretariat

1. The Working Party held its fourth meeting on 15 May 1987, to continue its examination of the documents concerning the accession of Portugal and Spain to the European Communities, in the light of the relevant provisions of the General Agreement.

A. Documentation recently submitted to the Working Party (Spec(87)2, Annexes II and III, L/5936/Add.5, L/5984/Add.2)

(i) Additional question and reply (L/5984/Add.2)

2. The representative of South Africa stated that the reply contained in the above document, raised a number of questions of principle. Issues which they thought needed to be addressed included the relevance of Article III:4 to non-tariff measures adopted in pursuance of Article XXIV and applied in a discriminatory manner and the apparent exoneration from the preamble to Article XX, implied by the European Communities under point (d) of their reply, where it was stated that "these exceptions are consistent with the GATT by virtue of Article XXIV". As the reply of the European Communities had reached his authorities only a few days previously, he reserved his right to come back to it at a later date.

(ii) Quantitative restrictions

3. The representative of Japan introduced a document prepared by his authorities on the quantitative restrictions maintained against his country by Spain and Portugal after their accession to the European Communities and requested that it be annexed to the present note (see Annex). His delegation had never received a satisfactory response from the European Communities, to the problems which it had raised in relation to the present enlargement. The document indicated that the situation had not improved with the accession of Portugal and Spain. Under the Treaty of Accession, Spain and Portugal would each maintain a number of discriminatory quantitative restrictions, in contravention of the GATT. These illegal measures had to be abolished immediately. Article XXIV:5(a) could not be interpreted as authorizing the existence of illegal measures merely because

their number had been reduced after accession. Illegal quantitative restrictions could not be included in the assessment of incidence required under Article XXIV:5(a). Moreover, seven new discriminatory restrictions were introduced in Spain in violation of Article XXIV:4, as could be seen from Section II of the document. Problems arose also because of other import restrictions in Spain, which were listed in Section III of the document. Portugal also applied a number of discriminatory non-tariff measures against Japan, and the list was therefore not exhaustive.

4. The representative of the European Communities was surprised to see Japan argue that the situation had worsened since the accession of Spain and Portugal. L/5936/Add.5 demonstrated that 182 of the 333 items which had previously been restricted for Japan in the Spanish market under specific or general measures, had been fully liberalized in 1986. Another 19 items had been partially liberalized. At the end of the transitional period an additional 75 items would be fully, and 10 partially liberalized. The overall balance sheet with respect to non-tariff measures was therefore positive. The same was true in the Portuguese market where of the 101 earlier restrictions vis-à-vis Japan, 35 had been liberalized in 1986 and 42 would be liberalized at a subsequent date. As early as 1986 Japan's exports to both Spain and Portugal had increased by over 30 per cent in ECU terms and 20 per cent in yen terms, which was not the case for world trade in general. This was the result of the favourable impact of the alignment of Spain and Portugal to the Communities' system which called for greater transparency. The Working Party was only expected to study the global incidence of accession, but by way of example the European Communities had singled out Japan in L/5936/Add.5. Each contracting party was free to interpret matters such as the consistency of measures with the GATT. Japan had pointed to seven restrictions which it claimed were new. Withholding any judgement on the truth of this contention, this implied that the other restrictions maintained against it had already been applied before accession. The management of border measures had previously lacked transparency. By acceding to the Communities, both countries had clarified their system, which was a positive step. Some exporters at the time may have felt free to export, but could in fact have been faced with restrictions, reinstated at any time because the system was changed frequently. This was no longer the case.

5. The representative of Hungary stated that when trying to assess the global effect of the accession of Spain in terms of Article XXIV:5(a), one could not and should not take into account any measure violating different GATT obligations. Newly established illegal barriers could not be traded off against the alleged reduction of other barriers. The accession of Spain to the Communities had resulted in the introduction by that country of quantitative restrictions inconsistent with Article XIII, for Hungarian exports in 94 CCCN headings or sub-headings. This development was contrary to Spain's obligations under the GATT, vis-à-vis Hungary. Prior to its accession to the Communities, Spain had not maintained discriminatory restrictions on Hungarian exports, as was indicated by the previous five Spanish notifications. Article XXIV did not release Spain, the Communities

or any other contracting party from their obligations under Articles XI and XIII. The majority of the members of the Working Party had supported or made the same point and no contrary view had been voiced, except by the European Communities. As quantitative restrictions inconsistent with Article XIII had been introduced as a result of Spain's accession to the European Communities, the Treaty of Accession was therefore inconsistent with the provisions of Article XXIV. It was undeniable that the Working Party had to express its view on this issue.

6. In response to the representative of the European Communities, the representative of Japan stated that the restrictions on the seven items mentioned by the representative of the European Communities had not been maintained in the past, but had been introduced after Spain's accession. For a number of tariff lines listed in L/5936/Add.5, such as 16.04, there would only be partial liberalization in a manner which was discriminatory against Japan, even after the end of the transitional period. There were other tariff lines, such as ex 73.15, 85.01, 85.24 and 91.02 for which discriminatory restrictions against Japan would be maintained for an undetermined period. As for Portugal, discriminatory quantitative restrictions would remain permanently for 18 items. Examples were 40.11, 51.04, 53.11, etc. He wanted to ask the European Communities whether these restrictions were going to be eliminated. He also wanted to ask them why the restriction in Spain on item 73.18 which had been of a global nature prior to its accession, had been liberalized partially for Japan but fully for most other contracting parties. Until 1 March 1986 item 73.25 had also been under a global quota which had been liberalized for most contracting parties other than Japan. Exports of this product from Japan would be fully liberalized only on 31 December 1991. Similarly, items such as 84.24, 84.51, 85.01 of which there was a total of 13, were subjected to a global quota before accession, but treated discriminatorily after accession, depending on whether they originated in Japan, or other contracting parties. In some cases, such as 84.24, 85.15, 85.20, 87.12, 89.05, 90.17 and 98.02 the element of discrimination against Japan had been increased after accession. He requested the European Communities to explain how this could be justified under Articles I, XXIV:4 and XXIV:5.

7. The representative of Australia indicated his country's interest in the EC's concept of liberalization. For example, the EC import arrangements for meat products included the imposition of variable import levies. Australia's experience with variable levies applied by the EC had been that once they had been imposed, trade took place only in the most extraordinary circumstances. No matter what situation had prevailed in Spain and Portugal prior to accession, it would appear difficult to argue that a situation in which variable import levies applied was the end result of liberalization. The Communities could perhaps provide an explanation of what they meant by liberalization in agricultural trade and give examples of measures which had previously been in force for agricultural items as well as of measures which were now being implemented, and indicate what sort of trade increase was expected as a result of this liberalization.

8. The representative of the United States recalled that her delegation had raised a number of specific concerns with respect to the effect of the Communities' enlargement on quantitative restrictions. She did not believe that the European Communities had to date provided sufficient evidence to support their contention that the post-enlargement situation was better than the pre-enlargement one. Her delegation had evidence which suggested that Spain had put in force new quantitative restrictions which more than offset the alleged improvement resulting from enlargement. They had also pointed to new problems which had arisen in Portugal, especially with respect to agricultural trade. There seemed to be confusion in the Commission as to what Spain was doing now and what it had done before accession. Their analysis suggested that most of the products listed in L/5936/Add.5 had not been subject to quantitative restrictions in Spain before accession. Importers from the United States had not been required to obtain licences or certificates, nor had they been required to obtain prior authorization from the Spanish Government. Her authorities had done an analysis of this situation which would be provided to the Working Party.

9. The representative of Czechoslovakia shared many of the concerns expressed with respect to the non-tariff and agricultural aspects of the accession of Spain to the Communities. Of particular concern to his delegation were the provisions of the Treaty of Accession governing the Communities' common commercial policy and introducing new restrictive measures in trade with third countries. The accession of Spain had led to an increase in the list of items whose importation from his country was subject to quantitative restrictions. Prior to accession Spain had maintained practically no discriminatory quantitative restrictions against his country. After accession, a number of restrictions were introduced in Spain specifically against some countries including his own. They covered a not insignificant part of Czechoslovakia's exports to Spain and they had impaired traditional trade flows by preventing the use of existing trade opportunities. As Article XXIV did not waive any contracting party from its obligations under Articles XI or XIII, restrictions which had no justification under the General Agreement, had to be eliminated without delay. The accession of Spain to the Communities had also caused commercial prejudice to his country in the agricultural sector and above all in products such as milk powder which had been subjected to prohibitive variable levies. Lost trade opportunities for his country amounted to \$6 million in annual shipments. Their analysis showed that the post-enlargement situation was more restrictive for Czechoslovakia than had been the case before accession and they would therefore pursue their concerns bilaterally.

10. The representative of New Zealand stated that when assessing the incidence of tariffs and other regulations of commerce, precise information was needed as to what was counted as liberalization. L/5936/Add.5 did not

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<sup>1</sup>Subsequently issued as L/6172.

specify the nature of the restrictions maintained before or after accession, except that "liberalization" was clearly claimed in some of the columns. In fact, in some cases, variable levies were introduced in replacement of the previous administered régimes but this could not be considered a move towards liberalization, since variable levies generally excluded imports. Therefore an item-by-item examination had to be carried out and the general claims contained in L/5936/Add.5 could not be accepted. In order to justify the scepticism which his delegation felt in this regard, he pointed to item 04.04 which appeared to have been under restriction in Portugal before accession to the Communities. Variable levies would apply to that product at the end of the transitional period, and quantitative restrictions would be maintained in the interim. Information was needed on the nature of the restriction which had existed beforehand. Notifications made by Portugal prior to its accession, indicated that state-trading had been applied on only a small portion of that heading, namely edam cheese. In the Committee on Trade in Agriculture the representative of Portugal was recorded as saying that quotas applied to only one agricultural product, which was not one covered by 04.04 (AG/M/3, page 156, paragraph 3). The provisions of Article XVII which Portugal had cited for this particular item, required that normal commercial considerations apply to state-trading. The trade statistics for that item indicated that imports had taken place over a number of years. It appeared that notifications made previously to the GATT, contained information which could be useful in clarifying the nature of previously applied restrictions.

11. Reverting to the European Communities' response to Japan's comments, the representative of New Zealand seemed to have detected a shift in the Communities' approach on the way to carry out assessment of general incidence. Hitherto, the Communities had taken the view that assessment was "overall". His delegation had taken the view that assessment included specific contracting parties. He welcomed the indication that the Communities now seemed to be prepared also to make an assessment of incidence for specific contracting parties. It was also possible as a second best option, in any case where there was a real lack of clarity on the nature of the previous régime, to at least compare the trade flows in particular products before accession with the post-enlargement prospects. This was illustrated by the fact that the European Communities had made a special study assessing the incidence of accession for Japan, which they had made available to the Working Party and he hoped that they were prepared to make similar assessments for other countries.

12. The representative of the European Communities replied that they recognized the existence of a specific régime for Japan and some other contracting parties. They had responded in detail to those delegations for that reason. Variable levies were a "sui generis" measure and participants in the Working Party could best refrain from repeating comments which had been made for a number of years. With respect to the documentation submitted by the United States, (Spec(87)2, Annex III) they understood the difficulties faced by the United States, but it was not clear in what way

the tables contained in that document could be distinguished from each other. The last one dealt with measures taken under Articles XX or XXI and therefore not for commercial reasons. The other tables were based on the difference between measures which had been notified to the GATT but without specifics being provided, and transparent measures taken under the Treaty of Accession or Community regulations which provided for the introduction of quantitative restrictions in proper form. The new regulations were clear and precise, and covered a much smaller number of tariff lines. The information submitted by his delegation enabled a global assessment to be made of the accession. One delegation had argued that the products covered by their notification had in fact been unrestricted previously. This was based on a private Spanish publication which contained erroneous information on the old import régime. In making its assessment, that delegation had therefore been misled by this source. Responses which still stood had already been given in earlier meetings to the points raised by the delegations of Hungary and Japan. Part of the lack of transparency in the system previously applied by one of the new member States was attributable to the fact that in some cases where an "erga omnes" restriction was in effect, its management in fact distinguished among trading partners. The Working Party was not the appropriate forum for reopening discussions which in other fora, had led nowhere.

13. The representative of Japan was disappointed by the explanation provided by the representative of the European Communities and reserved his rights under the GATT.

(iii) Tariffs

14. The representative of the European Communities stated that progress was being made in ongoing Article XXIV:6 renegotiations. As long as they were not completed and their outcome was not communicated to the GATT, a formal CCT/12 did not exist. The Working Party would therefore have to wait until it made its final assessment on that matter. However, there were already elements which made it possible to reach a preliminary assessment. In the context of the renegotiations, the Communities had made an offer which envisaged returning to the CCT/10 for 95.5 per cent of the Communities' imports in the 96 tariff lines which were originally blank. Only a small number of items in the fisheries sector were still the subject of negotiations. The only incidence of variations in customs receipts would therefore be on the new member States. However, his delegation could not accept the quantification made by the United States of the variable levies and of their incidence in the context of a balance sheet of customs receipts. These levies depended on economic phenomena of a worldwide nature, such as monetary factors over which the Communities had no control. The assessment of protection could not depend on such factors. Consequently, and putting aside trade covered by variable levies, the tables though based on 2 instead of 3 years' trade flows, showed that accession would have a positive global incidence.

15. The representative of Japan stated that they were conducting Article XXIV:6 renegotiations, and they reserved the right to raise in the Working Party any problems which could arise in that context.

16. The representative of the United States stated that in their tariff analysis they had worked on the assumption that the Communities would extend fully the provisions of the CCT/10 to the new member States. Until this was confirmed in the GATT, a complete and definitive judgement could not be made and they would find it difficult to come to informal conclusions other than the ones they had stated in their document. It would be useful to have from the European Communities an indication as to when their Article XXIV:6 renegotiations were expected to be completed and a new CCT/12 published. They were also interested to know whether departures were planned from the GATT obligations of the EC/10, because these obligations had to be extended fully to the new members. From their perspective, the post-enlargement situation with respect to tariffs was worse than the pre-enlargement one, despite the fact that they had reached a bilateral agreement with the Communities which mitigated some of the most onerous problems of enlargement. Nevertheless, the small, incidental industrial tariff improvements in Spain and Portugal which resulted from their accession, in no way affected the major impairments in agriculture. Even assuming the extension of the EC/10 bindings to the "blanks", they found that the net duties collected effect for third countries would be an increase of over 600 million ECUs which was a worsening of the situation. The variable levies replaced bindings and her authorities used the full trade coverage as a proxy for duties collected. The alternative would have been to use the actual "ad valorem" value of the levy which would have produced figures in excess of the actual trade coverage because the levies had sometimes been as high as 200 per cent.

17. The representative of New Zealand accepted that no final conclusion on the incidence of duties could be reached until the Article XXIV:6 renegotiations had been completed and the Communities had extended the CCT/10 to the new member States. The EC had the right to wait until Article XXXIV.6 negotiations were concluded but it was hoped there would not be any undue delay in responding. What the Working Party needed was a precise response from the European Communities to the analysis made by the United States which would indicate any alternative assumptions on which they had based their assessment of incidence. In the meantime, the US assessment was the only concrete basis upon which to reach any judgements. The duties collected basis used by the United States provided a concrete assessment, although it probably understated the effect of enlargement in terms of trade-creation and diversion.

18. On variable levies, he noted that the EC had not provided an alternative concrete assessment of incidence. This seemed to be on the basis of a claim about variability of future currency movements. He doubted the relevance of this. Realistically the variably levy was there to exclude trade in many areas and to protect at high cost to imports, in others. That aside, it appeared that the EC was implicitly arguing that

there could be a conditionally favourable outcome; i.e. if certain currency movements were to be of a certain nature, the overall incidence could be favourable.

19. The representative of the European Communities replied that they could not provide more detailed information on the Article XXIV:6 renegotiations at this stage. They were negotiating with each partner for the products on which it had negotiating rights under Articles XXIV:6 and XXVIII. He could not agree that the Communities had an obligation to extend the CCT/10 to the EC/12. A new customs union had an obligation to negotiate with other partners and maintain a general balance. The new external tariff would be the outcome of these negotiations and of this balance.

20. The representative of Australia stated that according to the European Communities, variable levies were neither a tariff nor a non-tariff measure. The EC maintained that they had something to do with the global economic situation which apparently only applied to agriculture. In fact, it was clear that the levies' purpose was to ensure that Community producers could sell in their own market. Arguing as the Communities did that their impact on trade was unmeasurable was untenable. The approximations made by the United States were reasonable and could be used by the Working Party as a basis for its assessment. It was up to the European Communities to refute these assessments in detail and on paper.

(iv) Further points on documentation

21. The representative of New Zealand asked whether the European Communities would respond to the further questions which had been raised in the meeting. The Communities seemed to imply that there was no further information that they could provide but in the light of their own statements on the lack of transparency in regulations of commerce before enlargement, he wondered whether they considered that the information with respect to other regulations of commerce was sufficient for the purposes of the Working Party.

22. The representative of the European Communities stated that they had provided all the information that they could. In the case of Spain 238 tariff lines had been subjected to restrictions which were not always clear. Since 1986 a number of these restrictions had been liberalized or transformed into more transparent ones and this would continue throughout the transitional period. This made possible a realistic assessment of the incidence of "other regulations of commerce". There were other measures such as VAT in Spain which replaced previous measures taken at the border and had a liberalizing impact.

23. The representative of Japan stated that before making an assessment of incidence, they needed additional information from the European Communities. At the next meeting, they hoped that the European Communities would react to the paper (Annex) they had submitted, and reply to the points which they had raised on L/5936/Add.5. The representative of

Australia asked whether VAT was to be taken as a "duty or charge imposed on importation" in which case it would have to be included in the Working Party's assessment. The representative of the European Communities replied that taxation at the border was a measure which was relevant to international trade, even though it was not a tariff. The previous Spanish taxation régime had been repeatedly criticized in the GATT, and economists agreed that taxation at the border was being reduced by 2-8 per cent as a result of the introduction of VAT because it assured trade-neutrality.

B. Continued examination of the issues which have arisen in the discussion (Spec(87)2, Annex I)

24. The representative of Chile stated that his country had engaged with Spain in trade principally on three products: alcoholic beverages, tuna and frozen hake. In view of the fact that Spain's accession had seriously prejudiced Chile's trade with it, he was not convinced by all the arguments presented by the European Communities. In the Article XXIV:6 renegotiations, account should be taken of the fact that Chile was a developing country.

C. Other relevant points, including the date of the Working Party's next meeting, and the timetable for completion of its work

25. The representative of the European Communities stated that the Working Party would have to meet again after the Article XXIV:6 renegotiations had made progress. On that occasion, it would be useful to have a summary by the secretariat of the positions taken by the participants on the points which would have to be reflected in the report and which had been identified in Annex I of Spec(87)2. The representative of the United States stated that such a summary would have to be based on the existing factual information and would have to include their conclusion that the Communities had failed to meet the requirements of Article XXIV:5. The representatives of Japan, Chile, Australia and New Zealand objected to the suggestion made by the European Communities on the grounds that the Article XXIV:6 renegotiations were in progress and information on many relevant issues was still not available.

26. At the end of the discussion, the Chairman suggested that the date of the next meeting be set in the light of progress in the Article XXIV:6 renegotiations. If any delegation requested a meeting, the Chairman would hold consultations on the possibility of convening one. He would also hold consultations on the best way of making progress in the preparation of the Working Party's report. It was so agreed.

ANNEX

An overview of the discriminatory QR/NTM situation  
after Spanish and Portuguese accession to  
the European Community

Note from Japan

I. Maintenance of the discriminatory QRs against Japan

Fact

- (1) Spain maintains 42 items at the four-digit level (of which 37 apply during the transitional period).
- (2) Portugal maintains 47 items at the four-digit level (of which 29 apply during the transitional period).

GATT Inconsistency

- (1) The discriminatory QRs maintained by Spain and Portugal are prima facie violation of the GATT Articles XI and XIII and no justification has been so far given by these countries. Countries entering a customs union will continue to be governed by the provisions of the General Agreement and the elimination of illegal QRs is simply a GATT obligation to any contracting party.

Article XXIV:1 stipulates that each such customs territory shall, exclusively for the purposes of the territorial application of the General Agreement, be treated as though it were a contracting party. The EC, therefore, cannot escape from the obligations under the General Agreement.

- (2) The Article XXIV:5(a) cannot be read as authorising the existence of illegal measures merely because the number of them is reduced after the accession. It is not, in our view, right to interpret that the "other regulations of commerce" in the Article XXIV:5(a) should include the illegal QRs, particularly such discriminatory

QRs which can have no justification in the General Agreement.

## II. Introduction of new discriminatory quantitative restrictions

According to Article XXIV:4, the purpose of a customs union should not be to raise barriers to the trade of other contracting parties.

Spain, however, introduced new discriminatory QRs for the following seven items, and they are not in conformity with the Article XXIV:4.

- (1) 73.18 Tubes and pipes and blanks therefor, of iron (other than of cast iron) or steel, excluding high-pressure hydro-electric conduits;
- (2) 73.25 Stranded wire, cables, cordage, ropes, plaited bands, slings and the like, of iron or steel wire, but excluding insulated electric cables;
- (3) 84.24 Agricultural and horticultural machinery for soil preparation or cultivation (for example, ploughs, harrows, cultivators, seed and fertiliser distributors); lawn and sports ground roller;
- (4) 84.25 Harvesting and threshing machinery; straw and fodder presses, hay or grass mowers, winnowing and similar cleaning machines for seed, grain or leguminous vegetables and egg-grading and other grading machines for agricultural produce (other than those used in the bread grain milling industry falling within heading No 84.29);

- Mowers for lawns, parks or sports grounds:

- (5) 84.45 Machine-tools for working metal or metal carbides, not being machines falling within heading No 84.49 or 84.50.

(Spain actually introduced discriminatory QRs for this item after the agreement of accession between EC and Spain).

- (6) 84.51 Typewriters, other than typewriters incorporating calculating mechanisms; cheque-writing machines.

(Spain once lifted discriminatory QRs for this item but re-introduced them at the time of accession to the EC).

- (7) 85.23 Insulated (including enamelled or anodised) electric wire, cable, bars, strip and the like (including co-axial cable), whether or not fitted with connectors.

### III. Other import restrictions

(Spain)

- (1) Ball bearings: Discriminatory QR was lifted at the entry of Spain into EC and the products were made subject to import licensing. However, the administration of the import licensing has been arbitrary and the virtual discrimination against Japan is continuing.

- (2) VTRs: There were no restrictions before the Spanish entry into EC, but since the entry of Spain the products are subject to import licensing.
- (3) Automobiles: Prior-notification system (Vigilancia Estadística Previa) which was approved by EC Commission has been utilised so as to restrict the import of automobiles from Japan and some other countries by way of rejection of the notification.
- (4) Steel pipes: Some kinds of steel pipes (Oil Country Tubular Goods etc.) are now subject to the administrative guidance by the Government of Spain to Japanese companies not to exceed the level of imports of 1985 in preference for the supply from EC member countries.
- (5) Tyres: The import quota was imposed after the Spanish entry into EC to align Spain with other members of the EC which keep global quota on tyres.
- (6) The Spanish import licensing system: About 110 items which are subject to the Spanish import licensing system, the import quota has not been published. The criteria for the implementation of the system is also not transparent.