

GENERAL AGREEMENT ON

RESTRICTED

TARIFFS AND TRADE

Spec(88)31

17 June 1988

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

REPORT

First Draft

1. The Working Party was established by the Council on 12 February 1986 "to examine, in the light of the relevant provisions of the General Agreement, the provisions of the documents concerning the accession of Portugal and Spain to the European Communities, taking into account other relevant GATT documents, and to report to the Council."

2. The Working Party met on 8 July, 7-8 October and 3 December 1986, 15 May 1987, 17 February 1988, 20 April 1988 and [] under the chairmanship of Ambassador F. Jaramillo (Colombia). Detailed summaries of the discussion which took place at these meetings can be found in Spec(86)46 and Corr.1, Spec(86)60, Spec(87)2, Spec(87)31, Spec(88)15, Spec(88)28 and [].

3. The following documentation (L/5936 and addenda) was supplied to the Working Party by the delegation of the European Communities:
 - (a) The Treaty of Accession of Portugal and Spain to the European Communities;

 - (b) Council Regulation No.3330/85 of 5 December 1985 amending the Common Customs Tariff of the Communities;

- (c) Import statistics in value and quantities for the EC/10, Spain and Portugal broken down by GATT country of origin for the years 1983, 1984 and 1985;
- (d) A concordance table between the Common Customs Tariff of the EC/10 and the corresponding Spanish and Portuguese statistical codes and rates of duty;
- (e) Lists of restrictive non-tariff measures applied by Portugal and Spain before and after their accession to the European Communities;

4. The replies to questions put by contracting parties in accordance with standard GATT practice in such cases, were made available in L/5984 and Corr.1 and L/5984/Add.1-2. During the proceedings of the Working Party, the following documents were circulated:

- (a) Notes by the Communities on the question of tariff incidence (Spec 88(15), Annex and Spec 88(28), Annex);
- (b) Note from the United States on the tariff impact on contracting parties' trade of Spanish and Portuguese accession to the European Communities (Spec(87)2, Annex II, subsequently revised in Spec(88)18, Annex);
- (c) Note from the United States summarizing Spanish industrial quantitative restrictions before and after accession to the European Communities (Spec(87)2, Annex III);
- (d) Note from the United States analysing the EC Commission's notification (L/5936/Add.5) on quantitative restrictions maintained in Spain (L/6172);

- (e) Note from Japan on the situation with respect to discriminatory quantitative restrictions and other non-tariff measures prevailing after the accession of Portugal and Spain to the European Communities (Spec(87)31, Annex I);
- (f) Notes by the secretariat on the documentation submitted to previous working parties which had examined customs unions and free trade areas (Spec(86)61 and Add.1).

I. Introductory Statements by the Parties to the Treaty of Accession

5. At the first meeting of the Working Party, the representative of the European Communities stated that the enlargement provisions were fully consistent with Article XXIV of the General Agreement and with paragraph 5(a) thereof in particular. The import régimes which had been in force in the two new member states prior to accession had given substantial protection. The tariffs had on average been at a level much higher than in the Communities. In addition, the two countries had had relatively few tariff bindings. In many cases, the other regulations of commerce were not totally transparent and their effects were sometimes uncertain or even restrictive. As a result of their accession to the Communities, Spain and Portugal would be effecting substantial tariff reductions and liberalizing other regulations of commerce, thus opening their markets to the benefit of contracting parties. Upon accession to the Communities, Portugal had eliminated restrictions which had been maintained because of balance of payments difficulties. Spain had liberalized its fiscal policies and adopted the value-added tax which was a major contribution to a trade-neutral system. The conclusion that had to be drawn was that, at the end of the transitional period, the general incidence of duties and other regulations of commerce in the two countries would be lower and less restrictive than before. If this conclusion were not shared by other contracting parties, then it would be hard to imagine any customs union or enlargement of a customs union which could be acceptable.

6. Article XXIV:5 only required an examination on the broadest possible basis. The task was general, namely to reach a view on whether the general incidence of customs duties and regulations after enlargement was on the whole more or less restrictive than before. Even if a negative incidence were shown to be the case for certain items, such as when duties were increased or replaced by variable levies, one had to consider whether these effects were not balanced by the effects of other changes in the tariff sector taken as a whole. An overall appreciation of effects of changes in tariffs and regulations of commerce had to be made. In assessing general incidence, one had to avoid too static an analysis and to take into account the trade-creating effects of the establishment or enlargement of a customs union.

7. The representative of Spain stated that in 1971, the CONTRACTING PARTIES had recognized the agreement between his country and the European Economic Community, whose minimum objective had been "the creation of a free-trade area which at a later stage, would be developed into a customs union" (BISD, 18S/166). After a period of reflection, his country had decided to continue its efforts towards fuller integration with the economic area to which it belonged from many points of view. Spain was convinced that the integration fulfilled the requisites of Article XXIV of the General Agreement. With accession to the Communities, it would be possible for Spain to assume more fully GATT obligations in the tariff and non-tariff areas. After the Tokyo Round, Spain had undertaken to bind approximately 40 per cent of its tariff positions. By acceding to the Communities, almost all tariff positions would be bound at a much lower level. Spain had become a party to four of the MTN Codes (Customs Valuation, Technical Barriers to Trade, Anti-Dumping and Subsidies and Countervailing Measures). Integration with the Communities required that it accede to and apply all the instruments negotiated in the Tokyo Round. While Spain had signed the first Multifibre Agreement, it had not become a party to either of its Protocols of Extension. It would now need to apply the disciplines arising out of instruments relative to trade in textiles.

Finally, Spain would immediately start applying the Communities' various systems of preferences to a large number of developing countries. All this was reflected in a substantial opening of Spanish markets, which would surely be rightly appreciated by Spain's trading partners, given the present economic situation.

8. The representative of Portugal stated that accession to the European Communities successfully completed a period of progressive approach to European integration. Portugal had become a founding member of the European Free Trade Association in 1960, and had signed a free-trade agreement with the European Economic Community in 1972. Accession to the Communities was a logical consequence of this process of liberalization. It implied a new orientation for Portugal's external economic policy. His country intended to participate to the fullest extent in the Communities even though a transitional period and specific modalities for flexibility had been envisaged in order to avoid excessive costs to its economy. Portugal believed that the solutions found for the adaptation period complied with the requirements of Article XXIV of the General Agreement. The previous trade régime had been characterized by a considerable degree of interventionism and by recourse to administrative and fiscal practices aiming at providing protection for the weaker sectors of the economy. Adoption of the "acquis communautaire" would also have positive effects for Portugal's foreign trade with other contracting parties. The direct effects of participation in a customs union such as the ones stemming from the adoption of the Common Customs Tariff (CCT), had to be stressed. The former Portuguese tariff had been on average 30 per cent higher than the CCT and alignment with the latter would therefore result in a significant dismantling of tariff barriers. After accession, Portugal had become a donor by adopting the Communities' GSP scheme, thus improving market access for beneficiary countries. The positive effects of changes in the tariff and non-tariff areas would bear benefits for all, and enable Portugal to assume GATT disciplines more fully.

II. The provisions of the documents concerning accession

9. The Working Party examined, in the light of the relevant provisions of the General Agreement, the provisions of the documents concerning the accession of Portugal and Spain to the European Communities. The following paragraphs set out the main points made in the discussion. A fuller record will be found in the notes on individual meetings of the Working Party.

A. Tariffs

10. At the first meeting of the Working Party, which was held on 8 July 1986, the representative of the European Communities stated that in the new Common External Tariff of the EC/12 contained in EEC regulation 3330/85, a weighted average tariff, which was trade-neutral by definition, had been introduced for 85 per cent of the total trade of the EC/12. The duty rates of the EC/10 had been retained for items which amounted to less than 5 per cent of the total imports of the EC/12. For these items, there would be no change in incidence for the EC/10; the only possible change in incidence could arise in Spain and Portugal whose trade in relation to the EC/12 was minimal. Items which amounted for 6 per cent of the total had been left blank. Finally, items subject to a variable levy (on which a weighted average tariff had not been calculated) accounted for an additional 2 per cent of the total imports of the EC/12. Whatever the incidence of these levies might be, it was highly unlikely that 2 per cent of trade would be a significant factor in any overall analysis to be conducted by the Working Party. The application of the new tariff, which constituted the Communities' offer in Article XXIV:6 negotiations, was suspended for a period of two years, or pending the outcome of these negotiations. As long as the new tariff was suspended, the duties applied would be those of the EC/10 to which the new members were aligning, by implementing substantial tariff reductions from often prohibitively high levels. The Working Party was therefore in a position to reach a solid,

albeit preliminary, conclusion about the tariff incidence of the enlargement.

11. Some delegations expressed the view that the Working Party could not reach conclusions on the incidence of tariff changes until the blanks had been filled in the Communities' offer. They considered that these blanks which covered some 96 non-industrial items, represented some of the Communities' most important concessions in the sectors of agriculture and fisheries. The variable levy category which had been referred to as constituting 2 per cent of the Communities' imports, represented 30 per cent of one participant's total exports to Spain. The introduction of variable levies in Spain and Portugal, as part of their adoption of the common agricultural policy would constitute a serious new obstacle to trade which would disadvantage all exporters of agricultural products. It could therefore not be presented as a trade liberalizing move. The representative of the European Communities replied that they were the biggest importer of agricultural products in the world and would remain so after enlargement.

12. Some delegations were also concerned at the interim agreement reached by the Communities and the United States on access of certain agricultural products into Spain and the rest of the Communities. They considered that such a bilateral agreement could have detrimental effects for third parties, especially those which had negotiating rights under Article XXVIII:4. The representative of the European Communities replied that contracting parties were entitled to resolve problems in a way that was acceptable to both sides and that if a result was achieved in such bilateral negotiations, it would be notified to other contracting parties like the result of any other Article XXIV:6 negotiation. The Communities did not intend to deny any country its negotiating rights and would engage in appropriate negotiations. Furthermore, the terms of the temporary arrangement would be available to all contracting parties on an erga omnes basis.

13. With respect to industrial products, some delegations were concerned that whereas the overall result of the adoption of a trade weighted average tariff might be statistically neutral, the changes could be damaging from the standpoint of a trading partner's particular trade interests. The Working Party had to examine the impact of enlargement on particular trading partners as well as on all contracting parties. Furthermore, Article XXIV:6 did not cover changes in unbound duties. The rate applied by the EC/10 was extended to Spain and Portugal when the one applied by these countries had not been bound, though at a lower level. Suppliers of affected products, which included chemicals, computer parts, coal and related products, would therefore face a situation which was more restrictive than the one prevailing before accession. Moreover, even though the weighted average tariff adopted for 85 per cent of the Communities' total trade might be trade-neutral, the overall incidence could be negative if the trade effect on the remaining 10 or 15 per cent of EC imports was negative.

14. The representative of the European Communities considered that the Article XXIV:6 procedure was designed to deal with increases in, and withdrawals of bound tariffs. On the other hand, the Working Party's task was to carry out a general examination of changes in incidence, as required by Article XXIV:5(a). In this exercise, the total trade of the EC/12 had to be taken into consideration. Even though the items subject to variable levies might account for a substantial portion of the exports of one contracting party to Spain and Portugal, this did not alter the fact that of all the import trade of the EC/12, only 2 per cent was subject to levies. The same was true for tariff lines where Spanish and Portuguese duties might be increasing. Other participants repeated that the Article XXIV:5 exercise could not be conducted without looking at the specific effects of enlargement on individual contracting parties. One participant stated that one-third of his country's trade with the enlarged Communities would be subject to higher duties and restrictions, which was significant.

15. As part of the examination carried out by the Working Party, one delegation submitted analyses prepared by its authorities (initially circulated as Spec(87)2, Annex II and revised in Spec(88)18, Annex), according to which the global incidence of EC/12 duties would be higher after enlargement than before. This delegation stated that in its calculation it had adopted the commonly used GATT approach of measuring changes in duties collected by multiplying the trade coverage for a tariff item by the change in duty for that item. In making these computations which had assumed that the EC/10 rates would be extended to the EC/12, the ad valorem equivalents of the variable levies at the time they had gone into effect, had been used for products subject to the levies.

16. The Working Party suspended its examination pending progress in the Article XXIV:6 negotiations. At the meeting which was held on 17 February 1988, the representative of the European Communities introduced the new schedule of concessions of the EC/12 which had been submitted to the GATT in December 1987 and stated that tariff negotiations had been completed with most of the Communities' trading partners. The EC/10 rates had been retained for substantially all the trade of the EC/12 and the blanks had been filled. In 1986 and 1987 there had been a considerable reduction of tariffs in the two acceding countries and imports into both Spain and Portugal had increased substantially, though this could not entirely be attributed to better market access. When assessing the general incidence of tariff changes, one had to bear in mind that imports into Spain and Portugal only amounted to 7 per cent of the total imports of the EC/12 and that therefore 93 per cent of the EC/12 imports were not affected by tariff changes, since the new members were aligning their tariffs to the EC/10 tariff and the trade-weighted average tariff had been abandoned. As the previous tariff rates of Spain and Portugal were being brought down substantially and bound to a much higher degree than before, the Working Party was in a position to reach the positive conclusion that on the tariff side, accession conformed with the requirements of Article XXIV:5(a). The representative of the European Communities rejected the approach which

assessed the effect of tariff changes by looking at duties collected, and said that according to their own analysis (Spec(88)15, Annex) which measured the trade covered by tariff changes, tariffs had only increased on half per cent of the total trade of the Communities which could not lead to a negative assessment of general incidence of tariff changes for the contracting parties as a whole. Other representatives considered that Article XXIV:5(a) required a comparison between the post-accession tariff and the tariffs which had been in effect before accession in the individual constituent parties of the customs union. On the basis of the available information, they did not share the assessment of tariff incidence which had been outlined by the Communities. The delegation which had submitted the analysis concerning the tariff impact of accession, stated that the assumptions made in this analysis had been borne out in the Article XXIV:6 negotiations and the negative conclusion reached in the analysis remained valid.

17. One delegation stated that it was still engaged in Article XXIV:6 negotiations with the European Communities, and that until these were completed, it would be premature for the Working Party to draw conclusions on the tariff aspect of enlargement. The representative of the European Communities replied that outstanding Article XXIV:6 renegotiations related to a very limited volume of trade which would not affect the exercise carried out by the Working Party. He recognized however that delegations could reserve their rights under Article XXIV:6, since the Communities had reserved their own right to modify the schedule of concessions they had submitted, if that proved to be necessary in the course of negotiations.

18. Some delegations stated that they could not reach conclusions on the incidence of tariff changes until the Working Party had been supplied with a breakdown of imports statistics into Spain and Portugal between preferential and m.f.n. suppliers. After the accession of Spain and Portugal to the Communities, certain countries which had been m.f.n. suppliers would become preference receivers, but should not be credited

with a benefit because their improved access to the Spanish and Portuguese markets would not be due to a reduction of the m.f.n. duty but to the preference obtained after enlargement. This preferential treatment would result in a significant degree of trade diversion to the detriment of third countries. The representative of the European Communities replied that the preferences that Portugal and Spain would provide were a requirement of Article XXIV and would not alter the fact that their markets were substantially opened as a result of accession.

B. Quantitative restrictions

19. Some delegations expressed concerns which related to the introduction in Portugal and Spain of new quantitative restrictions some of which were discriminatory and inconsistent with Articles XI, XIII and XXIV:4. Even if certain restrictions had been eliminated, they considered that new forms of protection were introduced, contrary to the Communities' assertion that the requirements of Article XXIV:5 had been met for other regulations of commerce.

20. In particular, some delegations considered that since Article XXIV did not waive contracting parties from their obligations under other GATT provisions, the Communities should eliminate these restrictions before the Working Party completed its examination of accession. The representative of the European Communities replied that no new discriminatory quantitative restrictions had been imposed in Spain since its accession to the Communities and that under the old Spanish import régime, the management of border measures had lacked transparency, leading to a situation under which exporters might have felt free to export to Spain even though restrictions could be imposed at any time. A specific trade régime had existed in Spain for imports from state-trading countries and other restrictions were justified by bilateral agreements. By adopting the Communities' common commercial policy, Spain was making a substantial move towards liberalization which would continue throughout the transitional period. As

could be seen from the Communities' submission (L/5936/Add.5), before acceding to the Communities, Spain had maintained 238 quantitative restrictions on imports from state-trading countries, and 333 on imports from another contracting party. 200 of these restrictions were liberalized upon accession or would be liberalized during the transitional period. At the same time, the Communities' own régime for state-trading countries which was justified under the Protocols of Accession of these countries to the GATT, was becoming more transparent and would eventually be eliminated.

21. Some delegations did not agree with the European Communities' view that discriminatory quantitative restrictions could be justified by their countries' Protocols of Accession to the GATT. To the contrary, they argued that these Protocols required that discriminatory quantitative restrictions maintained by contracting parties against their countries be eliminated and that their discriminatory element not be intensified. They also considered that the Treaty of Accession required Spain to introduce after accession discriminatory quantitative restrictions against imports from their countries, thus acting inconsistently with Article XXIV:4. Prior to accession Spain had not maintained such restrictions as was confirmed by several notifications which it had made. In their opinion Article XXIV did not require that a country acceding to a customs union align its import régime with the more restrictive and discriminatory régime of that customs union. Moreover, newly established GATT-inconsistent measures could not be traded off against the alleged reduction of other barriers. One delegation also stated that its country was a founding member of the GATT, but that nevertheless its exports to Spain had been subjected to new discriminatory quantitative restrictions after it acceded to the Communities. Another delegation stated that Articles 177:3 and 177:5 of the Treaty of Accession, its Annexes and EC Regulations 7334(85) and 175(86) allowed or required Spain to introduce discriminatory quantitative restrictions inconsistent with Article XIII. These restrictions covered 94 headings or sub-headings which accounted for one fourth of its country's total exports to Spain.

22. One delegation denied that discriminatory quantitative restrictions maintained in Portugal and Spain could be justified under bilateral agreements concluded with these two countries. This delegation was also concerned about the differential dates for the liberalization of discriminatory quantitative restrictions. It therefore called upon the Communities to eliminate immediately, rather than at the end of the transitional period, such restrictions because otherwise the conclusion would have to be drawn that the requirements of Article XXIV:5 had not been met for other regulations of commerce. The representative of the European Communities replied that imports into Spain from the country in question had risen substantially since it had acceded to the Communities, which was an indication of improved market access. While there were some differences in the dates applicable to different contracting parties for the liberalization of some restrictions, the trade involved was of minor importance and would not alter the fact that the incidence of restrictions in Spain would be lower after accession than before, and would be still lower at the end of the transitional period. He considered that Article XXIV:4 did not constitute an obligation but an objective and did not preclude members of a customs union from erecting barriers to trade if their overall incidence was less restrictive than the ones which had prevailed before the customs union was established.

23. One delegation pointed to its authorities' findings that 70 new quantitative restrictions had been introduced in Portugal; in Spain, 241 tariff items were covered by post-enlargement quantitative restrictions, affecting about US\$500 million of its country's exports. Of this trade, only about US\$83 million had been subject to actual restrictions prior to enlargement. The rest had to be considered new restrictions on which this delegation reserved its GATT rights. A note citing specific restrictions was also made available to the Working Party (Spec(87)2, Annex III). The representative of the European Communities replied that the products covered in this notification had not in fact been

unrestricted previously. The notification was based on a private Spanish publication which contained erroneous information on the old import régime.

24. Some delegations took issue with the European Communities' contention that "credit" was owed to the Communities for the relaxation of non-tariff barriers which had resulted from the accession of Portugal and Spain. The trade liberalization effect of the removal or modification of certain practices was minimal in the agricultural area, since they would be replaced by the Common Agricultural Policy's instruments which would relegate non-EC suppliers to the status of residual sources. In particular, one representative stated that variable levies which were introduced in replacement of the previous administered régimes generally excluded imports. Comparing previous Portuguese notifications to the Committee on Trade in Agriculture with the information submitted by the Communities on the liberalization of quantitative restrictions in that country, he considered that a positive assessment in terms of Article XXIV:5(a) could not be reached. Some delegations stated that the elimination of restrictions which had affected industrial products would primarily benefit the other members of the Communities and the EFTA countries with which the Communities had free-trade arrangements. Some measures which were being eliminated were inconsistent with the GATT and had to be phased out without compensation, in view of the standstill and rollback commitments undertaken under the Ministerial Declaration launching the Uruguay Round. The representative of the European Communities replied that it could not be assumed that the measures which were being liberalized were GATT-inconsistent.

C. Regulations of commerce other than tariffs and quantitative restrictions

25. Some delegations sought clarification from the Communities concerning certificates of origin and the dismantling of state monopolies in the acceding countries. The representative of the European Communities replied

that certificates of origin might be required in accordance with Community legislation and that the dismantling of certain state monopolies carried out in accordance with the Treaty of Accession, would be favourable to third countries.

26. On the basis of the past experience obtained from earlier enlargements of the EC, some delegations expressed doubts about the contention the EC put forward in reply to their questions (L/5984 and Add.1-2), that the implementation of the CAP in Spain and Portugal would not have significant effects on temperate agricultural production in those countries. The representative of the European Communities responded that the purpose of the meeting was not to examine the CAP, but to examine the incidence on Spain and Portugal of the totality of the Community's import regulations. The variable levies applied in Spain and Portugal since 1 March 1986 had replaced all existing quantitative restrictions and similar measures and were more transparent than the previous régimes. Spain's and Portugal's import requirements would continue to be met in large part from third countries. Some delegations asked what were the expected effects on imports of income and price support measures. They considered that such arrangements should be examined by the Working Party, because Article XVI recognized that they could increase exports and reduce imports. However, the representative of the European Communities rejected this suggestion, on the grounds that price and income support arrangements were not a regulation of commerce. In view of the realities of the market there were constraints on production in the new member states and no Community incentives to encourage production. Assumptions made on the basis of past experience were flawed because the Communities had moved over the years from a situation of deficit in certain products to self-sufficiency which was reflected in internal debates about reform.

27. In reply to questions which related to global fish quotas and the 15 per cent annual increase in imports from other member states required in Spain under the Treaty, the representative of the European Communities

stated that the global quotas had been set for the transitional period, during which certain arrangements which had been incompatible with EC membership would be phased out. The 15 per cent figure was a purely procedural threshold for determining the Community authority competent to take intra-Community safeguard measures in the case of a disruption of the markets of the new members.

28. One member of the Working Party stated that the system of quantitative controls introduced in Portugal for oilseeds was more restrictive than the import régime which was in effect prior to enlargement. He also asked what could have been expected to happen in the absence of the quantitative controls whose objective according to the EC, was to prevent disorganization of the market. The representative of the European Communities replied that the present system of quantitative controls was not substantially different from the previous one, except that it was more transparent. Its purpose was not to restrict imports but to control the marketing of a product which had to be subject to a special régime during the transitional period. Before accession, a balance had been maintained between the consumption of olive oil and other vegetable fats obtained from oilseeds. Dismantling immediately the régimes which had been in force for many years in Spain and Portugal, might have been disruptive and it had therefore been considered appropriate to adopt a five-year transition period, at the end of which the Community system would be applied, and there would be a variable levy for olive oils and duty-free entry without quotas for other oils. The introduction of production aids for oilseeds in both countries was not expected to change the situation which had prevailed before accession because of the limitations put on these aids.

29. Some members of the Working Party stated that during the transitional period, the Communities would reserve to themselves a portion of the grain and cereals market which they had not had before. In the end, this market would be closed through the levies. They considered this to be a definite worsening of the situation, in terms of Article XXIV:5. The representative

of the European Communities replied that without this provision the Communities could have been excluded from the Portuguese market which was inconceivable for a customs union consistent with Article XXIV. However, this import requirement was temporary, and would be replaced by the variable levy at the end of a four-year transitional period. The introduction of the variable levy on imports of grains into Spain, which had occurred on 1 March 1986, was not expected to have substantial effects. Some representatives took issue with the view that the extension of the CAP would not significantly change production in Spain and Portugal. The artificial incentives inherent in the CAP would have the same effects in Spain and Portugal as they had had in the rest of the Communities. This was a fact of which the Communities and the new member states had been aware in their deliberations leading to the Treaty. The artificially increased production would have damaging effects for third countries both in the EC markets and in third country markets.

30. Some delegations asked what were the expected effects of production aids and Community reference prices for fruits and vegetables. The representative of the European Communities replied that the production aids implemented during the transitional period were not comparable to the one in force before accession, and that a limitation had been put on their level during this period. At the end of the transition period, the Community-wide systems would apply. The reference price mechanism would have no effect on production and only aimed at controlling imports at abnormally low prices. In response to a question about imports of citrus and orange juice from third countries, he stated that the enlarged Communities' needs of these products would continue to be met with imports from third countries.

31. Replying to a question which dealt with sugar production in Spain and Portugal, and the effect on it of export refunds and production quotas, the representative of the European Communities stated that while she could not

make definite forecasts, the conditions in the world market for sugar did not provide encouragement for additional production.

32. Asked about the expected effects on production and trade of the support régime for sheepmeat and levies applied to imports of other meats and dairy products, the representative of the European Communities stated that given the market situation, increases in production could only result from increases in domestic demand. The levy system had been applied in Spain and Portugal since their accession and the Communities' bilateral agreements with third countries for the supply of dairy products, would be renegotiated to take the enlargement into account.

D. Other points

33. During the examination, a number of other specific points were raised. Referring to the requirement contained in Article XXIV:7(a), some participants requested the European Communities to provide information on the effects of variable levies and the breakdown of increases of imports into Spain and Portugal from the other members of the Communities and countries with which the Communities had free-trade or association agreements. The representative of the European Communities considered that they had submitted enough material for the Working Party to reach conclusions.

34. It was accepted that if the Treaty were implemented as planned, a customs union would be put in place after 10 years. However, some representatives considered that the Treaty of Accession was an interim agreement under Article XXIV:5(c) which would result in a full customs union only once it was fully implemented. Therefore, and as provided for in Article XXIV:7(b), they considered that the parties to the agreement should not put it into force if they were not prepared to modify it in accordance with any recommendations that the CONTRACTING PARTIES might make. On the other hand, the representative of the European Communities

argued that the Treaty of Accession of Portugal and Spain was a definitive agreement providing for the establishment of a full customs union at the end of a transitional period. In his view, the requirements of Article XXIV:8(a) would be largely fulfilled after seven years and totally achieved, even for sensitive products, after 10 years. However, the European Communities acknowledged the right of the Working Party to make recommendations.

35. Several representatives stated that there were other provisions of the General Agreement, such as Articles I, III, XI, XIII, XVI and XVII which were relevant to the Working Party. In particular they wondered whether in the opinion of the European Communities, Article XXIV provided a derogation from the obligations arising out of other GATT provisions. The representative of the European Communities considered that Article XXIV applied in the light of other provisions of the GATT. However, in his opinion, the Working Party's task was limited to making an assessment of the general incidence of measures as required by Article XXIV:5(a). The Chairman recalled that the mandate of the Working Party was "to examine, in the light of the relevant provisions of the General Agreement, the provisions of the documents concerning the accession of Portugal and Spain to the European Communities, taking into account other relevant GATT documents and to report to the Council".

III. Final statements

36. One member of the Working Party noted that Article XXIV provided for departures from the most-favoured nation principle subject to certain conditions. The condition of not raising barriers to the trade of other contracting parties contained in Article XXIV:4 was clear and one could not ascribe to it any special subtleties or reservations. While each new customs union or free trade area agreement had to be examined on its merits, past experience was relevant when an agreement provided for the simple extension of existing policies to new members of an established

customs union. The extension of the Communities' Common Agricultural Policy to Spain and Portugal would result in an increase in barriers to third country trade in those countries and a major negative impact on his country's export opportunities generally. No matter how managed and opaque the pre-accession import arrangements of Spain and Portugal for agricultural products, it was not tenable to argue that adoption of the import levy system was a trade liberalizing move. His delegation had repeatedly sought to have the Working Party address the impact of other measures, such as domestic subsidies. The Communities had rejected these suggestions but sought to have the Working Party take into account other internal measures such as the introduction of VAT in Spain and Spanish fiscal liberalization. This lack of balance in the Communities position prevented a comprehensive assessment by the Working Party. His country could not agree that the agricultural sector could be treated specially and excluded from trade liberalization initiatives. Broader concerns about increased post-enlargement quantitative restrictions had been supported by evidence provided by other members of the Working Party. His country could not accept the Communities contention that the extension of the tariff of the EC/10 to the EC/12 was compatible with their obligations under Article XXIV:5(a) regardless of the effect on the tariffs of Spain and Portugal. Article XXIV:5(a) required a comparison with the pre-accession tariffs of the constituent territories and the relative size of those territories was not a relevant factor. His country also could not subscribe to the Communities' claim that a deterioration in access for a major item could be adequately compensated by improvements in access in a large number of items of minor trade interest. Nor could it accept that credit was owed to the Communities because of their own decision to proceed with enlargement. It was concerned by the Communities' failure to provide information which separately identified trade taking place under preferential conditions. The exclusion of preferential trade was necessary when making the Article XXIV:5(a) assessment of the impact of accession as well as for the purpose of determining supplier rights in the negotiations conducted under Article XXIV:6. The same member of the Working Party said

that the Communities had consistently argued that issues raised by other participants were beyond resolution and that the Working Party only need write a report reflecting all views, instead of attempting to reach definite conclusions. Under Article XXIV:7(a), the burden of proof about the GATT compatibility of an agreement rested with the parties to the agreement. At the present stage it was not possible to reach the conclusion that accession conformed with the GATT, rather a tentative conclusion might be otherwise. However, his country was prepared to accept the request of the Communities that a static analysis be avoided and suggested that the Communities prepare annual or biennial reports on the implementation of the Treaty of Accession, as was customary for free trade areas and had been done with respect to the implementation of the Treaty of Rome.

IV Conclusions and Recommendations

[To be inserted]