

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## REPORT OF THE WORKING PARTY ON THE SECOND ACP-EEC CONVENTION OF LOME

1. The Working Party was established by the Council of Representatives at its meeting of 10 March 1981 (C/M/146) "to examine, in the light of the relevant provisions of the General Agreement, the Second ACP-EEC Convention signed at Lomé on 31 October 1979, and to report to the Council".

2. The Working Party met on 23 and 24 February 1982 under the Chairmanship of Ambassador T. O'Brien (New Zealand). Membership of the Working Party was open to all contracting parties wishing to serve on it; ACP States not GATT contracting parties could be represented by observers.<sup>1</sup>

3. The Working Party had before it, as background material, a communication from the Permanent Delegation of the Commission of the European Communities transmitting the text of the Second ACP-EEC Convention of Lomé (L/5098), communications from the Chairman of the ACP Committee of Ambassadors in Brussels (L/5176 and L/5272), and questions put by a number of contracting parties and the replies thereto provided by the parties to the Convention (L/5273).

4. In an introductory statement, the representative of the European Communities emphasized the importance of continuity in the pursuit of innovative policies of international cooperation and trade liberalization between developed and developing countries. He said that, like the first Convention of Lomé, the new Convention put into force a series of complementary instruments aimed at giving expression to a development policy as complete, coherent and effective as possible in the framework of economic relations between partners at different levels of economic development. The new Convention contained a number of improvements and innovations which had been determined in the light of experience with the operation of the first Convention. The part of the Convention that dealt with trade cooperation (Title I) gave rise by its nature to an examination in the context of GATT. However, it should be borne in mind when undertaking this examination that the trade provisions were but one part of a broader development policy.

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<sup>1</sup> A list of representatives has been circulated as Spec(82)16.

5. He said that the parties to the Convention were convinced that the particular effort of economic and social development cooperation that they were undertaking under the Convention was in line with, and contributed positively to, the general efforts being pursued at the international level in this respect. The main modifications negotiated in the new Convention relating to trade concerned above all provision for increased possibilities to export to the Community certain agricultural products and foodstuffs and improvements to the mechanisms and procedures in regard to safeguards aimed at forestalling potential difficulties through greater cooperation and consultation among the different parties to the agreement. The representative of the European Communities emphasized the greater importance accorded throughout the Convention to special mechanisms and provisions in favour of least-developed, land-locked and island ACP countries. Other changes included the improvement of the STABEX system by the introduction of a mechanism known as SYSMIN concerning mineral products and the reinforcement of financial provisions aimed at assisting regional integration among ACP States. The new Convention, which was based on the same economic and legal provisions as the first Convention, enabled the institutionalization between partners in the South and North of a unique model of contractual cooperation that was contributing to the development of a more just and balanced international economic order.

6. The spokesman for the ACP States said that the Second Convention of Lomé had entered into force on 1 January 1981 for a period of five years. The new agreement was based on the experience obtained by EEC member States and ACP States under previous Conventions. It was a dynamic instrument of cooperation covering various aspects such as the stabilization of export receipts, industrial cooperation, financial and technical cooperation, agricultural cooperation and trade cooperation. In regard to trade cooperation, the Second Convention represented essentially a continuation of the first Convention. In this respect, it was an example for relations between developed and developing countries that was compatible with the aspirations of the international community for a more just and balanced international economic order. The Convention facilitated the efforts of the poorest countries in the world to secure the better welfare of their peoples. While a certain number of improvements and innovations had been effected, no fundamental modifications to the structure of ACP-EEC trade relations were being made; they remained almost unchanged from those provided for in the first Convention. He emphasized that the new Convention in no way prejudiced the interests of third countries, in particular, third developing countries. He was convinced that the provisions of the Convention were in conformity with the development needs of the developing countries in general and of the ACP countries in particular and were consistent with the principles contained in Part IV of the General Agreement.

7. A member of the Working Party said that he recognized that the development objectives and principles underlying the Convention were ones that should be supported and that the examination of the arrangement should be conducted in this context despite the misgivings his delegation might have about the subject of preferential trading arrangements in general. He expressed the view that periodic review of the operation of the arrangement was essential to ensure its transparency and to make certain that it was working in a way that respected the rights and obligations of GATT

contracting parties. He believed that the traditional practice of reviewing such arrangements biennially should be continued. He noted that the examination was being conducted without prejudice to the rights of contracting parties under the GATT, since the effects of the arrangement could only be judged in practice, and the Second Convention had only recently entered into force. He expected that, if the Convention did give rise to trade difficulties for his country, the parties to it would be prepared to work with his authorities with a view to seeking solutions.

8. A member said that his country had seen the first Lomé Convention as an effort by the EEC to understand the problems of the developing countries concerned and to cooperate in their efforts for development. He hoped that the EEC would extend similar cooperation to other developing countries not parties to the Convention.

9. A member said that he understood and appreciated the basic objectives of the Convention and wished the ACP States well in pursuing them. However, from the point of view of the principles of GATT, his delegation continued to have the same concerns about how the Convention related to the provisions of the General Agreement that it had had in relation to the first Lomé Convention. It was not clear to his delegation that a combination of Part IV and Article XXIV provided a solid legal foundation in GATT terms for preferential trading arrangements of the kind contained in the Convention. He emphasized that nothing in the Convention should be construed as impairing the rights of contracting parties under the GATT and that, as is normal practice, the operation of the agreement should be subject to periodic reviews in GATT.

10. A member, noting that the Convention was considered by the parties as a contribution towards a new international economic order by assisting the development of developing countries, said that his government fully supported the principles of a new international economic order and had attempted to promote them by participation in certain arrangements such as SPARTECA (South Pacific Regional Trade and Economic Cooperation Agreement) which was being implemented in accordance with the General Agreement. As agreements such as the Lomé Convention contained advantages for some countries, there could be dangers for other countries, which are especially vulnerable through their mix of production and exports. In this respect, he welcomed the opportunity to examine the Convention at the present time and would welcome in the future the opportunity to examine any major changes that might be made to it.

11. A member said that his delegation was also concerned about the possible effects of the Convention on third countries and about the compatibility of the Convention with the General Agreement. However, he felt that further experience with the working of the Convention was necessary before a position could be taken on these matters.

12. Responding to some of the points made, the representative of the European Communities said that cooperation with the ACP States was only one element, albeit an important one, of the Community's policy on development cooperation. Other elements pertained primarily to cooperation with non-ACP developing countries. These related in particular to cooperation agreements established with a number of developing countries that provided

a framework within which continual efforts to further development cooperation between the parties concerned were made; the Generalized System of Preferences which had been recently renewed by the Community for a further ten years and which was being improved wherever possible, for example by the reinforcement in 1981 and 1982 of the preferences granted to least-developed countries; financial and technical cooperation with non-ACP developing countries, which had been allocated ECU 185 million in the 1982 Community budget; and special aids such as food aid and emergency aid.

13. A member said that he interpreted the statement of the representative of the European Communities as an expression by the Communities of their intention to further intensify development cooperation to assist developing countries in their development efforts.

14. After introductory statements by parties to the Convention, and general statements from some other members of the Working Party, members proceeded to an examination of the provisions of the Convention, taking into account the questions and replies circulated in document L/5273.

15. In response to a question concerning the possible effects of the Convention on the trade of developing countries other than the ACP countries, the spokesmen for the ACP States referred to an annual report of the ACP-EEC Council of Ministers which was submitted to the European Parliament and which indicated that in the period 1975-1980 the volume of trade between the EEC and the ACP countries had increased no more than the trade between the EEC and other developing countries. Excluding a number of oil-exporting ACP countries, trade between the ACP countries and the EEC could be seen to have increased even less over the period. In 1975, forty-six ACP countries had supplied some 6.7 per cent of the EEC's total imports from outside the EEC; this had represented 18.8 per cent of the EEC's total imports from developing countries. In 1980, fifty-eight ACP countries had supplied 7 per cent of total EEC imports, representing 19.8 per cent of the EEC's total imports from developing countries. Oil products which in 1975 had constituted 35 per cent of the exports of ACP countries to the EEC, in 1980 represented 51 per cent of such exports. In the view of the ACP States, the operation of the Convention had not been detrimental to the interests of other developing countries.

16. In response to a question as to whether the Convention contained provisions for adjustment when the trade of other countries was being adversely affected, the spokesman for the ACP States said that such a situation had not been foreseen as, after five years of operation, it had not been demonstrated that the application of the Convention had caused prejudice to third countries.

17. Information was requested concerning the GATT justification of preferential treatment granted to the EEC by certain ACP countries which are contracting parties to the GATT. The spokesman for the ACP States said that ACP countries were not obliged to give preferences to the EEC. Prior to the first Lomé Convention, a number of ACP countries had granted reverse preferences to the EEC. Since the Convention had been implemented, all States but two had eliminated such preferences. Responding to a further question on the possible elimination of the remaining reverse preferences

by the two ACP States concerned, the ACP spokesman said that for historical and economic reasons their elimination was apparently not feasible at this time. When the economic situation permitted, he understood that the States concerned would endeavour to take appropriate action. It was also to be noted that treatment presently being applied by one of those States to imports originating in certain third countries, some of which were industrialized countries, was no less favourable than the treatment granted to EEC products.

18. In reply to questions with respect to the effects on EEC sugar exports to third country markets of the provisions of Protocol No. 7 concerning ACP sugar, the representative of the European Communities recalled that no public purchases of the guaranteed quantities of ACP sugar had taken place. Thus, it was not possible to quantify or assess the effect such purchases could have on EEC exports to third country markets. Community participation in world sugar trade was basically a function of its own production and consumption. Furthermore, imports and exports of sugar were private transactions carried out by EEC traders. Replying to a further question, the representative of the European Communities noted that the Working Party was not the appropriate place to discuss the EEC stocking mechanisms for sugar. However, he could confirm that up to June 1982, when the current season would be completed, importers of ACP sugar would still be subject to a storage levy; as of 1 July 1982, this system would be suspended for three years.

19. Responding to a question by a member of the Working Party, the representative of the European Communities stated that, in 1980, banana imports originating in the ACP countries had represented 21.5 per cent by value of total banana imports into the EEC.

20. One member of the Working Party requested information about the changes introduced in Lomé II to the safeguard provisions contained in Lomé I. The representative of the European Communities said that following careful negotiations and in the light of the respective needs of the parties to the Convention, Articles 12 and 13 of Lomé II had established more precise procedures. In this respect, Article 13 provided for a consultation process concerning the application of the safeguard clause and instituted a mechanism to ensure the statistical surveillance of certain sensitive ACP exports to the Community.

21. One member of the Working Party in referring to Protocol No. 1 and the replies to the questions on rules of origin contained in L/5273, expressed his country's continuing concern that potentially there might be prejudicial effects and possible damage to the trade interests of other countries by the application of these provisions, where these arrangements led to further processing of products within the ACP countries rather than in non-ACP countries. In expressing the interest of his delegation in the operation and application of the provisions of Lomé II being followed closely, this member suggested that when the operation of the Convention is being reviewed, the effects of the rules of origin on the trade of third countries should be subject to particular examination.

22. Two members of the Working Party requested clarification of certain characteristics of the STABEX system and its application. In response, the

spokesman for the ACP States said that, in his view, the STABEX system as such did not fall within the competence of GATT. However, he was prepared to provide information because STABEX was a significant element in international economic relations between certain developed and developing countries which could serve as a model for the future. On the question of financial transfers, there was no requirement or economic reason for such transfers to be limited to the sectors which motivated such transfers. He stated, however, that approximately one third of total transfers had been invested in the sector which had suffered the shortfall; the balance had been used for other purposes including, for example, structural adjustment and product diversification. Even though only a partial solution, STABEX was at present, in addition to the IMF compensatory financing facility, the only available means of lessening the instability of export earnings from primary products of developing countries parties to the Convention. In adding that the studies to evaluate the economic effects of STABEX mentioned in document L/5273 were expected to be ready in the next few months, he assured the Working Party that they would be made available to the GATT for the information of interested contracting parties.

23. By way of concluding remarks, the parties to the Convention expressed their appreciation for the constructive spirit with which the questions had been raised and assured the members of the Working Party that efforts would be made to continue to improve the Convention which constituted an example of economic and trade cooperation between developed and developing countries.

#### Conclusions

24. Having regard to the information and explanations provided by the parties to the Second ACP-EEC Convention of Lomé, there was wide sympathy in the Working Party for the view that the purposes and objectives of the Convention were in line with those embodied in the General Agreement, including Part IV, inasmuch as the Convention aimed at improving the standard of living and economic development of the developing country participants including the least-developed among them. While the parties to the Convention stated that the trade commitments it contained were compatible with the relevant provisions of the General Agreement as a whole and with its objectives, some members of the Working Party considered it doubtful that the Convention could be fully justified in terms of the legal requirements of the General Agreement. The Working Party noted that the parties to the Convention were prepared to supply information on a periodic basis concerning its operation and to notify any changes which might be made to the Convention for review by the Council. It was understood in the Working Party that the Second Lomé Convention would in no way be considered as affecting the legal rights of contracting parties under the General Agreement.