

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/5124

10 March 1981

Limited Distribution

Original: English

EUROPEAN COMMUNITIES - ACCESSION OF GREECE

Request by Australia for the Establishment of a Panel in respect to the Relevance of Variable Levies to Article XXIV

The following communication dated 6 March 1981 has been received from the Commission of the European Communities.

The European Community has taken note of the request of the Australian authorities for a panel to be established to consider certain matters in relation to Article XXIV and variable levies (L/5117). No bilateral consultation has taken place between the Community and Australia on this subject before the submission of this request.

In the following comments the Community wishes first to address certain points in the Australian document with regard to the Community's attitude to these matters; and second to offer its views on the issue of substance.

A

1. According to the Australian submission, the Community "has maintained that the Working Party has no mandate to examine the effects of its Common Agricultural Policy on trade with third countries" (L/5117, paragraph 2). This is not a statement of fact, as will be evident from the records of the Working Party on Greek Accession.

2. Furthermore, a statement is attributed to it that "its variable levies on agricultural products are not duties or other regulations of commerce in terms of paragraph 5 of Article XXIV of the GATT and are therefore not relevant to the CONTRACTING PARTIES' consideration of its regional arrangements under Article XXIV, paragraph 5. Again, this point is easily clarified: the Community view is that "duties and other regulations of commerce" in the agricultural sector are unquestionably relevant to any examination of an agreement under Article XXIV:5(a), and we believe no contracting party could hold a contrary view. As regards the first part of the statement, the Community view is that variable levies are covered by the phrase "duties and other regulations of commerce". Neither of these points has so far been discussed by the Working Party on Greek Accession.

3. With regard to question 4 in the Australian submission, whether Article XXIV:7(a) requires the parties to a Customs Union to provide information on "duties and other regulations of commerce", including information on variable levies, the Community view is that, as stated in the text of this paragraph, the parties to a Customs Union "shall make available ... such information ... as will enable [the CONTRACTING PARTIES] to make such reports and recommendations ... as they may deem appropriate". The question may be raised whether the CONTRACTING PARTIES do in fact need as much detailed data as the Australian authorities appear to consider necessary in order for the Working Party to carry out its work under Article XXIV:5(a) and for it to reach appropriate conclusions on the conformity of the enlarged Community with the provisions of this paragraph. In any event, the Community is ready, as it has always stated, to supply the basic information on the rates of variable levy applicable for any product and for any period of time that the Working Party may require.

B

4. As regards the substance of the matter, the European Community considers that the third question raised by Australia - the means by which the incidence of duties and regulations of commerce may be calculated - is a matter of well-established difficulty. As regards the measurement of the incidence of duties, this is no doubt possible and certain conventional methods have long been accepted - although on a rigorous and academic approach it may be questioned how accurate the results of this measurement are. However, the measurement of the impact of "other regulations of commerce" is a matter on which there is no single accepted approach and it will not be easy to develop one rapidly in order for it to be used for comparison in the case of Greek Accession. Such a method would need to be applicable to a wide variety of types of measure including, for example, quantitative restrictions and State trading, and it would need to analyse and quantify a wide number of different factors in connexion with such measures.

5. In this connexion I would recall the comments of the Chairman of the 1972-73 Working Group on this matter. In his final remarks in the GATT Council, he spoke of his "disappointment that the Working Party was not able to agree on the ways and means to assess the general incidence of the duties and regulations of commerce before and after the formation of the Customs Union in question"; and he added, as a personal explanation, that he felt that the vagueness and ambiguity of the provisions of Article XXIV was one contributing factor to the differences of view in the Working Party on how to analyse the situation in terms of Article XXIV:5.

6. The European Community has therefore proposed to the Working Party a different and somewhat simpler approach to the examination under Article XXIV:5(a) which would, in its view, facilitate the rapid development of some general conclusion. This consists in examining Greek imports prior

to Accession to determine the volume of trade previously subject to bound duty rates which would remain bound (at the same, or at higher or lower, duty rates) or would become unbound, as well as the volume of trade previously not bound which would remain not bound or be bound after Accession. Account would also be taken of other measures taken to liberalize access to the Greek market. Under this approach the detailed calculation of the incidence of particular regulations of commerce in the enlarged Community, or in Greece prior to Accession, would not be required in order to reach a judgement whether the broad provisions of Article XXIV:5(a) had been respected.

7. It is clear that a rapid conclusion of the examination under Article XXIV:5 would also be favourable to an early start on the negotiations envisaged under Article XXIV:6.

8. The question of substance which is before the Council therefore seems to be:

- either to proceed to a very detailed analytical examination of various measures covered by "other regulations of commerce" as Australia seems to be suggesting;
- or to accept the simplified approach which the Community has proposed which, in terms of making the assessment required by Article XXIV:5, would lead to a result in our view which would certainly not be any more favourable to the enlarged Community than the alternative.

9. Since there does not appear to be any dispute on the premises which underly the Article XXIV:5 exercise, and since the European Community would be ready to participate even in a detailed technical examination, if this is what the Council desires, the supplementary point to be decided would be whether it is appropriate to set up a panel or whether the examination could not be as well undertaken by the existing Working Party, if necessary meeting in a technical group.