

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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AGREEMENT BETWEEN THE EFTA COUNTRIES AND SPAIN

Report of the Working Party

1. The Working Party was established by the GATT Council of Representatives on 29 January 1980 to examine, in the light of the relevant provisions of the General Agreement, the Agreement between the EFTA countries and Spain concluded on 26 June 1979, and to report to the Council (C/M/138).

2. The Working Party met on 17 September, 3 October and 15 October 1980, under the chairmanship of Mr. A. Hussain (India). It had available the texts of the relevant legal instruments referred to in paragraph 1 of L/4867 which contained the communication from the Depository Government (Sweden), as well as the replies to questions which had been asked by contracting parties (L/4986 and Addendum 1 with Corrigendum).

I. GENERAL STATEMENT

3. In his opening statement, the representative of Sweden as spokesman for the parties to the Agreement recalled that the Agreement, which was concluded between the EFTA countries and Spain on 26 June 1979 and entered into force on 1 May 1980, consisted of three separate sets of texts which all formed part of the Agreement (the Agreement itself together with the Annexes and Lists, a Record of Understandings as well as bilateral agreements concluded in accordance with Article 9 of the Agreement concerning trade in agricultural products). As a short background description he further recalled that in 1970 the European Economic Community and Spain had concluded an Agreement the purpose of which was to attain free trade between the parties. The first step towards this objective had implied considerable duty reductions on both sides. About two years later the EFTA countries had concluded trade agreements with the European Communities leading to full free trade in substantially all originating products from 1 July 1977. In 1977 Spain had applied for membership in the EC, a request which was at present subject to negotiation. A consequence of the accession of Spain to the EC would be that the free trade between the EFTA countries and the EC would be extended also to Spain immediately upon her accession, unless arrangements for transitional measures were made. This background had in many respects influenced the content of the individual provisions of the Agreement. The first tariff cuts provided for thus coincided with the level of liberalization obtained so far under the 1970 Agreement between the EEC and Spain. The parties had also agreed that any further liberalization of trade under the 1970 Agreement would be reflected in their relations. However, the Agreement between the EFTA countries and Spain was not designed only to reflect developments under the 1970 Agreement but contained provisions which, irrespective of such developments, were intended to ensure the creation of a free-trade area in accordance with the provisions of Article XXIV of the GATT.

4. The spokesman for the parties pointed out that the objective of the Agreement, as set out in its Article 1, was to reduce progressively and eliminate the obstacles to substantially all trade between the EFTA countries and Spain in products originating in an EFTA country or in Spain. The Agreement was a self-contained legal instrument established in accordance with the provisions of Article XXIV of the GATT and covered trade in industrial products, certain fish and fishery products, and a number of processed agricultural products. In addition, the bilateral agreements to facilitate trade in agriculture negotiated between Austria, Finland, Norway, Portugal, Sweden and Switzerland on the one hand and Spain on the other covered a number of agricultural products of major importance to the parties concerned. As a first step towards the said objective the Agreement provided for tariff cuts on industrial products generally equal to those contained in the 1970 Agreement EEC-Spain. The EFTA countries had thus reduced their import duties on almost all industrial products by 60 per cent on 1 July 1980, except for Portugal for which there were special provisions. On a few sensitive products the reduction was either 30 or 40 per cent. At the same time Spain had reduced duties on some industrial products imported from these EFTA countries by 60 per cent and on a large number of industrial products by 25 per cent. In addition to these important steps towards attaining the objective of the Agreement, paragraph 2 of Article 3, the so-called "dynamic clause", provided for further steps to be taken towards the attainment of that objective. In the first place the possibilities of taking further measures should be examined annually. Moreover, a comprehensive examination of the Agreement with a view to achieving substantial progress in the further elimination of obstacles to trade was to take place not later than 1982. These commitments of the parties constituted an efficient plan for the formation of a free-trade area.

5. The spokesman for the parties went on to explain that the Agreement contained a general prohibition against quantitative restrictions on imports. The exceptions to the general rule on the EFTA side were limited to a few products on which the EFTA countries were entitled to apply such restrictions under their free-trade Agreements with the EC. The exceptions on the Spanish side implied that Spain from the outset might maintain the restrictions at present applied to the EC. The Agreement envisaged, however, the progressive elimination of these restrictions. The special provisions governing trade between Portugal and Spain took account of the fact that Spain's industry was larger and more varied than that of Portugal. During a first phase, lasting four years, Portugal would therefore in most cases reduce tariffs less sharply than the reductions vis-à-vis Spain agreed by the other EFTA countries, whereas Spain would give Portugal greater tariff reductions than those granted to other EFTA countries. A second phase was intended to lead to the elimination of all obstacles to trade between Portugal and Spain.

6. The Joint Committee established to administer the Agreement had met twice. Apart from deciding to apply from 1 July 1980 the tariff cuts referred to in paragraph 4 above it had also taken a decision concerning the basic duties from which the EFTA countries should begin their cuts. According to the Agreement these basic duties would be the most-favoured-nation rates in force in the individual EFTA countries on 1 January 1978 on their imports from third countries. As a consequence of the above-mentioned decision, however, for products on which tariff cuts resulted from the MTN the lower rates would be the basis on which the EFTA countries would make their reductions. For its part Spain had based the tariff cuts on the customs duties applied at any given time.

7. In concluding his opening remarks, the spokesman for the parties pointed out that a study of the practice of GATT showed that the borderline between the two legal concepts of free-trade agreement and interim agreement was not quite distinct. The Agreement certainly fulfilled the requirements for an interim agreement; its provisions, notably those of paragraph 2 of Article 3, met the requirements of Article XXIV of the General Agreement for a plan and schedule for the formation of a free-trade area. Moreover, the Agreement, in important respects, contained provisions on trade liberalization which went beyond what was required if the Agreement were to be only an interim agreement in the sense of paragraph 5(c) of Article XXIV.

II. QUESTIONS AND REPLIES

1. General considerations

8. Referring to questions 1-5 one member of the Working Party noted that the Agreement provided only an expectation that at some point in time the duties and other regulations of commerce would be eliminated but no specific provisions existed in this respect. There was a great difference between an expectation and a specific plan and schedule which in his view would be required in order for the Agreement to be compatible with Article XXIV of the GATT.

9. The same concern regarding the compatibility of the Agreement with Article XXIV was also expressed by other delegations. One of these noted that in the case of an interim agreement GATT required a plan and schedule. Another member stated that it appeared from the replies given that the free-trade status would be achieved only when Spain joined the EC, rather than under the particular EFTA/Spain Agreement. In the light of the "reasonable length of time" requirement referred to in Article XXIV:5(c) the question therefore arose what was the current time perspective in which Spain's accession to the EC might take place. Yet a reason for concern was the fact that the time span within which the achievement of free trade took place would be affected by possible transitional arrangements which were or

could be envisaged. Two members understood the so-called "dynamic clause" only to contain a commitment to consider - not actually to take - further liberalization measures in trade between the parties. They also enquired what particular elements of the Agreement the parties had referred to as going beyond the requirements laid down for an interim agreement.

10. The spokesman for the parties reiterated that Article 1 of the Agreement was a firm commitment to reduce and eliminate the obstacles to substantially all the trade between the parties. Article 3:2 instructed the parties to work towards these objectives, and not later than 1982 make a comprehensive review of the situation, with a view to increase the coverage and the depth of the Agreement. These two Articles, read together, thus contained a binding commitment to eliminate obstacles to substantially all trade as well as binding provisions for the necessary procedure in order to achieve the fulfillment of this commitment. As to the accession of Spain to the EC, this would lead to the total elimination of obstacles to trade between the EFTA countries and Spain, the only question in this connexion remaining being the timing. From the drafting history of the GATT it seemed clear to him that so long as a definite decision had been made to form a free-trade area and as long as the elaboration of details was actually in process, there should be no rigid application of the most-favoured-nation clause.¹ The practice in the GATT has thus been quite clear: agreements presented under Article XXIV had not always contained a detailed plan and schedule for attaining the objective of free trade. This was also the case for the Agreement in the sense that it did not set a fixed date for such achievement. It contained, however, provisions for attaining the objectives of Article 1 within a very short period of time. Therefore, in the view of the parties to it, the Agreement was fully in conformity with Article XXIV of the General Agreement. Also, the Agreement contained a comprehensive set, for instance, of the rules on competition, which were necessary for the operation of a free-trade area. No additional agreements or amendments were necessary in this respect. Therefore, while the parties to the Agreement had been willing to treat it as an interim agreement, they had also pointed out that it went beyond the requirement for such an agreement.

¹Reference was made to Jackson: "World Trade and the Law of GATT", (1969) page 606.

11. One member of the Working Party agreed that similar free-trade agreements which had been examined in the GATT had not always provided for very specific plans and schedules. Because of this fact, however, divided views had been expressed; the present discussion reflected a further disagreement on this point between the parties to the Agreement and other members of the Working Party. Another member of the Working Party stated that past practice was not necessarily a good guide to a proper interpretation of the General Agreement. This would particularly apply to Spain's future accession to the EC and its implications for third country trade. The impression should not be created that in not pressing hard on certain aspects of the Agreement between Spain and EFTA one was necessarily accepting certain matters when it came to Spain's future accession to the EC. Questions 6 and 7 were in this connexion of quite considerable relevance.

12. In response to members which, in reference to reply 6, asked for an assurance on this point, the spokesman for the parties confirmed that the Agreement in the view of the parties to it, would not retard or hinder the further global trade liberalization, an aim adhered to by the governments in question.

2. Trade coverage

13. Concerning the special arrangements between Spain and Portugal, the question was raised whether any time-table was envisaged for the complete application of free trade between these two countries. In reply the spokesman for the parties stated that two phases were envisaged and that a final time schedule will be established under the provisions of paragraph 12 of Annex P. Certain conditions in paragraph 12 made it impossible to give a precise time schedule at the moment. The spokesmen for both Portugal and Spain expressed their preparedness to make all necessary information on this matter available to interested contracting parties.

14. One member of the Working Party stated that while the detailed data on trade coverage which had been put forward were highly appreciated, they were only marginally relevant to the question of the legal obligations under the GATT because of the lack of a specific plan and schedule. Similar views were expressed by two other members, one of them observing that between 5 and 30 per cent of EFTA imports from Spain were not covered by the Agreement and that there were significant gaps as to the coverage of agricultural products.

15. The spokesman for the parties stated that although the precise meaning of "substantially all the trade" was nowhere defined, it was clear that it meant less than all trade. Given the fact that very close to 90 per cent of all the trade between the EFTA countries and Spain was covered by the Agreement at its initial stage and that there was a commitment by the parties to go further, there was no doubt in his mind that the GATT obligations were

fulfilled. The fact that the agricultural agreements did not cover all trade in that sector was not relevant in this connexion, as one could not approach an agreement of this kind on a sector-by-sector basis. The GATT required a coverage of "substantially all the trade", not "trade in substantially all products"; agricultural trade would have to be seen as part of and a contribution to the total coverage.

3. Bilateral agreements on agriculture

16. One member of the Working Party stated that his government did not consider a network of bilateral agreements as being consistent with the purpose and intent of Article XXIV and that such arrangements were inconsistent with other provisions of the General Agreement.

17. Another member of the Working Party, noting that question 21 referred to the same sort of matters as did questions 6 and 7, reiterated his view that if and when Spain acceded to the EC, the current agreement would be superseded by a free-trade agreement between Spain as a member State of the EC and the EFTA members. Although the answers given to questions 6, 7, 21 and 22 were acceptable in relation to the EFTA-Spain Agreement, it should be borne in mind that it formed part of an evolving process with implications for the trade of other contracting parties. In particular, after accession, Spain presumably would be applying variable levies against agricultural imports from contracting parties not members of either the EC or EFTA.

18. Two members of the Working Party, referring to question 27(a) and the reply thereto, asked why it had been felt necessary for Spain to undertake to purchase minimum amounts of certain agricultural produce as long as the bilateral agreements stated as a condition for this commitment that sales should take place under normal market conditions. It was further asked whether the concept of "margins of preference" used in questions 27(d) and 28 was identical or not to "duty reductions" used in the replies given and what specific measures might be undertaken following the general review in 1982 to move the parties closer to achieving the objectives of the Agreement.

19. The spokesman for the parties stated that from the parties' point of view the replies given to the questions mentioned were correct, because what would happen as a result of Spain's accession to the EC would be entirely independent from and not affected by the Agreement under consideration in this Working Party. The spokesman for Spain recalled that his Government had indicated its desire to participate actively in the process of trade liberalization emanating from the various Agreements negotiated under the Multilateral Trade Negotiations. This fact was relevant to most of the questions which had been raised concerning the Agreement. On the particular point concerning purchases of butter dealt with in question and reply 27, the circumstances had not changed since the Agreement between Spain and the European Economic Community had been discussed in 1971. The bilateral

purchase agreement on butter in connexion with the EFTA/Spain Agreement was subject to the fact that suppliers of the EFTA country in question offered normal trade conditions. Consequently, Spain's purchases would take place on non-discriminatory conditions. Moreover, the Spanish authorities had indicated the intention to accede as soon as possible to the International Arrangement on Dairy Products. Replies 27(d) and 28 were also explained and confirmed.

4. Quantitative restrictions, licensing and safeguards

20. In response to requests for clarifications made by two members of the Working Party with respect to questions 29 and 31 and the replies thereto, the spokesman for the parties stated that no preferences in respect of quantitative restrictions were presently maintained between Spain and the EFTA countries. On the other hand, nothing excluded such a possibility in the future. In this connexion the EFTA countries maintained that Article XXIV permitted the parties to a free-trade agreement to remove restrictions among themselves at a faster rate than against third countries. The parties intended to continue a liberal trade policy which would mean a further reduction of quantitative restrictions also vis-à-vis third countries.

21. In reply to a question raised concerning reply 30, whether safeguard measures requiring the imposition of quantitative restrictions would conform with Article XIII of the GATT, the spokesman for the parties stated that such measures under the Agreement would be in conformity with the General Agreement. One member of the Working Party stated that safeguard measures taken under Article XIX of the GATT required restrictions to be placed on imports from all sources.

22. A clarification was sought concerning reply 32, as to whether an eventual liberalization of fish imports into Spain would apply equally to all contracting parties. The spokesman for the parties recalled that the Agreement contained provisions for the liberalization of licencing régimes. While the intention would be to pursue further liberalization on a global basis it was fully compatible with the General Agreement to liberalize quantitative restrictions at a faster pace between the parties than towards third countries. The spokesman for Spain stated that the agreement on fish with the country raising the matter was not affected by the provision in question, which did not intend to create any prejudice to third countries. Furthermore the Spanish Government's intent was to extend as far as possible liberalization measures to other contracting parties.

23. In reply to a question whether it could be concluded from reply 33 that measures taken for balance-of-payments reasons would be applied on an m.f.n. basis, the spokesman for the parties confirmed that any such measures would be consistent with the GATT. One member, observing that there had been differences of opinion as to what was consistent with the GATT in this respect, recalled that his government's view was that such measures had to be applied to all contracting parties.

24. In reply to a question concerning reply 36 the spokesman for the parties confirmed that the purpose of the Articles mentioned therein was to provide for measures in relation to the parties to the Agreement which under the General Agreement were covered, inter alia, by Articles VI, XII, and XIX.

25. Two members of the Working Party expressed concern about origin rules in free-trade agreements against the background of considerable practical problems which had arisen because of such rules in other Agreements. One of these members sought assurances that the rules in the present Agreement would not cause trade problems. The other member, referring to the reply to question 39, did not share the view that origin rules could not be restrictive regulations of commerce within the meaning of Article XXIV:5(b). The views of his government in respect to the rules of origin in the agreements between the EC and the EFTA countries were fully set forth in the reports of the GATT working parties which had examined these agreements. Since the rules of origin in the Agreement were essentially the same as those contained in the agreements between the EC and the EFTA countries, his government's views with regard to them were the same.

26. The spokesman for the parties stated that rules of origin were necessary because without them it would be most difficult to implement an Article XXIV agreement. These rules were not of a restrictive character and were formulated so as to make them as simple as possible for customs authorities as well as trading partners. There were no objective criteria available in the GATT to evaluate rules of origin and their effects on trade but if problems arose, the parties to the Agreement were ready to take into account any detailed evidence of export losses by third-country traders and would consider carefully any observations about possible damaging effects of these rules; for such complaints, procedures existed in the GATT.

III. CONCLUSIONS

27. Some members of the Working Party were of the view that the Agreement did not meet the requirements of Article XXIV:5(c) since the tariff reductions foreseen were only of a limited nature and no specific plan and schedule was foreseen for the achievement of free trade. They were furthermore of the opinion that also the requirements of Article XXIV:8(b) were not met because an important sector of trade between the parties was only to a small extent covered by the Agreement. Moreover, in their view the strict rules of origin in the Agreement would limit the scope of free trade in a manner inconsistent with the requirement of Article XXIV:8(b) and would raise barriers to the trade of third countries contrary to the obligations of Article XXIV:5(c). They noted, however, that the parties would carry out a comprehensive examination of the Agreement not later than 1982 and that further developments including the outcome of that review could make the Agreement more consistent

with the General Agreement. They were therefore of the opinion that the parties to the Agreement should, as soon as possible after the general review foreseen for 1982, provide a report containing relevant information on the further developments under the Agreement, including in particular changes which relate to those aspects of the Agreement noted above.

28. The parties to the Agreement were of the view that the Agreement was fully in conformity with Article XXIV. Article 1 of the Agreement stated clearly the objective to eliminate the obstacles to substantially all the trade, and an important first step of duty reductions had already been taken. Moreover, Article 3(2) contained a binding commitment for the parties to take the necessary remaining steps for attaining the objective within a reasonable period of time. These elements no doubt constituted a plan and a schedule as required under Article XXIV:5(c). As to the question of trade coverage they pointed out that a 90 per cent coverage was more than had been the case with other similar agreements examined previously in GATT. Concerning the rules of origin the parties to the Agreement stated that such rules were necessary in a free-trade arrangement. The purpose of the rules was to prevent deflection of trade and not to limit the scope of free trade nor create obstacles to third country exports.

29. The Working Party concluded that the parties to the Agreement would submit biennial reports in accordance with normal GATT practice. The first report would be submitted after the comprehensive review under Article 3(2) of the Agreement and contain information on that review, including relevant aspects in the GATT context.

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