

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

RESTRICTED

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ACP-EEC CONVENTION OF LOMÉ

Questions and Replies

Following the establishment by the Council in July 1975 of a Working Party to examine the provisions of the ACP-EEC Convention of Lomé, contracting parties were invited in GATT/AIR/1196 to submit questions in writing to the secretariat concerning the provisions of the Convention in relation to the General Agreement.

In response to the invitation a number of questions were received and transmitted in consolidated form to the parties to the Convention. These questions and the replies prepared and submitted by the parties to the Convention are reproduced hereunder.

Preliminary remarks

As the examination of the Lomé Convention commences, the parties to the Convention consider it important to underline that this agreement deploys a range of instruments established by common accord as a result of negotiations which related to specific circumstances and needs. The combined and complementary action of these instruments is directed towards achieving a development policy as comprehensive, consistent and effective as possible in the framework of economic relations between partners with different levels of economic development. It is in this sense that the Lomé Convention constitutes a "new model".

Trade co-operation, which is more specifically the subject of the GATT examination of the Convention, is only one of the instruments of this overall policy. To be considered fairly it ought not to be separated from this context.

The parties to the Convention are firmly convinced that the special economic development effort they are undertaking through and under the Lomé Convention is in line with international efforts in general and constitutes an additional and positive

contribution to those efforts as part of a dynamic whole. The particularly positive welcome with which the signing of the Lomé Convention was greeted by world opinion reveals, moreover, that it has been understood and acknowledged in this sense.

The parties to the Convention are convinced that the Contracting Parties will draw on this understanding and acknowledgement in examining the trade provisions of the Convention.

I. GENERAL

Question 1

In the notification of the Lomé Convention to the GATT (document L/4193) it is stated that the Convention "conforms with the obligations of the CONTRACTING PARTIES and complies fully with the objectives which govern and motivate the GATT".

- (a) Could the parties specify the obligations and objectives referred to?
- (b) Would the parties specifically indicate (1) whether the Convention is in accord with Article I of the General Agreement and (2) the specific Articles in the General Agreement in relation to which the Trade Arrangements under the Convention are justified?

Reply to questions 1(a) and (b)

The provisions of the General Agreement on which the parties to the Lomé Convention base the compatibility of their commitments under the Convention with their obligations under the General Agreement are explicitly set out in the notification of the Convention to the GATT (document L/4193, fourth, fifth and sixth paragraphs, and document L/4198). These provisions are contained in Articles I(2), XXIV and XXXVI, which must be considered side by side and in conjunction with one another.

The parties to the Convention would stress once again the fundamental agreement between the objectives assigned to the Convention and defined in its Preamble and the objectives pursued by the GATT, in particular those defined in Part IV. Since the objective of the Convention is to implement actions and measures aimed at improving standards of living and the economic development of less-developed countries, it cannot but be in line with the general objective of developing and establishing fairer and better-balanced international economic relations.

Question 2

According to GATT document L/4193, the EEC observes "the obligation to eliminate customs duties and other restrictive regulations of commerce as regards substantially all its trade with ACP States".

In view of this, is the Convention intended to create, and has it created, a free-trade area in the sense of Article XXIV of the GATT?

Reply

It is true, with regard to its own contribution to trade co-operation under the Convention, that the Community considered that as the economically more developed party, it should undertake appropriate obligations if the objectives set out in Article 1 of the Convention were to be attained and a better balance achieved in trade. In addition, the Community intended to retain, in respect of a number of countries situated in Africa, the Caribbean and the Pacific, the advantages of trade arrangements previously applied to them by the Community as originally constituted on the one hand and by the United Kingdom and Ireland on the other. The parties to the Convention are also anxious to encourage regional economic integration between developing countries through the Convention and its provisions. These considerations led the Community to see its own obligations in terms of conditions of free access to its market, as provided for in the GATT for the purpose of the establishment of a free-trade area.

Questions 3 and 4

If the answer to question (2) above is in the affirmative, what is the view of the parties to the Trade Arrangement on the relationship between Article XXIV:8(b) and the fact that the ACP countries are not required to assume the same kind of obligations as the EEC in respect of elimination of duties and other restrictive regulations of commerce?

If the answer to question (2) above is in the negative,

- (a) what is the view of the parties to the Trade Arrangement on the relationship with the most-favoured-nation principle, in case the treatment which the EEC grants to the import from the ACP countries or the treatment which the ACP countries grant to the import from the EEC are more favourable than those granted by the EEC or ACP countries to the import from the third contracting parties?

- (b) do the Parties to the Convention present this Convention as a request for a waiver under Article XXV of the GATT?

Reply to questions 3 and 4

It is in keeping with the spirit and letter of Part IV of the General Agreement that the ACP States, in view of their present development needs, are not required for the duration of the Convention to assume in respect of imports of products originating in the Community obligations corresponding to the commitments entered into by the Community. This in no way detracts from the validity and applicability of Article XXIV in respect of the Community. Furthermore, it places the Convention as such in a dynamic perspective of economic development in which the fundamental rule in Article XXIV fully retains its value of principle. For these reasons the parties to the Convention do not request the granting of a waiver for the Convention.

Question 5

Article 1 of Protocol No. 1 of the Convention defines, for the purpose of implementing the Convention, that the ACP States be considered as one territory and that working and processing carried out in the EEC be considered as having been carried out in the ACP States when final products undergo working or processing in the ACP States.

Will this arrangement not cause trade diversion by depriving the ACP States of the incentives to import the products from the third countries or the parts worked and processed in the third countries?

Reply

In general, the main purpose of rules of origin in the framework of preferential arrangements is to prevent trade diversion.

As regards their exports to the Community, however, it should be noted that the provision referred to does not deprive the ACP States of the possibility of importing and working up products and parts from third countries, provided that substantive processing - the only guarantee of real economic development - subsequently takes place on their territory.

In addition, the fact that the ACP States are considered in this respect as a single customs territory makes it easier for a product to contain components from third countries and nevertheless qualify for origin than if the rules applied to the territory of each ACP State individually.

Finally, the provisions on origin contained in the Lomé Convention affect only exports from ACP States to the Community and not their imports of products or parts destined for incorporation in products which are sold on their own market or exported to third countries.

Questions 6, 7 and 8

Is it the intent of Article 7 of the Convention that previous obligations of the ACP countries toward member States of the EC such as those contained in the Yaoundé Convention, the Arusha Convention, and those preferences specifically referred to in GATT Article I are hereby null and void? If so, do the various ACP countries intend to eliminate those specific preferences?

Are the ACP countries, which have been granting preferential treatment to United Kingdom products under the Commonwealth Preferential Scheme, required to grant the same preferential treatment under Article 7 of the Convention to the products from the other member States of the EEC?

According to Article 7 of the Convention and GATT document L/4193, the Community has not demanded reciprocity in its trade with the ACP States. According to this formula the ACP States would still have the option to accord preferential treatment to imports from the Community if they so wish. If this interpretation is correct, do any ACP-countries intend to accord such preferences?

Reply to questions 6, 7 and 8

The fourth paragraph of the notification of the Convention to GATT (document L/4193) stresses the concern for continuity and succession represented by the Convention with regard to the special arrangements which previously governed trade relations between the different member States of the Community and the various ACP States. The purpose of Article 7(1) is to specify the obligations of the ACP States under the Lomé Convention in this connexion, there is no obligation for the ACP States to grant preferences to the Community. This Article does not affect the provisions of Article I(3) of the General Agreement.

The ACP States regard the Community as a single customs territory. Consequently, the ACP States do not discriminate between member States in their Trade with the Community.

Question 9

With respect to Article 11:2, has the Community to date notified the ACP countries of the intention of concluding any preferential trade agreements? If so, with whom are agreements envisaged?

Reply

No.

Question 10

In the preamble to the Convention as well as in GATT document L/4193 the Convention is cited as a new model for relations between developed and developing States. Is it the intention of the European Communities to conclude similar arrangements with other developing countries, which are not members of the ACP-group? Do the Contracting Parties to the Convention contemplate the adherence of additional signatories?

Reply

The Community will continue to observe fully all the obligations regarding notification incumbent upon it under the General Agreement.

Articles 89 and 90 govern the conditions and procedures for the accession of non-signatory States to the Lomé Convention. The institutions of the Convention will decide on a case-by-case basis, at the appropriate time, on the response to be given to applications for accession. Any new accessions will be notified to the GATT by the parties to the Convention.

Question 11

How could exports from a developing country which is not a signatory to the Lomé Convention have access to the EEC market on a footing of equality with products from countries signatories to the Convention?

Reply

By definition, the advantages resulting from the Convention will be enjoyed only by the parties to the Convention between which they have been negotiated.

## II. PRODUCT COVERAGE

### Questions 12 and 13

Are the parties to the Convention prepared to notify to the CONTRACTING PARTIES to the General Agreement the specific products and currently applied trade measures which fall within the scope of Article 2, paragraph 2(a)(i) and paragraph 2(a)(iv) of the Convention? Are the parties to the Convention prepared to notify to the CONTRACTING PARTIES to the General Agreement changes that occur by invocation of Article 2, paragraph 2(b) of the Convention?

The Convention states that EC imports of certain agricultural products covered by the CAP from the ACP will be undertaken on more favourable terms than are applicable to imports from other countries.

- (a) What are the agricultural products that will be affected by the Convention?
- (b) What are the terms that the EC will apply to these imports?

### Reply to questions 12 and 13

The products and measures in question are covered by Council Regulation (EEC) No. 1599/75 of 24 June 1975 (OJ No. L 166 of 28 June 1975).

This Regulation is concerned mainly with the following products which are wholly or partly exempted from import charges (customs duties, levies): beef and veal, fish, crustaceans, fruit and vegetables fresh, chilled, frozen or processed, oils and fats, maize, millet, sorghum, rice, products processed from cereals and rice, unmanufactured tobacco, tapioca and other goods resulting from the processing of agricultural products.

### Question 14

Is it the specific intention of the parties that Article 7 of Title I, Chapter 1 be applied to the agreement on products within the province of the European Coal and Steel Community?

### Reply

Article 2 of the Agreement on products within the province of the ECSC clearly stipulates that the provisions of Title I, Chapter 1 of the Convention, which includes Article 7, apply to imports into the ACP States of ECSC products originating in the member States of the Community.

Question 15

Indicate, with relevant supporting data whether the EEC sugar production and reserves are adequate, or expected to be adequate in the near future, to cover the internal requirements of the EEC. If so, how will the Protocol on sugar to the Convention operate?

Reply

The provisions of the Protocol on ACP sugar form part of the measures established by the Lomé Convention regarding the ACP States' export earnings from commodities.

The recent trend in prices and quantities available on the international market for a large number of basic foodstuffs shows clearly that it is not possible to make forecasts which are sufficiently sound to be used as a basis for drawing operational conclusions.

In any event the functioning of the special Protocol on sugar will not be affected.

III. QUANTITATIVE RESTRICTIONS

Question 16

Does the Community intend to apply the provisions of Article 3:1 pertaining to quantitative restrictions to other countries on a most-favoured-nation basis in accordance with the provisions of GATT Article XIII?

Reply

The provisions of the Convention govern only relations between the Community and the ACP States.

IV. TITLE II OF THE CONVENTION:  
EXPORT EARNINGS FROM COMMODITIES

(Chapter 1 - Stabilization of export earnings)

Questions of a general nature

Questions 17 and 18

If third country trade interests - either export or import - are affected by the operation of the Stabex mechanism, will the parties to the Agreement undertake consultations in the GATT at the request of one or more Contracting Parties to the GATT?

Are the Contracting Parties to the Convention willing to consult with GATT Contracting Parties whose trade may be affected? Are the Contracting Parties to the Convention willing to incorporate agreed modifications from these consultations? How would the Convention be modified if that were required?

Reply to questions 17 and 18

The stabilization of export earnings was designed to be neutral as regards markets. This is borne out by the *ex post facto* nature of any action taken under the system. It could not therefore affect the trade interests of third countries.

In any event, the rights and obligations of the Contracting Parties with respect to consultations under the General Agreement cannot be modified by the Lomé Convention.

Question 19

What relationship exists between international commodity agreements covering certain of the products listed and the "Stabex" Arrangement?

Reply

The stabilization of export earnings is in no way incompatible with international commodity agreements. The system for stabilizing export earnings does not affect the functioning of such agreements but gives the ACP States additional assurance, particularly if export earnings fall as a result of a drop in production.

Question 20

Is it correct that the Convention does not involve explicit assurances of supply to the Communities? Does provision to monitor global exports of each commodity implicitly entail assurance of supplies?

Reply

Chapter 1 of Title II of the Convention does not involve any assurance - either explicit or implicit - of supplies to the Community.

Questions 21 and 22

What measures have been taken in the Stabex Arrangement to prevent transfer payments effecting changes in output which may tend to aggravate rather than alleviate problems of over-production and declining prices?

The transfer of resources to the beneficiary countries under the Stabex Arrangement may allow the beneficiary countries to maintain the production capability of the commodities while producers of the non-signatory developing countries would be forced to shoulder most of the adjustment to world market conditions. Are the contracting parties willing to take into account the effects of the Convention on third countries?

Reply to questions 21 and 22

The transfers granted are intended as partial compensation for loss of earnings and do not bear interest. Moreover, the beneficiary States are, within the limits and conditions prescribed in Article 21 of the Convention, required to contribute to the reconstitution of the resources made available to the system by the Community.

Any State which receives a transfer will decide freely and with complete sovereignty on the use to which such resources are to be put. There can be no doubt that the ACP States will use such resources in their best interests, which do not include over-production.

Question 23

Do the parties to the Agreement view the availability of statistical information as a hindrance to the Stabex Arrangement? If so, how do they propose to overcome the problem?

Reply

Any difficulties as regards statistics - which, according to the preparatory work conducted so far, should in any case be minimal - will be dealt with under the statistical and customs co-operation arrangements established between the Community and the ACP States.

Specific questions

Questions 24 and 25

Could the parties to the Convention give one example of how Article 17 paragraph 4 will operate? Would the Community stabilize the earnings from ACP State exports to third markets? Would the parties to the Convention consider such an arrangement an export subsidy in the sense of Article XVI of the General Agreement?

What criteria would determine a "special case" as mentioned in Article 17:4?

Reply to questions 24 and 25

Article 17:4 applies to five ACP States. Under the provision referred to, the system for stabilizing export earnings covers all exports of the products in question from the countries concerned, irrespective of destination. The parties to the Convention do not consider this arrangement to be an export subsidy within the meaning of Article XVI of the General Agreement.

The purpose of this provision is to stabilize export earnings of countries the bulk of whose exports is traditionally absorbed by markets other than the Community market and which are also among the least developed countries. These exports are important for the countries concerned but represent a small share in international trade in these products.

Question 26

Where the Stabex system applies to a product irrespective of destination, as provided under Article 17:4, the opportunity might be created for market penetration sales at low prices to third countries with the prior knowledge that the export earnings level will be supported by Stabex funds, effectively providing a form of subsidy for that product. What actions can or will be taken to eliminate the possibility of such subsidization occurring?

Reply

As stated in the reply to question 24, Article 17:4 does not constitute an export subsidy.

Furthermore, to assume that an ACP State would take advantage of the system for stabilizing export earnings to indulge in dumping is to credit it with an intention for which there is no evidence whatsoever.

It should also be noted that any State which indulged in such practices would penalize itself for the future, since the result would be a drop in its reference level.

Export subsidies will not solve the problem of developing countries which export raw materials, as their aim is to obtain better prices for such exports.

Question 27

What form will the certification that is required in paragraph 5 of Article 17 take? Will it be based on importation documents or export certificates?

Reply

Origin is certified in the manner laid down in Protocol No. 1.

Question 28

Under what conditions might the amount of the transfer be reduced as referred to in paragraph 4 of Article 18?

Reply

Article 18:4 is designed to cover a situation in which, owing to a shortfall in the total financial resources available for a given year, it would be necessary to reduce transfers.

Question 29

What is the meaning of the phrase "..., from each of the products considered individually, ..." in Article 19:2? Is it correct that there is no provision for aggregating individual commodity earnings totals to compute Stabex payments?

Reply

The passage referred to means exactly what it says, namely that each of the products is considered individually. The total amount of earnings for each product is taken into consideration only in order to determine whether the dependency threshold has been reached or exceeded.

Question 30

What kind of trade policy measures could be deemed to "adversely affect exports to the Community in particular" in Article 19:4?

Reply

Trade policy measures which may be regarded as "adversely affecting exports to the Community in particular" could be restrictions directed particularly at exports to the Community or to one or more Member States.

Question 31

How is "significant change" in paragraph 4(b) of Article 19 defined and for what purpose is paragraph 4?

Reply

The purpose of Article 19:4(b) is to enable account to be taken of significant changes in the trend of total exports in the requesting ACP State. This means, for example, that if a country processes on the spot an increasing volume of the primary product, consultations will take place between that country and the Commission with a view to determining what conclusions should be drawn from the drop in exports of the primary product which might result from the increase in the volume processed.

V. REPORTING AND NOTIFICATION

Question 32

Are the Contracting Parties to the Convention willing to submit a yearly report to the CONTRACTING PARTIES of the General Agreement?

Reply

The parties to the Convention are prepared to provide the Contracting Parties to the General Agreement with a periodic report on the implementation of the Convention under the information procedure generally applied in connexion with such arrangements.

Question 33

Will the parties to the Agreement also communicate their respective customs tariff to the GATT at the same time as to the Council of Ministers (Article 8)?

Reply

The Community customs tariff is available to the GATT. The ACP States will continue, for their part, to fulfil their GATT obligations in this regard.

Question 34

Is the Community prepared to notify to the CONTRACTING PARTIES of the General Agreement the measures falling under Article 5?

Reply

The Community is prepared to notify the GATT of the measures referred to in Article 5 of the Convention if arrangements to this effect involving the same obligations for all the Contracting Parties are made under the auspices of the General Agreement.

VI. STATISTICAL INFORMATION

EC trade

Question 35

What is the proportion of total trade to the EC from the ACP countries which is duty free on an m.f.n. basis?

Question 37

What was the total value of imports into the EC of products originating in the ACP, showing separately imports from the Yaoundé Convention and Arusha Agreement countries, in each of the three most recent years for which statistics are available?

- (a) What value and percentage of the above were comprised of agricultural products?
- (b) What value and percentage of the above were comprised of industrial products?

Question 39

What value and percentage of (1) agricultural and (2) industrial imports into the EC from the ACP will be subject to preferential tariffs?

Question 40

What was the total value of imports into the EC from ACP countries of agricultural products covered by the Community's Common Agricultural Policy, imports which will receive more favourable terms than are applicable to imports from other countries? Please provide statistics for the three most recent years for which figures are available.

Question 41

What was the total value of EC imports from ACP countries of products listed in Annex II of the Treaty of Rome, in each of the three most recent years for which statistics are available.

Reply to questions 35, 37, 39, 40, 41 (see table below)

The figures used correspond to a partly "fictitious" application of the Lomé régime in relation to trade flows for the latest three years for which statistics are available.

It has not been possible to establish precise and detailed data in respect of the countries of the Yaoundé or Arusha Conventions for the EEC (Nine).

Question 36

What was the total value (and percentage) of EC exports to the ACP countries, showing separately exports to the Yaoundé Convention and Arusha Agreement countries, in each of the three most recent years for which statistics are available?

Reply

	<u>EEC exports to the ACP States</u>	(\$'000)
1972	4,458,065	or 6.5 per cent of total EEC exports
1973	5,314,418	or 5.3 per cent of total EEC exports
1974	7,025,332	or 5.2 per cent of total EEC exports

Imports from ACP States		(\$' 000)			
		1972	1973	1974	%
A.	Total imports	5,371,135	7,140,265	12,245,376	%
B.	Duty free on n.f.n. basis B/A	3,376,990	4,213,198	8,667,526	71
C.	Agricultural products C/A	1,765,752	2,212,101	3,130,111	26
D.	Agricultural products subject to preferential régime D/C	1,116,721	1,609,887	2,038,515	65
E.	Industrial products E/A	3,605,383	4,928,164	9,118,265	74
F.	Industrial products subject to preferential régime F/E	877,424	1,317,180	1,439,335	17
G.	Common Agricultural Policy products imported under preferential régime	755,594	956,458	1,212,100	
H.	Products listed in annex II to the Treaty of Rome	1,625,815	2,101,905	2,878,601	

Question 38

What was the value (and percentage of total imports) in respect of the following categories of dutiable imports into the EC of products originating in the ACP in each of the three most recent years for which statistics are available:

- (a) Imports of products on which customs duties and levies were not imposed?
- (b) Imports of products for which customs duties and charges having equivalent effect are to be reduced?
- (c) Imports of products for which tariff quotas or quantitative restrictions are not to be eliminated?

Reply

The detailed data necessary for this reply is available only for 1974.

ACP exports to the EEC

(\$'000)

- (a) 3,511,387 - products on which customs duties and levies were not imposed.
- (b) 3,474 - products for which customs duties and charges having equivalent effect are to be reduced.
- (c) 21,373 - products subject to tariff quotas.

ACP trade

42. What was the total value (and percentage) of ACP exports to the world and to the EC, showing separately exports by the Yaoundé Convention and Arusha Agreement countries, in each of the three most recent years for which statistics are available?

43. What was the total value (and percentage) of ACP imports from the world and from the EC, showing separately imports by the Yaoundé Convention and Arusha Agreement countries (from the world and from the EC), in each of the three most recent years for which statistics are available?

44. What was the total value of imports into the ACP of products originating in the EC showing separately imports by the Yaoundé Convention and Arusha Agreement Countries in each of the three most recent years for which statistics are available?

- (a) What value and percentage of the above were comprised of agricultural products?

- (b) What value and percentage of the above were comprised of industrial products?

45. What was the value (and percentage of total imports) in respect of the following categories of dutiable imports into the ACP of products originating in the EC in each of the three most recent years for which statistics are available?

- (a) Imports of products on which customs duties and levies were not imposed?
- (b) Imports of products for which customs duties and charges having equivalent effect are to be reduced?
- (c) Imports of products for which tariff quotas or quantitative restrictions are not to be eliminated?

46. What value and percentage of (1) agricultural and (2) industrial products will be free to enter the ACP from the EC without payment of duties or subject to other restrictive regulations of commerce?

47. What was the total value of ACP exports to the world and to the EC of products listed in Annex II of the Treaty of Rome, in each of the three most recent years for which statistics are available.

Questions 42-47

With regard to questions 42-47, it has been indicated to the secretariat that every effort is being made to provide the statistical information required to the extent that it is available at the earliest possible date.