

GENERAL AGREEMENT ON

RESTRICTED

TARIFFS AND TRADE

Spec(88)42

16 September 1988

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

MEETING OF 27 JUNE 1988

Chairman: Ambassador F. Jaramillo (Colombia)

Note by the Secretariat

1. The Working Party held its seventh meeting on 27 June 1988. It adopted the agenda contained in GATT/AIR/2616.

A. Final statements, suggestions for conclusions and recommendations

2. The representative of the United States stated that while the General Agreement recognizes the right of contracting parties to form customs unions, it also places certain constraints on those forming such unions because it provides a fundamental derogation from the MFN principle, though not from other GATT obligations. In the Working Party his delegation had sought to ensure that the European Communities met their obligations to third countries. In accordance with Article XXIV:5, the Working Party had undertaken a detailed examination of the terms of accession of Portugal and Spain to the European Communities in order to determine whether duties and other regulations of commerce were, on the whole, higher than prior to enlargement. After carefully examining all the information provided by the European Communities, his delegation regretfully considered that all the factual evidence pointed to the conclusion that on the whole, third country suppliers to Spain and Portugal would be worse off as a result of enlargement. Third country exporters to Spain and Portugal were paying significantly higher duties after accession than before. The analyses presented by his delegation, on the basis of EC data, demonstrated that in duties collected terms, there was a net increase of 650 million ECUs in payments by third countries (see Spec(88)18, Annex). The fact that this significant damage to third countries was heavily concentrated in a few important product areas made it all the greater. The element of improvement came in the form of relatively small duty decreases which in many cases would be offset by trade diversion. Therefore, his delegation's calculations understated the harmful effects of enlargement. The Communities' suggestion that assessment of the incidence of tariff changes be made only on the basis of trade coverage figures was unacceptable because the duties collected method was the standard normally used for that purpose and there was no reason not to apply it in the present case. The situation with respect to other regulations of commerce, was equally disquieting. New quotas which had no GATT basis had been introduced in Spain for at least 139 industrial products affecting hundreds of millions of ECUs of third country trade (see Annex I). His delegation had received general denials and indications that the pre-enlargement régimes were ambiguous, but no

specific responses had been provided to its presentations. It therefore formally reserved its GATT rights to revert to this matter at a later stage.

3. With respect to trade in agricultural products, his delegation considered that the European Communities were once again shifting the burden of their agricultural régime onto third countries, through a variety of devices, including new quantitative restrictions such as those on soybeans in Portugal, variable levies on numerous products including in particular feedgrains, and the general distortions inherent in the extension of the Common Agricultural Policy to Spain and Portugal. This would have immediate and long-term implications for all third countries. In response to these facts, the European Communities had stated only that third countries would in the long run benefit from enlargement. In the light of this situation, his delegation concluded that the European Communities had failed to meet their obligations under Article XXIV:5. It therefore called on the Communities to redress this situation, both with respect to tariffs and to other regulations of commerce.

4. Introducing the communication submitted by his delegation on behalf of a number of delegations (Spec(88)33), the representative of the United States stated that it was an attempt to develop meaningful conclusions for the Working Party. The clear convergence of views among countries which would experience the consequences of enlargement was particularly noteworthy. He therefore urged that the suggested conclusions be incorporated in the final report of the Working Party.

5. The representative of Japan stated that in the Working Party his delegation had repeatedly pointed to the problems arising out of the present enlargement of the Communities. Because such a customs union was an exceptional deviation from the MFN principle of the GATT, it should be subject to the strict application of Article XXIV. It was by no means acceptable to presume like the Communities, that the conditions stipulated in Article XXIV were fulfilled because the formation of the customs union resulted in some minor improvements in market access. In particular, a problem had arisen in the context of Article XXIV because Spain and Portugal had acceded to the Communities while maintaining discriminatory quantitative restrictions, recognized by the Communities, which were contrary to Articles XI and XIII. Although Japan had repeatedly requested in the Working Party that these restrictions (41 items in the case of Spain and 48 in the case of Portugal) be abolished immediately, it had not received a satisfactory reply. Japan interpreted Article XXIV:4, 5 and 6 in a manner which differed substantially from the Communities and throughout the deliberations of the Working Party no agreement had been reached in this regard. While his delegation did not oppose the drafting of the Working Party's report, it wished to confirm that this did not imply any change of its legal position and that it reserved all its rights under the GATT.

6. Moreover, the submission of the Communities (L/5936/Add.5) did not specify when discriminatory quantitative restrictions maintained by Spain on five items and by Portugal on 18 items, would be eliminated. The

Communities had contended in the Working Party that these discriminatory quantitative restrictions were based upon bilateral agreements and could not be questioned in the GATT. However, Japan considered that there were no such bilateral agreements. Japan also considered that discriminatory quantitative restrictions could not be included in the assessment of the incidence of changes in "other regulations of commerce", because they were inconsistent with Articles XI and XIII. Moreover, there was a lack of transparency with respect to these restrictions because of discrepancies between the Official Gazettes of Spain and Portugal and the Common Import Regulations of the European Communities.

7. The representative of Japan considered that Article XXIV:4 laid down rights and obligations distinct from those stipulated in Article XXIV:5. Specifically, it prohibited the raising or the introduction of barriers against other contracting parties on the occasion of the formation or enlargement of a customs union. Japan had detected the introduction in Spain of new discriminatory quantitative restrictions on 7 items, namely: CCCN 73.18, 73.25, 84.24, 84.25, 84.45, 84.51 and 85.23. Moreover, since accession, global quotas on 13 items had been transformed into quotas discriminating against Japan. These measures infringed both the MFN principle of the General Agreement and the spirit of Article XXIV. Therefore, the Communities should abolish these restrictions immediately.

8. Article XXIV:6 required that even if the general incidence of post-accession customs duties were not higher than that of pre-accession duties, contracting parties were entitled to compensation under Article XXVIII for the modification of concessions on particular items which were of interest to them. As a result of accession, some bound duties were raised above their pre-accession level in some of the constituent territories of the customs union, and lowered in others. Japan construed "compensatory adjustment" in Article XXIV:6 as implying that a tariff reduction on one item in some constituent territories of the customs union should be taken into account in calculating the amount of compensation for the increase in the tariff applicable to the same item in other constituent territories of the same customs union. Japan was opposed to the view that "compensatory adjustment" implied that the amount of compensation should be estimated on the basis of the aggregate change of all tariffs, including those not subject to concessions. Japan also rejected the view put forward by the Communities as a corollary to the concept of "compensatory adjustment", that a customs union may claim "counter-compensation" from other contracting parties for the reduction of customs duties resulting from the formation of the customs union. This notion was without foundation in the GATT.

9. The representative of Hungary expressed support for the communication contained in Spec(88)33. Much to its regret, his delegation had come to the conclusion that the Treaty of Accession did not meet the criteria of Article XXIV and particularly of its paragraphs 4 and 5(a). The accession of Spain to the Communities had resulted in the introduction by that country of new discriminatory quantitative restrictions affecting one quarter of Hungary's total exports to it. These new discriminatory restrictions contravened Articles XI and XIII of the GATT and also Article XXIV, because

the obligations of the European Communities and of Spain under Articles XI and XIII were not waived by the Treaty of Accession. Moreover, these restrictions were contrary to the Protocol of Accession of Hungary to the GATT, in which contracting parties undertook not to raise the level of discrimination in their imports from Hungary. In the past, Spain had notified the GATT five times that it did not maintain quantitative restrictions inconsistent with Article XIII against imports of Hungarian origin. Hungary had no reason to doubt the correctness of these notifications.

10. The representative of Hungary firmly believed that there was nothing in Article XXIV or elsewhere in the GATT, which would require or even allow that the countries acceding to a customs union should align their import régimes with the more restrictive discriminatory régime of the customs union. He also rejected the view that newly established GATT-inconsistent barriers could be traded off against the alleged reduction of other barriers. When assessing the general incidence of regulations of commerce in accordance with Article XXIV:5(a), only GATT-consistent measures should be taken into account. Hungary also considered that the Treaty of Accession failed to meet the requirement contained in Article XXIV:4 that customs unions should facilitate trade rather than raise barriers to the trade of other contracting parties. Therefore, unless the European Communities and Spain immediately removed all GATT-inconsistent quantitative restrictions, the Hungarian delegation could not accept the Treaty of Accession as being in conformity with the GATT. It also reserved fully its rights under the GATT in relation to the accession of Spain to the Communities.

11. The representative of Canada remained concerned that the European Communities had used the accession of Spain and Portugal as a way to reduce market access for Canada, particularly in the fisheries sector. This was not consistent with Article XXIV according to which customs unions and free trade areas were not to be used for erecting new barriers to the trade of third parties. The Communities had argued that the balance sheet of enlargement in terms of tariff reduction was favourable to Canada, which was therefore expected to compensate them through reductions in market access in certain products. Canada considered that the Communities could not claim "credits" for incidental market access improvements which followed from the Communities' own decision to enlarge. In any event, many of these alleged improvements were illusory. In many cases, tariff benefits were nullified by non-tariff measures or were intangible because of price-inelastic demand. Canada was still engaged in Article XXIV:6 negotiations with the Communities and was not prepared to endorse specific conclusions. It reserved its right to revert at the next meeting to matters which could affect the content of the report. However, the communication submitted by the United States (Spec(88)33) reflected many of Canada's concerns.

12. The representative of Australia recalled that his delegation had already made a final statement at the previous meeting of the Working Party, and considered that the conclusions suggested by the United States on behalf

of a number of participants, reflected accurately the outcome of the Working Party's deliberations. He therefore thought that these suggestions should be adopted by the Working Party. With the exception of the Communities, the overwhelming view of other participants in the Working Party had been that the Communities had failed to meet its obligations under Article XXIV:4 and XXIV:5(a). Australia therefore fully reserved its GATT rights.

13. The representative of New Zealand stated that they were not convinced that accession had not resulted in a net increase in the incidence of duties and other regulations of commerce in the sense of Article XXIV:4 and 5(a). There had been net liberalization effects in certain areas and some contracting parties outside the enlarged customs union may have obtained increased market access. However, this could not be assumed to apply generally and a major problem had been the lack of agreed techniques for evaluating the available data. As a result, it had not been possible to make the complete comparison of the pre- and post-enlargement duties and other regulations of commerce in each of the three constituent parties of the customs union which was required under Article XXIV:5(a). On the basis of some of the available means of assessing the data, the overall incidence of accession appeared to be negative. Enlargement could have had net trade creating effects. However it was incumbent on the contracting parties concerned to provide the basis upon which an objective assessment would be possible.

14. His delegation considered that the figures put forward by the Communities for evaluating the incidence of tariff changes did not provide a reliable basis for the assessment required under Article XXIV:5(a). With the trade coverage approach favoured by the Communities, the large amount of trade which would take place under a slightly reduced tariff would exaggerate the positive impact of the reduction. On the other hand, a substantial increase in the tariff applicable to a lesser amount of trade would be ignored under this approach, even though it was much more significant. That is why the "duties collected" approach was a more reliable basis for conducting the assessment required by Article XXIV:5(a). The figures provided by the United States, using this approach, showed that the net effect of enlargement was negative. These figures had never been challenged on their own methodological basis. Furthermore, no assessment had been made of the role of preferential trade before and after enlargement. The Communities had been prepared to provide this breakdown in the deliberations of the Committee on Trade and Development, but they had not agreed to it in the Working Party.

15. His delegation considered that the terms of Article XXIV:5(a) required an evaluation of the impact of enlargement on each individual contracting party, since the words "as a whole" which it contained referred to the duties and other regulations of commerce of the customs union concerned and not to the contracting parties which remained outside it. Such an evaluation had been made by the Communities for only one contracting party. New Zealand faced an overall increase in the barriers to its trade with the enlarged Communities, because the Communities systematically raised barriers

to trade with third countries in a whole sector of their external régime. His delegation found it difficult to reconcile that with Article XXIV.

16. With respect to "other regulations of commerce", the representative of New Zealand considered that in the cases which had been raised on an item-by-item basis the clarification provided had not been sufficient to dispel doubts about the conclusions drawn by the Communities in their own submission (L/5936/Add.5). In a number of significant cases, documented by his delegation on the basis of past notifications to the GATT, a pre-accession régime which provided opportunities for imports was replaced by a régime which acted to exclude imports (e.g. variable levies).

17. The representative of New Zealand considered that there had not been a systematic evaluation of subsidy and income/price support arrangements that restrict imports and increase exports in the sense of Article XVI. Such an evaluation would have been relevant and necessary under Article XXIV:4 and 5(a). The Communities had argued that these measures were not relevant for the Working Party but they had considered that the introduction of VAT in Spain was a relevant factor in evaluating the post-enlargement situation. Nevertheless, New Zealand had taken careful note of certain assurances expressed by the Communities in the Working Party on matters involving support arrangements, notably in the case of sheepmeat where an undertaking had been made that existing suppliers may look to a régime of trade liberalization in the framework of the Communities (L/5984, reply to question 108).

18. The representative of New Zealand also stated that whereas the Communities claimed that the Treaty of Accession was a definitive rather than a transitional arrangement, they emphasized the relevance of its transitional elements such as when they rejected claims about the significance or extent of new quantitative restrictions introduced after accession (Spec(88)15, paragraph 17). An estimate of the percentage of trade liberalized at the beginning of the transitional period and at its end, had been requested from the Communities in the Working Party, but in its absence it was difficult to evaluate claims made by the Communities. Undertakings whose implementation should be monitored had been made by the Communities with respect to the transitional period, e.g. on dairy products and some fruits and vegetables. That is why New Zealand considered it appropriate that there should be a periodic evaluation of the evolution of relevant measures, as was suggested in the submission put forward by a number of delegations (Spec(88)33).

19. The representative of Poland stated that in accordance with the mandate of the Working Party, his country's assessment of the Treaty of Accession was made in the light of the relevant provisions of the General Agreement. Article XXIV stated that customs unions should not raise barriers to the trade of other contracting parties with the constituent territories of the customs union. However, Articles 177:3 and 177:5 of the Treaty, its annexes as well as regulations of the Communities allowed or required the

implementation of discriminatory quantitative restrictions against products originating in Poland. On the basis of these provisions, which contravened Articles I, XI, XIII and XXIV:4 of the General Agreement, Spain had introduced 48 quantitative restrictions inconsistent with Article XIII on imports from Poland. Some of these restrictions would be maintained after the transitional period. Prior to its accession to the Communities, Spain had notified the GATT that "it continued to apply no discriminatory restrictions on imports from Poland". There were no grounds for questioning the validity of these notifications, in spite of statements made by the representative of the European Communities.

20. The introduction of new discriminatory quantitative restrictions by Spain was also contrary to paragraph 3 of the Protocol of Accession of Poland to the GATT which required that the discriminatory element of restrictions maintained by contracting parties against imports from Poland, not be increased and that any inconsistency with Article XIII be progressively eliminated. Poland therefore rejected the argument that the Protocol of Accession could serve as justification for the maintenance of discriminatory quantitative restrictions. Moreover, there was no legal justification in the General Agreement for the allegation that such quantitative restrictions could be maintained because of differences in economic structures.

21. Poland continued to hold the view that Article XXIV did not waive any contracting party from its obligations under Article XIII. Therefore, Article XXIV:5 could not justify the Communities' claims that the liberalization of restrictions which had previously been applied globally could be regarded as compensation for the introduction of discriminatory quantitative restrictions. Until quantitative restrictions which were inconsistent with the GATT had been removed, Poland would not be in a position to accept that the Treaty conformed with the obligations of the Communities and Spain under Article XXIV. For these reasons, Poland favoured the adoption by the Working Party of a recommendation concerning periodic reviews of the implementation of the Treaty and supported the suggested conclusions put forward by a number of participants (Spec(88)33).

22. The representative of Brazil reserved the rights of his delegation under the GATT on differential treatment in favour of ACP countries, the effect that this could have on his country's exports and the application of quotas or variable levies on his country's exports of primary products, above all soya.

23. The representative of the European Communities stated that some delegations appeared to be aiming at conducting the evaluation of the enlargement in ways that were different from those used in the past. The duties collected approach which was considered necessary now, had never been used in previous examinations of the enlargement of the Communities. Similarly, examination of preferential trade and price or income support measures had not been considered necessary in the past. It was up to the

delegations putting forward these suggestions to prove why they were required for the present Article XXIV:5(a) exercise and not for previous ones. The Communities reserved the right to answer in detail points which had been made in final statements, because these statements only reflected individual points of view which were not acceptable to the Communities.¹ Some delegations had complained that the Communities had not responded to their arguments and that the Communities' own arguments were based on unfounded assertions. The Communities had submitted to the Working Party tables and other information on tariffs and quantitative restrictions (L/5936 and addenda). However, neither these nor the United States' submissions had been examined by the Working Party in detail. The Communities also rejected the claim by Canada that market access for fisheries had been reduced and asked for details so that this claim could be examined.

24. With respect to the conclusions suggested on behalf of a number of delegations (Spec(88)33), the representative of the European Communities did not consider that they constituted a balanced draft and was therefore not prepared to accept them as a basis for discussions in the Working Party. The document was biased because it ignored the points made by the Communities with respect to tariffs and quantitative restrictions. The practice in earlier cases had been to record points of disagreement in a neutral fashion in the report to the Council, whereas the paper took an extreme position and sought to suggest that the majority of the members of the Working Party shared the views contained in it, which was not established. The paper also sought to establish as conclusions, claims which had not been verified by the Working Party. The suggestion that the implementation of the Treaty be reviewed at the end of the transitional period was also unacceptable because it went beyond what was provided in Article XXIV.

25. Furthermore, the Working Party was entrusted with the task of examining the consistency of the Treaty with Article XXIV. As had always been the case for Working Parties examining similar arrangements, the standard terms of reference mentioned all the provisions of the GATT; but the interpretation always given to this phrase had not included overt consideration of consistency with provisions such as Articles XI and XIII. The Communities were prepared to listen to views which related to the consistency of the Treaty with other provisions of the GATT but could not accept that the Working Party try to draw conclusions on this question. Contracting parties which considered that measures which had been adopted by the Communities in the context of enlargement were GATT-inconsistent could raise the matter under Articles XXII or XXIII. Many of the participants in

¹A note on quantitative restrictions maintained in Spain before and after accession and a detailed final statement in written form, received from the European Communities after the meeting, can be found in Annexes II and III of the present document.

the Working Party had reserved that right, as they were entitled to do. The allegations which had been made in the Working Party would normally be subject to close examination by independent panels before operational conclusions were drawn, and this process could not be replaced by discussion in the Working Party.

26. The Chairman recalled that the conclusions and recommendations which would be included in the report had to be adopted by the Working Party as a whole. He suggested that a number of points such as the following could be identified presently as being acceptable to all delegations:

"As requested by the Council, the Working Party has 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.

At the end of its examination, the Working Party notes that it is not in a position to reach consensus on the compatibility of the Treaty of Accession with the General Agreement. This report therefore summarizes the diverging views which its members expressed during the discussion. The report is forwarded to the Council for its consideration.

The Working Party notes that the rights of contracting parties under the General Agreement are not prejudiced by the submission of the present report.

The Working Party recommends that the CONTRACTING PARTIES invite the parties to the Treaty of Accession, consistent with normal GATT practice, to furnish reports on the implementation of the Treaty biennially until such time as its provisions have been fully implemented."

26. After some discussion of the question of conclusions and recommendations, the Chairman announced that he intended to proceed as follows, with a view to facilitating early adoption of the Working Party's report to the Council:

- delegations which had any changes or additions which they wanted to make to the draft report, including points relating to conclusions and recommendations, were invited to transmit them to the secretariat in writing as early as possible;
- the secretariat would revise the draft report in order to incorporate points made at the present meeting and any comments received;
- the Chairman would hold informal consultations on the draft report with a view to its adoption by the Working Party in September.

B. Preparation of the Working Party's report to the Council, on the basis of a draft to be prepared by the secretariat

27. In addition to the discussion which had been held on the preparation of the report under the previous item of the agenda, the Working Party also examined the question of annexes to the report and agreed that the consultations to be held by the Chairman would also address this question.

ANNEX I

Note from the United States

Analysis of Spanish Quantitative Restrictions
Before and After Spanish Accession to the European Community
Affecting the Trading Rights of GATT Contracting Parties

June 16 1988

<u>Status of Restriction</u> ¹	<u>Number of Products</u> ²	
	<u>Agriculture</u>	<u>Non-Agriculture</u>
<u>Pre-Accession Status</u>		
I. Quantitative Restrictions Applied to GATT Trade by Spain in December 1985 ³	77	34
<u>Post-Accession Status</u>		
II. Pre-Accession Quantitative Restrictions Terminated After Accession	41	3
III. Pre-Accession Quantitative Restrictions Remaining After Accession	36	31
IV. Quantitative Restrictions Newly Introduced After Accession	19	139
V. <u>Total Quantitative Restrictions in Spain in 1988</u> ⁴	55	170
VI. Number of Post-Accession Quantitative Restrictions that are Transitional ⁵	15	42
VII. Number of Post-Accession Quantitative Restrictions that are Permanent	40	128

¹The United States has found no information that these restrictions imposed before or after accession are justified under Article XI.

²This summary uses the four-digit tariff categories used by the European Community in L/5936/Add.5 dated 24 February 1987.

³Source: Various Resolutions, Decrees, and Orders published since 1934 in the Boletin Oficial del Estado of the Government of Spain.

⁴Source for Post-Accession Quantitative Restrictions: Government of Spain, Boletin Oficial del Estado, 21 April 1987.

⁵Source for Temporary Quantitative Restrictions: The Spanish-EC Treaty of Accession.

ANNEX IINote from the European CommunitiesAnalysis of Spanish Quantitative Restrictions before
and after Spanish Accession to the European Community

1. The United States has submitted an analysis, dated 16 June 1988, on the position regarding quantitative restrictions in Spain. This was circulated in the meeting of the Working Party on 27 June.

2. The Community considers that the situation as described in the US document is misleading. The figures have never been verified by the Community, Spain or the Working Party, and, especially at Point IV, may well include surveillance or statistical monitoring measures as QRs. Thus the US document must be considered as unreliable as regards its conclusions.

3. The Community recalls that it has submitted a communication to the Working Party on this subject, circulated in document L/5936/Add.5. This information shows the following picture, at the four-digit level:

<u>Pre-accession</u>	<u>Agriculture</u>	<u>Industry</u>	<u>Total</u>
Items subject to quantitative restrictions	97	333	430
- of which QRs not applied to all GATT members		95	
<u>Post-accession</u>			
Items subject to quantitative restrictions	16	87	103
- of which QRs not applied to all GATT members		20	

It should further be noted that these latter figures cover a number of headings which have been partially liberalized.

4. The Community's analysis of the situation shows that there is a considerable reduction in the incidence of QRs applied by Spain following accession. The effects of this development on trade with GATT members can only be regarded as positive.

ANNEX III

Final statement received from the delegation
of the European Communities

The representative of the EEC stated that in the course of the Working Party discussions a number of delegations had argued that traditional methods of assessing the conformity of the enlarged customs union with Article XXIV were not adequate, and had insisted that new methodological techniques were required in order to arrive at a clear conclusion. The Community considered that it was for these delegations to show why methods that had been considered satisfactory in the past were now inadequate.

For example, some delegations now took the view that Article XXIV:5 required an examination of the incidence of enlargement on the trade of each individual contracting party rather than on the trade of all contracting parties taken together. Previous Working Parties had never made examinations on this basis and had considered that a global assessment was quite sufficient. Furthermore, some delegations now thought that the duties collected method was required if a precise assessment was to be attempted. This again had never been the basis of previous Working Party conclusions, and those who pressed for an approach on these lines ignored the difficult methodological problems which would result, despite the Community's clear observations on this aspect. Furthermore, some delegations now felt that preferential trade had to be excluded from any general assessment of the incidence of tariffs although this had not been the practice in the past. While m.f.n. tariff reductions obviously do not alter the incidence of duties on preferential trade, both Spain and Portugal had since accession applied new preferential rates including GSP rates to the trade of many contracting parties and the effects of this were to be counted as positive.

Other delegations considered that the Working Party should examine the impact of subsidy practices and of price support arrangements on EEC imports (and even on exports). The indirect effects of such measures had never been considered by previous Working Parties in assessing the general incidence of duties and other regulations of commerce under Article XXIV:5, and the difficulties of making precise measurements in this area were well known to all contracting parties. Finally, some delegations now considered that it would be indispensable to review the future implementation of those measures for trade liberalization that were foreseen at the end of the transitional period, in order to evaluate the final incidence of enlargement. This approach had never previously been followed and it was not clear why contracting parties should at this time consider that the parties to the Accession Treaty would not fully implement their clear legal obligations as they had agreed to do.

The Community totally rejected the need for such new approaches and continued to take the same view as before, that the general nature of the

assessment foreseen in Article XXIV:5 ("not on the whole ... higher ... than the general incidence ...") did not require more precise or sophisticated methods than those employed hitherto in order for valid conclusions to be drawn. In any event, if new factors were considered to be relevant to the examination, this would have consequences also in future for Working Parties operating under Article XXIV:5(b).

More specifically, the Community has always interpreted the requirements of Article XXIV:5(a) as applying to the enlarged customs union as a whole, on the one hand, and to the trade of this enlarged customs union with other contracting parties taken as a whole on the other. Thus the task of the Working Party is to examine the consequences of the measures taken by the enlarged Community of 12 on the trade with other GATT members taken collectively in terms of Article XXIV:5. This means that the total trade of the 12 (and not just that of the new member States) must be taken into account, and, on the other hand, problems which arise for individual contracting parties as a result of the formation of the customs union are to be considered in the overall context. Specific cases of impairment of tariff bindings are dealt with in negotiations under paragraph 6 of Article XXIV which provides specific remedies for such situations.

The criticism which contracting parties have made in their final statements must be viewed in the light of this general comment. These criticisms fall broadly into two categories - on tariff incidence and on other regulations of commerce.

Taking the question of tariff incidence first, the Community has examined this situation in great detail. Whether the traditional "bilan" approach of tariff movements or the revised presentation proposed by the US is used, the Community has shown that over 95 per cent of the trade of the enlarged Community with other contracting parties will experience either no change in customs duties or else lower customs duties as a result of accession. The amount of trade that will be subject to higher duties amounts to either 1.5 per cent or 0.5 per cent of total EC-12 trade depending on the presentation used.

In any event it is obvious that the volume of trade involved is minuscule in relation to the overall trade of the enlarged Community. In all circumstances the Community fails to see how the Working Party can reach any conclusion other than that the conditions of Article XXIV:5(a) regarding tariff incidence have been comprehensively fulfilled.

The argument on this point centres upon methodology. In particular it is suggested that the question of tariff incidence be measured in terms of duty collections rather than by trade coverage. Duty collections are traditionally one of the methods employed in Article XXVIII negotiations, where the object is to calculate precisely the value of concessions withdrawn and those offered as a substitute for them. The Community does not accept, however, that this method is appropriate for an Article XXIV:5

examination whose objective is completely separate and different. In the present case the "duties collected" method has been used to suggest that, despite the overall picture, the incidence of duties paid would be increased: but this analysis resulted from two doubtful propositions - first, that increases in unbound duties which are permitted in GATT could in some way result in a situation inconsistent with Article XXIV, and second, that large increases in incidence e.g. where variable levies replace bound duties, could be contrary to Article XXIV:5 even when compensation has been paid under Article XXIV:6. Neither proposition seems to us to make sense.

In addition, the argument put forward by other contracting parties on unbound duties does not seem to recognize the requirement, under Article XXIV:8, that the duties of the enlarged Community of 12 be substantially the same. That is, that Spanish and Portuguese duties have to align on those of the EC/10, or vice versa, or on some average duty rate. The solution chosen by the Community minimizes the increase in duties while offering substantial advantages to third countries in the form of new bindings. It is also questionable how far the notion of tariff incidence can be applied without some qualification in such a case. It is obvious that unbound duties could have been raised at any time before the formation of the customs union in order to enable the parties to claim, at a later date, that the tariff incidence had been reduced on enlargement: such a practice would however make no economic sense, and the CONTRACTING PARTIES should not encourage manoeuvres of this kind when reaching conclusions as regards conformity with Article XXIV:5

Turning to the question of other regulations of commerce, and in particular quantitative restrictions, the Community is in agreement that Article XXIV does not provide a waiver from other provisions of the GATT. By the same token, however, the role of the Working Party in this context is to examine the situation in the light of Article XXIV rather than in respect of any other Article such as Articles XI or XIII. Contracting parties who have different views on this question can have them recorded in the final report of the Working Party. However, the Community cannot accept that the Working Party is able to reach conclusions on whether the Community is in breach of other GATT Articles. This goes beyond the Working Party's mandate. Contracting parties are, in any event, free to reserve their GATT rights and to have recourse to other provisions on these questions.

As regards the quantitative restrictions maintained in force in Spain and Portugal, the Community repeats its view that no new quantitative restrictions have been applied by Spain or Portugal. While it is clear that the application of such measures prior to accession lacked transparency, it is also clear that as a result of accession Spain has made a substantial move towards liberalization through the elimination of a substantial number of quantitative restrictions. Details of these measures are set out in our communication circulated as L/5936/Add.5. Overall the situation is that out of a total number of 430 quantitative restrictions applied before accession, 328 have already been or will be liberalized by the end of the transitional

period. Thus the general incidence of these measures is positive on trade with other contracting parties.

With regard to the allegations of discriminatory quantitative restrictions against state trading countries, the Community can only repeat what we have said before. The particular import régime in Spain, as applied to state trading countries, was one in which discretionary import licensing was widely applied. Of the 238 quantitative restrictions which Spain maintained before accession against such countries, over 200 will be liberalized at accession or during the transitional period. Thus the Community cannot accept the argument that the general incidence of accession has resulted in a more restrictive régime for these countries.

Similarly with regard to Japan, the situation is one which is overall very positive. Of the 333 positions under restriction in Spain before accession, over 200 have been liberalized in part or in full after accession and a further 85 are to be liberalized at the end of 1989 or 1991. With regard to the alleged new restrictions, the Community must make two comments: firstly, the terms of Article XXIV:4 make it clear that not raising barriers to the trade of other contracting parties is an objective rather than an obligation. Secondly, the restrictions in question were previously covered by a bilateral agreement between Spain and Japan and had never been the subject of any complaint in the GATT. The fact that Japan had identified 7 such restrictions, out of a larger total, and that these were described as new, was an indication that it accepted the Community argument as regards the rest. Some of these restrictions had been liberalized de facto on an autonomous basis but they remained legally in force. They will all be eliminated by the end of the transitional period. As to the restrictions for which dates for elimination have been set for Japan later than for others, the situation varies from one product to another. As already explained, in some cases the difference is in Japan's favour, in others there is no distinction. It is only in very few cases that a later date applies to Japan and these must be viewed in the context of the overall movement towards liberalization which will occur in Spain.