

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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REPORT OF THE WORKING PARTY ON THE AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND SPAIN

1. In September 1970, the Council of the European Communities and the Spanish Government notified that an Agreement¹ had been concluded between the European Economic Community and Spain on 29 June 1970. The matter was discussed at a meeting of the Council on 29 September (see C/M/64). After having heard declarations from the representatives of the European Community and of Spain, to the effect that in the views of the parties the Agreement fell within Article XXIV:5-9, it was decided to set up a working party with the following terms of reference:

"To examine, in the light of the relevant provisions of the General Agreement, the provisions of the Agreement between the European Economic Community and Spain of 29 June 1970, and to report to the Council."

2. The Working Party met on 15 July 1971 and on 14 September 1971 under the chairmanship of Ambassador J. Boyesen, (Norway). The following was the composition of the Working Party.

Australia	Greece	South Africa
Brazil	Israel	Spain
Canada	Ivory Coast	Switzerland
Chile	Japan	Tunisia
Denmark	Madagascar	United Arab Republic
Dominican Republic	New Zealand	United Kingdom
European Communities and their member States	Portugal	United States

3. The representative of the European Communities stressed that the main characteristic of the Agreement was that the two parties had undertaken to eliminate gradually in two stages the barriers to substantially all the trade between them. The Agreement set precise and detailed objectives for the gradual removal of trade barriers during the first stage; on the basis of the liberalization achieved in the first stage the parties would then in the second stage take the further steps

¹The text of the Agreement which entered into force on 1 October 1970, is contained in document L/3427 and Corr.1. The questions addressed to the parties to the Agreement, as well as the replies thereto, are contained in document L/3533 and Corrs. 1 and 2.

required to achieve full free trade. He underlined that the aim of creating free trade between the Communities and Spain had to be seen against the background of the Mediterranean and European responsibilities of the Communities and the resulting dual calling of Spain.

4. The representative of the Communities referred to the detailed information regarding the Agreement which had been furnished to contracting parties in reply to their questions. In his view, the documentation confirmed that the Agreement was in conformity with the aims of Article XXIV and that it met the requirements laid down in paragraph 5 of that Article with regard to an interim agreement leading to the formation of a customs union or a free-trade area. He stressed in particular that the Agreement clearly set down precise conditions for the implementation of the process of removing tariffs and quotas in the first stage and that it contained the necessary provisions to ensure the continuation and achievement of their elimination in the second stage.

5. The representative of Spain stressed that there were economic facts underlying the conclusion of the Agreement which must be examined at the same time as the conformity of the Agreement with Article XXIV. He recalled that Spain had since 1959 gradually liberalized foreign trade and that its total imports had increased from \$872 million in 1958 to \$4,747 million in 1970. At the same time a spontaneous integration between the economies of Spain and the Communities had taken place - not only in the field of commerce but also with regard to labour and technology - which, if not institutionalized, could have serious repercussions for the weaker partner, Spain. Regional integration had, furthermore, spread in Latin America, Africa and the Mediterranean area. In Western Europe, nineteen countries participated in regional groupings. Spain could not alone remain outside such a movement within its natural integration area.

6. The representative of Spain pointed out that the conformity of the Agreement with the provisions of paragraphs 5 to 8 of Article XXIV was evident already from Article 1, which established as its objective that obstacles to substantially all the trade between the parties should be progressively eliminated. In their replies to the questionnaire, Spain and the Communities had made it clear that their minimum objective was the creation of a free-trade area, likely at a later stage to be developed into a customs union. The representative of Spain added that the Agreement, as he had stated in the Council, was for Spain a way to be incorporated in the European integration movement. ECSC products were the only ones which, for institutional reasons, remained outside the Agreement; all other products, industrial as well as agricultural, were covered by the Agreement. The vast majority of these products is affected by the gradual elimination of tariff and non-tariff barriers from the very moment of the entry into effect of the Agreement; a few remaining products would be subject to the removal of barriers during the second stage of the implementation of the Agreement - a delay due to their special position. In the opinion of the Spanish representative, the Agreement stood out favourably in comparison with some similar agreements which had not been considered as incompatible with Article XXIV. He finally stressed

that the Agreement would not create new obstacles to trade with third countries, but would, on the contrary, encourage trade by strengthening Spain's economy. The creation of a customs union would furthermore entail the reduction of Spain's customs duties to the level of the Common External Tariff. In sum, he felt that the Agreement met fully the requirements of paragraphs 5 to 8 of Article XXIV and was in line with established precedents.

7. Many members of the Working Party expressed understanding and sympathy for the aims underlying the Agreement and for the desire of Spain to participate in European integration. Some members expressed the view that the full circumstances in which the Agreement had been negotiated, including recent developments in the international trade field, should also be given due weight in the Working Party's considerations. Other members were, however, concerned that the Agreement would adversely affect their trade with the Communities and Spain. They underlined that the general sympathy they felt for the aims of the Agreement was based on the expectation that it would be trade creating and not trade diverting. Other members hoped that the parties to the Agreement would also have understanding and sympathy for their concerns for the implications of the Agreement for the multilateral trading framework.

8. Concern was expressed by some members of the Working Party over the proliferation of preferential trading arrangements inconsistent with Article XXIV. They wished that the examination of the Agreement be judicious and thorough and that the integrity of the GATT be maintained in letter and in spirit. They considered it very important to the future of the most-favoured-nation system of trade and the viability of GATT that Article XXIV should not be used to justify departures from most-favoured-nation treatment excepting in instances where it was obvious that Article XXIV criteria were met. Some members of the Working Party felt that the most-favoured-nation principle, the foundation of the GATT, was being undermined, that the value of Article II tariff concessions was being eroded, and that the resultant friction could lead to a return to protectionism which would have serious effects particularly on the trade of smaller contracting parties.

9. The Working Party examined the Agreement in order to establish whether it conformed to the criteria of Article XXIV of the GATT, with regard to the particular provisions of paragraphs 5 to 8 as well as the general requirements and the spirit of the Article.

10. Three opinions were expressed in the Working Party with regard to the conformity of the Agreement with Article XXIV. The parties to the Agreement and some of the members felt that it was fully in conformity with the requirements of Article XXIV. Some representatives took the view that the Agreement was a preferential agreement that did not meet the requirements of Article XXIV; in the opinion of one of these members the Agreement should have been presented with a request for a waiver under Article XXV. Another opinion was that, from a static viewpoint, the Agreement between the EEC and Spain was not fully consistent with all the provisions of Article XXIV, in particular because it failed to lay down the particulars of a programme legally binding the parties with respect to the manner in which they were to attain their final objective. However, having regard to the European geographical and political context in which the Agreement

was situated, delegations holding this opinion were prepared to take a dynamic view and give their provisional concurrence to the Agreement, being confident that Spain had already attained a sufficient degree of economic development to enable the parties in time to organize their relations in a way that would increasingly approximate a free-trade area. In order, however, to ascertain that such would actually be the case, these delegations urged that the parties should submit the implementation of their Agreement to periodic review by the CONTRACTING PARTIES according to a procedure to be determined.

Paragraph 5(b) of Article XXIV

11. Some members of the Working Party pointed out that Articles 9 and 10 of Annex II to the Agreement contained an undertaking by Spain to buy fixed shares of its annual imports of certain dairy products from the Communities for so long as these imports remained subject to the State-trading system. They considered that such a market reservation arrangement was incompatible with various provisions of GATT, in particular with Article XVII. They noted that the introduction of such an undertaking did not appear to be compatible with the provision of paragraph 5(b) that regulations of commerce maintained in the constituent territories should not be more restrictive than corresponding regulations existing prior to the formation of the free-trade area, and they recommended that the parties to the Agreement let those provisions remain inoperative.

12. The representatives of the parties to the Agreement pointed out that the percentages indicated in Articles 9 and 10 of Annex II were lower than the Community's share of the Spanish market in past years as could be seen from the reply to question 62 in document L/3533. They further stressed that the purchase undertakings were only valid on the condition that the Community suppliers offered normal market terms, and consequently Spain would carry out its purchases under non-discriminatory conditions. Therefore Articles 9 and 10 did not bring about any change in the trade situation of the products they covered. Similar provisions existed, furthermore, in other regional agreements.

13. Some members of the Working Party expressed concern regarding the consistency with GATT of the provisions contained in Article 5 of Annex II to the Agreement which required Spain to increase quotas for certain Community products, whether or not such increases would result in discrimination in favour of the Community and against other GATT contracting parties.

14. The parties to the Agreement held the view that Article XXIV of the GATT imposed an obligation on the member countries of a free-trade area to eliminate, in so far as possible, quantitative restrictions existing between them without necessarily extending such elimination to countries not members of the area. They therefore considered that the stipulations of the Agreement, providing for the increase of quotas in Spain, were fully consistent with GATT. In respect of trade with third countries, the Agreement did not stipulate the elimination of restrictions but the parties to the Agreement stated that it was certainly their intention to continue their liberal commercial policies in that respect. The representative of Spain added that his Government intended to continue enlarging the global quotas by 10 per cent a year. It was not the intention that the undertaking towards the Community should affect adversely the liberalization

erga omnes; on the contrary, he declared that it was the intention of his Government to extend to all contracting parties to GATT, as far as possible, any measure of liberalization in favour of the Community brought about by the working of the clauses of the Agreement.

15. As the issue was one which the Agreement raised in common with other regional agreements examined by the CONTRACTING PARTIES, and as the different views on the subject were well-known to the CONTRACTING PARTIES, members of the Working Party did not go further in the examination of the principles involved.

16. A member of the Working Party from a country with a large export interest in tobacco asked about the effect on Spain's tobacco imports of the inclusion of item 24.01 (unmanufactured tobacco) in list A and item 24.02 (manufactured tobacco) in list C, under Article 1, Annex II of the Agreement. He wished to know whether the Agreement would introduce any element of discrimination in Spain's tobacco imports. The representative of Spain said that tobacco was imported by a State Monopoly, which acted on purely commercial considerations. Since there was no import duty, the 60 per cent and 25 per cent preferences specified in lists A and C were percentages of zero and were themselves zero. Thus, the Agreement did not institute preferences in favour of EEC suppliers of tobacco, and no change in the present terms of importation were contemplated.

Paragraph 5(c) of Article XXIV

17. The members of the Working Party which took the general view that the Agreement should be considered as a preferential agreement rather than as an interim agreement leading to the formation of a free-trade area explained that the main reason for that opinion was that the Agreement did not contain a plan and schedule for the formation of such an area within a reasonable length of time, as required by paragraph 5(c). Since the Agreement contained no definite commitments to eliminate duties on any particular product or products now dutiable, it was not possible for the Working Party to make an independent judgment as to whether "substantially all" trade in products of the parties to the Agreement would eventually be freed of duty. In their view it was clear that the Agreement itself did not provide for the elimination of duties but only for partial tariff reductions over a period of not less than six years; i.e. the Agreement included a plan and schedule for preferential but not for duty-free treatment.

18. The parties to the Agreement pointed out that Article 1 contained a firm commitment that obstacles to substantially all trade should be eliminated. There were detailed provisions regarding action to be taken during the first six years and provisions to ensure the continued elimination of customs duties and other regulations of commerce on substantially all trade. In their opinion, since what was concerned was an "interim" agreement within the meaning of paragraph 5(c), there was no legal necessity and moreover it had not been realistic to fix already from the outset a detailed and complete plan and schedule for the achievement of free trade. More detailed and complete provisions would instead be established in due course, taking into account the experiences gained in the first stage. It was obvious that the action to be taken during the first period would set in movement a process which would lead to the attainment of free trade. The parties to the Agreement affirmed that it was an instrument whose objective, in relation with the economic imperatives of Spain and its calling to a European mission, was the formation of a free-trade area and which consequently would lead to the establishment of a free-trade area or a customs union.

19. Some members of the Working Party said that they appreciated the reasons why the parties to the Agreement had decided to postpone the drawing up of detailed provisions for the implementation of the second stage. They were confident that the arrangements that would in due course result would fulfil the requirements of Article XXIV.

20. Other members of the Working Party did not consider it obvious that preferential tariff reduction was a process that could not easily be halted or reversed short of complete tariff elimination; indeed the final steps to free trade might be more difficult than the earlier ones, particularly if the parties were not committed from the beginning to eliminate duties according to an agreed plan and schedule. In any case, although the difficulties involved in the fixing of a detailed time-table were appreciated, paragraph 5(c) unquestionably required a plan and schedule for the formation of a free-trade area within a reasonable time. The Agreement in its present form only stipulated that the first stage should last "at least six years"; nothing was said about the length of the second stage. In such circumstances they could not consider that the Agreement met the requirements of Article XXIV:5(c).

Paragraph 7 of Article XXIV

21. Members of the Working Party noted that paragraph 7(b) stipulated that the CONTRACTING PARTIES should make recommendations to the parties to a free-trade agreement if they found that the Agreement was not likely to result in the formation of a customs union or a free-trade area within the period contemplated by the parties to the Agreement or the period foreseen for the formation of the free-trade area was not a reasonable one. In the absence of a specific time period for achieving that purpose, it was obviously impossible in the case under discussion to judge its reasonableness. Hence the CONTRACTING PARTIES were deprived of one of the important safeguard provisions incorporated in Article XXIV.

22. The parties to the Agreement considered that as this was an "Interim Agreement" in the sense of Article XXIV:5(c), the provisions governing the first stage not only included a time-table for the tariff and quota dismantlement process to be carried out during the first stage, but also ensured that by the end of the first stage progress achieved in the dismantlement process would be such that one could foresee its completion within a "reasonable length of time" in conformity with Article XXIV:5(c) of the General Agreement. As regards the duration of the second stage, and considering the degree of economic development of Spain, the parties to the Agreement held the view that it would not be realistic to lay down such a duration in advance and in a specific way. The parties to the Agreement would decide before the end of the first stage, and having regard to the results achieved, the plan and schedule for the completion of the process of elimination of obstacles for substantially all the trade. In conclusion, the parties to the Agreement noted that the meaning of the term "reasonable length of time", which must be appreciated in conjunction with that of "interim agreement", had never been defined by the CONTRACTING PARTIES.

23. Other members said that they could not take a final position on the basis of the information available.

24. Some members of the Working Party considered it important for the CONTRACTING PARTIES to have regular reports on the operation of the Agreement to ensure that it would be possible to determine whether the Agreement progressed towards a free-trade area in accordance with the stated intentions. The representatives of the parties to the Agreement confirmed that such information would be provided.

Paragraph 8 of Article XXIV

25. The parties to the Agreement recalled that on the basis of the Agreement tariff dismantlement has been initiated as far as the EEC was concerned, in respect of 72 per cent of total imports from Spain and quota dismantlement affects 97.5 per cent of such imports. As regards Spain the corresponding percentages were 76 per cent and 89 per cent of total imports from the Community. It was noted that the figures for tariff dismantlement related both to dutiable products benefitting from reductions under the Agreement and to already duty-free products bound duty free by the Agreement.

26. Several members of the Working Party considered that little purpose could be achieved by a detailed discussion of trade coverage since no complete elimination of duties was provided for by the present Agreement. They merely wanted to stress that in their view the Agreement did not meet the criteria for a free-trade area or a customs union in the sense of paragraph 8.

27. A member of the Working Party said that it was understandable, because of the difference in economic development between the parties to the Agreement, that there was a need for special safeguard measures in the case of serious disturbances in the economy of either party, as provided for in Article 11 of the Agreement. He expressed the hope, however, that the rapid economic development in the past few years in Spain would make it possible to use such measures so sparingly that the aim of achieving full free trade would not be endangered. In reply to a question put by a member of the Working Party, the representative of Spain explained that no products subject to export duties in Spain were included in the figure for duty-free imports into the Community, given in the reply to question 18 in document L/3533.

General considerations

28. The members of the Working Party who for reasons outlined above, considered that the Agreement did not meet the requirements of Article XXIV were of the view that it was, instead, a preferential agreement incompatible with the General Agreement. They stressed that an essential function of Article XXIV was to safeguard the trading interests of third countries against discrimination emanating from incomplete economic integration.

29. Other members of the Working Party said that they were also concerned about the observance of the rules of Article XXIV. They considered, however, that in examining integration agreements it was essential to appraise realistically the intentions of the parties to the agreements in the light of the information given by them and to establish a procedure for examining continuously that the arrangements developed in conformity with the stated objectives. Against that background, they had found that the Agreement between Spain and the Community could be accepted provisionally under Article XXIV.

30. The parties to the Agreement, supported by other members of the Working Party, considered that the Agreement fully met the requirements of Article XXIV. They stated that the objective of the Agreement was clearly set forth in Article I of the Agreement. This objective, which was to form a free-trade area or a customs union, was not a mere statement of principle but a firm commitment undertaken by the parties. They noted further that in their view a restrictive interpretation of Article XXIV had not been followed on the occasion of the examination of other agreements which had not been found inconsistent with Article XXIV.

31. Having regard to the differences of view expressed on the legal issues involved, the members of the Working Party reserved their rights under the General Agreement.