

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Questions and Replies

The contracting parties were invited (document C/M/195 and GATT/AIR/2246) to communicate to the secretariat any questions they might wish to put concerning the Agreement regarding the Accession of Portugal and Spain to the European Communities.¹ In response to this request, a number of questions were received and were transmitted to the parties to the Agreement. The following replies to the initial set of questions have been received. Replies to additional questions are expected in due course.

¹ A copy of the text of the Accession Treaty was sent to each contracting party with document L/5936. Two copies of Council Regulation No. 3330/85 were sent to each contracting party with document L/5936/Add.2.

I. GENERAL CONSIDERATIONS

Questions 1-4

1. In view of the transitional arrangements for the adjustment of tariffs and the abolition of other barriers to trade, as well as the fact that many tariff items in the new Common Customs Tariff schedule have been left blank, would the parties to the Treaty confirm that it is to be regarded, for purposes of the examination under Article XXIV, as an interim agreement leading to the formation of a customs union?

2. The examination of the provisions of the Treaty of Accession and related documents is to be conducted on the assumption that all the provisions of the Treaty and the related documents as they stand now are to be fully implemented. There are, however, certain provisions which remain to be formulated (e.g., certain tariff rates and quota levels). When do the Parties to the Treaty intend to provide complete information on their intentions for implementation of these measures?

3. How can the Contracting Parties be expected to make the determination required under Article XXIV:5 in light of the fact that many tariff items in the new Common Customs Tariff schedule, as well as details of other non-tariff measures, such as variable levies, are unknown? When do the Parties to the Treaty anticipate that these measures will be announced?

4. (a) Do the Parties to the Treaty consider that the Treaty meets the requirements of Article XXIV:5(a) in that duties and other regulations of commerce in respect of trade with non-member countries will be on the whole no higher or more restrictive than the general incidence of these duties and regulations applicable prior to the formation of the expanded union? Would the Parties to the Treaty supply the basic data on which this conclusion is based?

(b) The Treaty requires new restrictions on agricultural trade in Spain and Portugal. In addition, many industrial products are subject to higher tariff rates in the new Common Customs Tariff Schedule. In light of these facts, how would the Parties justify an affirmative response to question (a) above? Please provide detailed calculations that would support this conclusion.

Reply to questions 1-4

As questions 1 to 4 are closely interrelated, the parties have decided to provide the following joint reply.

The Treaty of Accession by which Spain and Portugal become members of the European Communities specifies, in the Act annexed thereto, the conditions of their accession and the adjustments to the Treaties establishing the Communities that their accession entails.

As accession implies, among other things, the enlargement of the customs union through the accession of new members, provisions to this effect are contained in the Act concerning conditions of accession. Consequently, the Treaty as such establishes a customs union, and makes necessary and relevant provisions in this connection. Neither by its legal nature, nor its effects can it be regarded as an interim agreement within the meaning of Article XXIV, paragraph 5(c) of the General Agreement; it should be regarded as a final agreement providing for transitional measures.

The parties to the Treaty consider that the enlargement of the customs union is in accordance with the provisions of Article XXIV, paragraph 5(a) in the sense that customs duties imposed in respect of trade with non-member countries will not, on the whole, be higher or more restrictive than the general incidence of the duties and trade regulations applicable in the constituent territories of the Customs Union prior to its enlargement.

Indeed, as regards customs duties, the Common Customs Tariff adopted by the Community on 5 December 1985 and notified to the contracting parties as a basis for negotiation is based on a weighted average of the tariffs of the three customs territories constituting the enlarged Customs Union. Admittedly, a number of tariff headings will be quantified only on the conclusion of the negotiations provided for by Article XXIV:6, and others which were previously bound in the tariff of one or the other of the acceding countries will in future be subject to the CAP machinery. But it is certainly not the intention of the Community to introduce, in connection with the present enlargement, a Common Customs Tariff having a higher general incidence. It should be noted in this respect that the Community has decided to suspend the application of its new Common Customs Tariff for a period of two years or until the end of the negotiations provided for by Article XXIV, should they be concluded before that time.

As regards the other trade provisions, it may be noted that the changes which have taken place in the acceding countries since 1 January 1986 reflect a trend towards considerable liberalization of their import régime.

The various provisions which have yet to be formulated will be adopted in strict compliance with the Act of Accession. They may not, from a legal point of view, derogate from this Act, which constitutes a final agreement between the Community and Spain and Portugal with a view to the establishment of a customs union. The Working Party may thus embark on a general examination of the situation.

Question 5

Aggregate trade data for the 1977-1984 period indicates that non-member countries exporting to Greece lost market share following Greek accession, while the total market for imports in Greece did not increase. In light of this data, do the Parties to the Treaty consider that the trade of non-member countries with Spain and Portugal will also be adversely affected by the implementation of the provisions of the Treaty? If not, what specific factors lead the Parties to this conclusion?

Reply to question 5

Trade data for the 1977-84 period shows that overall, imports into Greece increased following the latter's accession to the Community in 1981. However, the share of Greek imports from the Community in total imports was not higher than in the early 1970's before Greece joined the Community and declined between 1981 and 1984. The pattern of imports varied between different non-Member countries which suggests that any decrease in exports experienced by individual GATT partners was more likely to be caused by factors such as the depressed economic climate of the period, exchange rates, the impact of the second oil shock, and a stagnant economy in Greece (as evidenced by the balance-of-payments problems there) rather than by factors relating to the enlargement of the Community.

More generally, the parties to the Treaty do not consider that the factors mentioned in the question constitute a valid test of whether or not a new customs union meets the requirements of Art. XXIV:5(a). The reasons for this view, in the case of Greek Accession, are set out above; a fortiori, the positive future effects in the case of Spain and Portugal are difficult to assess with any precision, and the parties are entitled to assume that the trade-creating effects of a new union (XXIV, para. 4) will occur to the benefit of third parties.

II. IMPORT DUTIES

Question 6

If the working party concludes that the duties and other regulations of commerce to be imposed by the enlarged EC are more restrictive than the general incidence of protection prior to enlargement, would the Parties be prepared to reduce the level of the Common Customs Tariff and make other regulations of commerce less restrictive, in order to conform with Article XXIV, paragraph 5(a)?

Reply to question 6

The Parties to the Treaty fully recognize the validity of the provisions of Article XXIV:5(a) and will act in conformity with them.

Question 7

- (a) Why did the European Community withdraw its GATT Schedule of Tariff Concessions?
- (b) In GATT document L/5936/Add.2 of 13 February 1986, the EC notifies the contracting parties of its withdrawal of Spanish, Portuguese and EEC 10 schedules of tariffs. We would note that GATT rules provide that bindings can be withdrawn only after negotiations have taken place. How does the EC justify this action under the GATT?

Reply to question 7

(a) Given that the Community has established a new tariff for the enlarged Community, it was considered inconsistent to leave a GATT Schedule in force which was based on different rates. Formally, the Community of 10 ceased to exist from 1 January 1986 and as such the previous schedule is in formal terms meaningless. However, this has no practical consequences since the Community has stated in de facto terms it intends to continue to apply the previous bound rates for the Community of 10 for a period of two years pending completion of the XXIV:6 negotiations.

(b) In acceding to the Community, Spain and Portugal withdrew their GATT schedules since it would not be logical to maintain these schedules in existence following the formation of a customs union. The procedure followed was the same as for the previous enlargements of the Community in 1973 and 1981. The Community is of course ready to negotiate the consequences of this action within the relevant procedures laid down in Article XXIV. Given that the totality of a customs tariff is affected by the establishment of a new schedule for an enlarged customs union, it was not considered inconsistent with GATT rules to withdraw the bindings prior to the negotiations. In so doing the Community has followed the procedures used on the occasion of previous enlargements.

Question 8

- (a) On what basis were the rates in the Community's suspended offer (the new Common Customs Tariff) calculated? Please supply the formula and data on which the new tariff rates are based.
- (b) Would the EEC provide a detailed explanation of how it arrived at the new common external tariff contained in COM (85) 656? How has the Community provided for variable levies, minimum import prices, quantitative restrictions and voluntary export restraints in the calculation of the common external tariff contained in COM (85) 656?

Reply to question 8 (a) and (b)

The rates of duty contained in the new Common Customs Tariff for the enlarged Community were as a general rule calculated using the following formula:

$$\frac{[\text{EC 10 Rate (B) x EC 10 imports (83)}] + [\text{Spanish rate B/A x Spanish imports (83)}] + [\text{Portugese rate B/A x Portugese imports (83)}]}{\text{EC 10 imports (83) + Spanish imports (83) + Portugese imports (83)}}$$

Note: A = Autonomous Rate
B = Bound Rate

imports (83) = imports for 1983 for EC 10, Spain and Portugal from all GATT countries less EC 10/Spain/Portugal as appropriate.

Certain exceptions have been made to this formula, the most notable being the following:

- (i) a rate has not been calculated for products which are not bound in the schedule of the Community of 10;
- (ii) a rate has not been calculated for certain agricultural and fishery products; the appropriate rate will be determined during the course of the Article XXIV negotiations;
- (iii) in certain cases where the autonomous rate applicable in Spain or Portugal was less than the equivalent bound rate of the Community of 10, the bound rate of the Community of 10 has been retained instead of the rate arising from the formula referred to above.

The Community has not taken account of factors such as variable components etc. in calculating the new rates of duty or of non-tariff measures such as quantitative restrictions etc. Due account of such factors will however be taken during the course of the negotiations themselves.

Question 9

Describe in concrete terms the "necessary measures for the maintenance of Community preference" as provided for in Articles 32 and 191 (in the event of (1) amendment or suspension of the CCT, (2) the application of Article 40 by Spain or Article 201 by Portugal, or (3) the coexistence in Portugal of specific duties vis-à-vis the Community and ad valorem duties with regard to third countries for the same tariff heading or subheading).

Reply to question 9

(1) The European Communities have suspended certain import duties vis-à-vis third countries: they have also decided to advance by one year - to the beginning of 1986 - the application of the tariff reductions envisaged for 1987 through multilateral trade negotiations in GATT.^(a) For this reason certain basic customs duties provided for in Articles 30, 75 No. 3, 189 and 243 No. 3, were higher or practically identical to the conventional or autonomous duties of the Common Customs Tariff actually applied on 1 January 1986, and measures were taken to maintain Community preference.^(b)

Example:

Tariff heading 06.04 B II

"Foliage, branches and other parts (other than flowers and buds) of trees, shrubs, bushes and other plants, and mosses, lichens and grasses, being goods of a kind suitable for bouquets or ornamental purposes, fresh, dried, dyed, bleached impregnated or otherwise prepared, with the exception of reindeer moss not further prepared than dried."

Basic customs duty on 1 January 1985: 4.5 per cent.

Bound customs duty on 1 January 1986: 4 per cent.

The customs duty applied in the 10-Member Community to Spanish products on 1 March 1986 was $4\% \times 87.5\% = 3.5\%$.

^(a) Council Regulation (EEC) No. 3331/85 of 5 December 1985 (OJL 331 of 9 December 1985, p.1)

^(b) Council Regulation (EEC) No. 443/86 of 24 February 1986 (OJL 50 of 28 February 1986, p.9)

Commission Decision No. 511/86/ECSC of 24 February 1986 (OJL 51 of 28 February 1986, p.41)

Without the application of Article 32, the duty on Spanish products would have been $4.5\% \times 87.5\% = 3.9\%$, and the Community preference 0.1 per cent instead of 0.5 per cent.

(2) The application of Article 40 by Spain and of Article 201 by Portugal has not yet given rise to the adoption of measures for the maintenance of Community preference, as provided for in Articles 32 and 191 of the Act of Accession.

The new Member States have in some cases brought their duties into line more rapidly with those of the Common Customs Tariff (Articles 40 and 201 of the Act of Accession).

(3) Nor has the existence side by side in Portugal of duties specific to imports from the 10-Member Community and ad valorem duties on imports from third countries given rise to the application of such measures.

However, because the nature of customs duties differs, it might happen that the ad valorem equivalence of a specific duty applied to imports from the 10-Member Community is higher than the ad valorem duty applied to imports from third countries.

In such a case, the Council, acting by a qualified majority on the proposal of the Commission, can take the necessary measures to maintain Community preference.

The Commission can take the necessary measures in a similar case with regard to products covered by the ECSC tariff.

Question 10

With reference to articles 38 and 198, please describe all adjustments made to the CCT and the ECSC unified tariff to take into account the alleged fact that the duties in force in Spanish and Portuguese tariffs are, on the whole, higher than the duties previously in force in the tariffs of the EEC and ECSC.

Reply to question 10

See reply to question 8.

Question 11

Can the EC indicate the sequence of steps it proposes to follow to arrive at a negotiated GATT schedule for the EC (12) in a situation where the negotiations under Article XXIV:6 seem likely to coincide with the negotiations under Article XXVIII associated with the implementation of the harmonized system?

Reply to question 11

It would be the Community's intention to treat the Article XXIV:6 negotiations and the negotiations under Article XXVIII associated with the implementation of the harmonized system as separate issues. Any adjustment to the new H.S. schedule as a consequence of the Article XXIV:6 negotiations can be carried out at a later stage as part of a technical exercise of adapting the H.S. schedule to the Community of 12.

Question 12

Articles 33 and 192 permit the EC, Spain and Portugal to suspend in whole or in part the levying of duties on products imported from each other. Articles 40 and 201 permit Spain and Portugal to alter their duties more rapidly.

- (a) What procedure is contemplated for informing third countries of advance implementation of internal tariff cuts? Do the Parties to the Treaty intend to provide GATT notification in the event of advance implementation?
- (b) Are there any current plans for advance implementation of internal tariff cuts?

Reply to question 12

There are no plans for advance implementation at this stage (subject to replies to question 9(2)). Should this occur, the parties would certainly have an interest to inform GATT; and would by all means respect the publicity requirements of Article X of the GATT.

Question 13

Can the Parties furnish details regarding the charges having equivalent effect to customs duties on imports referred to in Articles 35 and 193, including the commodities involved, as well as the current levels of the charges? Is the abolition of these charges also applicable to third country trade? If not, when will these charges be harmonized among the Member States?

Reply to question 13

The negotiation of Articles 35 and 193 of the Act of Accession was not based on a detailed list of charges having equivalent effect to the customs duties that were to be abolished on 1 March 1986 in trade between the 10-Member Community, on the one hand, and Spain and Portugal on the other. These two Articles create an obligation of a general nature for the two new Member States.

Questions 14 and 15

14. We would appreciate clarification of the terms of Article 39(1) of the Act of Accession and a demonstration of how this Article is to be applied. In particular, what is meant by the term "components of the Spanish basic duty"? Is the methodology for aligning the tariffs applicable in all sectors including fisheries?

15. Articles 39 and 199 provide for the alignment of tariffs of different natures (specific to ad valorem and vice versa), without the conversion of specific rates to their ad valorem equivalents. Do the Parties intend to provide ad valorem equivalents and, if so, what base period will be used for computation? If not, how do the Parties intend to show that none of these duties are being increased?

Reply to questions 14 and 15

As in the case of previous accessions, Articles 39 and 199 are applied whenever customs duties are of a different nature.

This is the best way of bringing about alignment with the Common Customs Tariff. It would not be desirable, for example, to transform specific Spanish duties into ad valorem duties, because a single tariff heading may comprise hundreds of products whose value could vary considerably.

Two examples of alignment are given below.

1. Example no. 1

CCT heading no.: 25.15 B II

CCT duty on 1 January 1986: 4.4 per cent

Basic Spanish customs duty (1 January 1985): 27 Ptas/metric quintal (mq).

Alignment of the Spanish customs tariff with the Common Customs Tariff in accordance with Article 37:

<u>Dates</u>	<u>Alignment</u>	<u>Spanish customs duty</u>
- 1.1.86	0%	0% + 27.4 Ptas/mq
- 1.3.86	10%	0.4% + 24.6 Ptas/mq
- 1.1.87	22.5%	1% + 21.2 Ptas/mq
- 1.1.88	37.5%	1.7% + 17.1 Ptas/mq
- 1.1.89	52.5%	2.3% + 13 Ptas/mq
- 1.1.90	65%	2.9% + 9.5 Ptas/mq
- 1.1.91	77.5%	3.4% + 6.1 Ptas/mq
- 1.1.92	90%	4% + 2.7 Ptas/mq
- 1.1.93	100%	4.4% + 0 Ptas/mq

2. Example no. 2

CCT heading no.

CCT duty on 1 January 1986: 4.6 per cent

Basic Spanish customs duty (1 January 1985): 14.8 per cent min
76.1 Ptas/mq

Alignment of Spanish tariff with the Common Customs Tariff in
accordance with Article 37:

<u>Dates</u>	<u>Alignment</u>	<u>Spanish customs duty</u>
- 1.1.86	0%	14.8% min 76.1 Ptas/mq
- 1.3.86	10%	13.8% min 68.4 Ptas/mq
- 1.1.87	22.5%	12.6% min 58.9 Ptas/mq
- 1.1.88	37.5%	11.0% min 47.5 Ptas/mq
- 1.1.89	52.5%	9.5% min 36.1 Ptas/mq
- 1.1.90	65%	8.2% min 26.6 Ptas/mq
- 1.1.91	77.5%	6.9% min 17.1 Ptas/mq
- 1.1.92	90%	5.7% min 7.6 Ptas/mq
- 1.1.93	100%	4.6% min 0 Ptas/mq

These examples show that the calculation of ad valorem equivalences is unnecessary.

Question 16

Explain how the variable components and compensatory amounts applicable to trade in certain processed agricultural products will be calculated pursuant to Article 353.

Reply to question 16

Article 353 concerns fisheries. The Commission presumes that this point should refer to Articles 53 (Spain) and 213 (Portugal).

The system of accession compensatory amounts foreseen in the Act of Accession is identical to the arrangements applied in previous accessions (GB + IRL + DK, GR).

Although the technical details of the system may seem fairly complicated at first sight the basic principle of ACA's is very simple: on import from Spain or Portugal into the EEC(10) and on export from EEC(10) to Spain or Portugal an amount is refunded or levied corresponding to the difference between market prices in the EEC(10) and the two new Member States for the various agricultural raw materials which have been incorporated in the finished processed goods.

The Commission Regulation 623/86 implementing the ACA's for processed foodstuffs was adopted on 22 February 1986.¹

On the question of variable components, precise details of the calculation are given in the above-mentioned Articles of the Accession Treaty.

As a general rule, their duties prior to accession were "split" into

- (1) a variable component equal to EEC(10) v.c. adjusted by the ACA referred to above, and
- (2) a residual fixed duty.
These resulting elements were used both for internal dismantling and approximation to the C.E.T.
See also reply to question 22.

¹JO L59 of 1 March 1986

Question 17

With respect to Article 53(4), please provide a list of the Spanish duties that have been converted into the type of duty and units entered in the CCT and the trade data upon which these conversions were based.

Reply to question 17

Although foreseen in the Act, the conversion was unnecessary for Non-Annex II goods.

Question 18

- (a) The procedure for establishing "compensatory amounts" in Article 72 should be clarified. What is the GATT justification for these "compensatory amounts"? Given that we are dealing with an entirely new customs union rather than with an enlargement this question is particularly relevant.
- (b) In a number of instances, such as Articles 111(3), 114(2) and 117(5), reference is made to coefficients on amounts to be determined. Clarification as to how these are to be determined would be useful.
- (c) Please provide all of the compensatory amounts that have been fixed under Articles 72 and 240 and the price differentials on which they are based.

Reply to question 18

(a) The compensatory amounts referred to in Article 72 of the Treaty are established by a regulation, under the internal procedures laid down for this purpose, on the basis of a comparison between "institutional" prices in the (10-Member) Community and in Spain. They constitute a method of adjusting prices to compensate for differences in price levels in Spain and in the EEC and to prevent any major disruption (inflation, distortion due to competition, etc.) of the economies of the countries concerned during the period when transitional methods are being applied.

As they constitute a transitional measure whose impact on trade is by definition neutral and are intended to have an effect essentially within the customs union, and as their sole purpose is to ensure the smooth functioning of the customs union, the application of compensatory amounts does not raise any problem with respect to Article XXIV.

(b) The method used to determine these coefficients is the same as that used to establish compensatory amounts. It is based on processing coefficients derived from the average output of the industry in question within the Community. Its purpose is to make sure that processing enterprises have access to primary agricultural products under similar conditions.

(c) A number of compensatory amounts as well as the related coefficients were determined for the 1985/86 season by the Commission's Regulation of 28 February 1986:

(1) Under Article 72 ...

- for cereals and rice - Regulation 576/86 and 577/86¹
- for milk and milk products - Regulation 585/86¹
- for the beef and veal sector - Regulation 586/86¹
- for egg products - Regulation 587/86¹;

(2) Under Articles 72 and 240 ...

- for the sugar sector - Regulation 581/86¹
- for the olive-oil sector - Regulation 589/86¹
- for processed products - Regulation 623/86².

¹OJEC L57
²OJEC L54

Question 19

Following the completion of the transition period, will the Parties to the Treaty maintain the zero duty bindings for oilseeds, oilmeals, and certain non-grain feed ingredients that currently exist in the European Community's GATT Schedule of Tariff Concessions?

Reply to question 19

The final duty rates to be applied and concessions to be offered will be determined in XXIV:6 negotiations. Subject to the final results of such negotiations, the maintenance of previous EEC bindings is not to be excluded.

Question 20

For purposes of the formation of the customs union pursuant to Articles 75 and 243, do the terms "basic duty" and "Common Customs Tariff duty" refer to variable levies, countervailing charges, and other import charges in addition to the ad valorem duties as specified in the CCT?

Reply to question 20

The terms "basic duty" and "Common Customs Tariff duty" used in Articles 75 and 243 of the Treaty refer only to ad valorem or specific duties contained in the Common Customs Tariff.

Question 21

Will the tariff bindings on tobacco in CCT 24.01 that existed in the EC prior to 1 January 1986 be extended to Spain and Portugal?

Reply to question 21

Under the provisions of the Act of Accession, the Portuguese Republic has, since 1 March 1986, been applying in full the Common Customs Tariff duties in respect of the products listed under heading 24.01 (Article 243, paragraph 2), whereas the Kingdom of Spain is to align its tariffs with the Common Customs Tariff in eight movements of 12.5 per cent, each movement taking place on 1 March 1986 and 1 January of the years 1987 to 1993 (Article 75, paragraph 2(d)). The possible extension of the tariff bindings in CCT 24.01 by the 10-Member Community to Spain and Portugal is not excluded, subject to the results of the negotiations initiated under Article XXIV:6. See also the reply to question 19.

Question 22

What method does the EC propose to use in the calculation of tariffs, duties, and other charges which contain a variable component to determine the increase or decrease in the incidence of duties for the relevant commodities?

Reply to question 22

The incidence of tariff, duties and other charges which contain a variable component, applied after the enlargement, should be evaluated by reference to all the measures applicable to the products in question before accession.

However, no mathematical calculation method is likely to yield reliable results, which vary owing to a number of factors whose influence cannot be foreseen (world market prices, currency fluctuations, etc.). These variable components do not, in any event, constitute a vital element in the evaluation of the overall incidence of the new tariff régime in comparison to the one which was in effect in the acceding States, in so far as the tariff lines to which they apply account only for less than 0.1 per cent of the total imports of the countries in question and as they are part of a tariff which replaces a previous highly restrictive régime in which the tariff element played only a minor rôle in the system of protection.

Question 23

Article 34 permits Spain to establish tariff quotas on imports of automobiles from the EC. What provisions will be made for imports of automobiles from non-member countries?

Reply to question 23

The arrangements referred to in Article 34 and Protocol 6 of the Treaty allow certain quantities of EEC-originating motor vehicles to be imported into Spain at a tariff of 17.4 per cent. The conditions for imports into Spain of motor vehicles originating outside the EEC will remain the same as before Spanish accession, except that the applicable tariff will progressively be reduced over the transitional period to the level of the CCT.

Question 24

Article 41 allows Spain to open tariff quotas (which existed on 1 January 1985) to third countries. When will the Government of Spain publish information about these quotas?

Reply to question 24

Spain has availed itself of the possibility of opening tariff quotas to third countries, for which provision is made in Article 41 of the Act of Accession.

These tariff quotas are the subject of Decree Law No. 2347/85 of 18 December 1985, published in Spain's Official Gazette of 31 December 1985. A copy will be transmitted to the secretariat.

Question 25

Upon Spain's entry into the EEC, the customs duty applicable to Cuban tobacco (manufactured or unmanufactured) has been increased. What consequences does this situation imply for future sales by Cuba, having regard to the preferential treatment that other exporting countries will receive as members or associates of the EEC?

Reply to question 25

The alignment of Spanish duties with those of the Common Customs Tariff does not have far-reaching consequences for future Cuban sales to Spain for two reasons:

(a) By derogation from the rule followed in respect of products for which Spanish duties were lower than those of the Common Customs Tariff, the latter were not applied immediately on 1 March 1986 but will be applied in eight movements (see reply to question 21) so that these exports of Cuban tobacco to Spain can be gradually adjusted to the higher duties payable, and

(b) Cuban exports of tobacco to Spain consist exclusively of tobacco of a special kind (black tobacco for "black" cigarettes or cigars) to satisfy the tastes of the Spanish consumer, as this tobacco is not produced by other Community or associated countries.

For these two reasons, the preferential treatment that may be received by certain countries will not affect Cuban exports to Spain.

Question 26

- (a) Will GSP access to Spain and Portugal be increased or reduced as a result of their accession to the EEC?
- (b) The treaty for the accession of Spain to the European Communities stipulates that as from its accession, that country will progressively apply the generalized preference system of the EEC and that this implies that upon import into Spain, as from the moment of accession and during the transitional period, products covered by the system will be subject to the same duties as products of Community origin. Does this clause fulfil the objectives of the Generalized System of Preference regarding the grant of preferential tariff treatment to products originating in developing countries?

Reply to question 26

(a) Neither of the two new Member States granted preferences under the GSP drawn up by UNCTAD. By applying the Community scheme, they are opening up their markets to 128 independent countries and 22 dependent territories which benefit from this scheme in respect of all the products it covers.

(b) During the transitional period, Spain will apply to the beneficiary countries practically the same preferential treatment as it accords to other Member States. As regards third countries, it will gradually align itself with the duties contained in the Common Customs Tariff (which is in general lower than its own tariff).

Consequently, during the transitional period Spain will grant to countries benefiting from the GSP tariff treatment more favourable than that it grants to other third countries, which is in accordance with the spirit of the GSP.

Question 27

As from the accession, coffee imported into Spain is subject to a progressive tariff increase up to the level stipulated in the common external tariff, and in addition a zero-duty quota of 40,000 tons annually has been opened for 3 years. Can this new situation be considered to limit access of these products to the Spanish market? Which countries can avail themselves of this quota?

Reply to question 27

Spain must align its coffee duties with those of the Common Customs Tariff which will mean a further binding for it.

In order to make allowance for traditional trade flows, the Community will, for a period of five years, open an annual zero-duty quota of 40,000 tons of which 95 per cent will be earmarked for imports into Spain. This quota is open to all countries.

Question 28

With respect to regulation (EEC) number 3330/85 (O.J.L330),

- (a) it is noted that "whereas many NTMs should be liberalized in accordance with accession treaty, further adjustments to new duty rates may, therefore, be derived at a later stage". In what manner might these duty rates be changed? How will the effects of liberalizing non-tariff measures be measured? What is the time frame envisaged for liberalizing non-tariff measures and for duty rate adjustments?
- (b) There are many tariff items for which the duty rate has not yet been determined. When and on what basis will these be determined? Does the EC envisage the unbinding of any tariffs, particularly in fisheries and agriculture sectors?

Reply to question 28

- (a) It is clear that the existence of an NTM in Spain or Portugal prior to accession may have had the effect of restraining trade with the result that the rates of duty contained in the new tariff of the enlarged Community arising from the calculation described in the reply to question 8 may not accurately reflect the full level of protection existing before enlargement. It would be the Community's contention therefore that due account of this situation should be taken during the course of the Article XXIV negotiations.
- (b) See answer to question 19.

Question 29

Background: The tariff in force for the EEC of 10 is Council Regulation (EEC) No. 3330 of 5 December 1985 which, inter alia, brings forward by one year (from 1.1.86) reductions undertaken by the EEC in the Tokyo Round. In addition, it suspends for two years, until 1.1.1988, Regulation 3330 of 5 December 1985 which established the tariff for the Community of 12 and adopted customs duty adjustments to take into account the fact that the Spanish and Portuguese tariffs are on the whole higher than those applied by the EEC. These changes are to be the subject of negotiations in GATT and correspond to the EEC "offer" in accordance with Article XXIV:6 of the General Agreement on exceptions from MFN treatment, as stated in GATT document L/5936/Add.2.

Regulation No. 3330 provides for duty increases on products of interest to developing countries including the following which were negotiated in the Tokyo Round: coffee (09.01.a.1.a), from 5 per cent to 5.1 per cent, cocoabeans (18.01), from 3 per cent to 3.2 per cent; some yarn of regenerated textile fibres (51.01.b.1), from 2.2 per cent to 10.4 per cent; and brassières (61.09.d), from 6.5 per cent to 6.7 per cent. As regards products not negotiated in the Tokyo Round: aromatic beverages containing alcohol (22.09.b.1), from free to 2.2 per cent; printed books (49.01), from free to 0.2 per cent; yarn of synthetic textile fibres (51.01.a), from 9 per cent to 9.8 per cent; cotton, not carded or combed (55.01), from free to 1.3 per cent, and cotton linters (55.02), from free to 0.1 per cent, inter alia.

Question: How will the EEC comply with Article XXXVII:1(b) in Part IV of the General Agreement on commitments by developed contracting parties to refrain from introducing, or increasing the incidence of, customs duties or non-tariff import barriers on products currently or potentially of particular export interest to less-developed contracting parties?

Reply to question 29

The increased duties established in EEC Regulation 3330/85 are intended to be a basis for tariff negotiations under Article XXIV:6. During these negotiations the possibility that previous EEC bindings will be offered and extended to Spain and Portugal is not excluded. It is not the Community's intention to increase the general incidence of customs duties after enlargement on products of particular export interest to less-developed countries.

III. QUANTITATIVE RESTRICTIONS

Question 30

Article 43 provides that quantitative restrictions on imports may be retained until 1988 or 1989 depending on the categories. What is the GATT justification for these continuing quantitative restrictions?

Reply to question 30

Article 43 refers to the derogations to Article 42 which concerns the quantitative restrictions between the Community of 10 and Spain after enlargement. The general régime to be applied to third-countries is set out in Article 177.

Since its very accession to the GATT, as embodied by its Protocol of Accession, Spain's import régime has been regularly notified to the GATT by Spain before entry, latest on 3 December 1985 (NTM/W/6/Rev.2/Add.5, page 5) and the corresponding justifications are duly indicated in this notification.

Question 31

Article 77 provides that Spain may maintain quantitative restrictions on imports of certain products from third countries. We would appreciate a detailed explanation of the rules for administration of such quantitative restrictions as well as the GATT justification for their establishment and maintenance.

Reply to question 31

The main purpose of Article 77 is to maintain, during the transitional period, a limited number of restrictions on products which are "sensitive" from the standpoint of the Spanish economy in respect of a market (that of agricultural products) that was previously controlled as regards imports, which were subject to quantitative restrictions or measures having an equivalent effect amounting to over 60 per cent, in terms of value, of agricultural imports. These residual restrictions which will be applied on a non-discriminatory basis and which imply gradual liberalization throughout the transitional period also constitute, in most cases, a corollary of equivalent restrictions applied to Spanish imports of products from other States Members of the Community. The rules governing the application of the restrictions, as well as the criteria to be taken into consideration in their establishment, are laid down in Council Regulations No. 3798/85¹ and No. 491/86². In its administration of these restrictions, Spain will continue to respect the principles laid down by GATT's Licensing Code.

The Community considers that the maintenance of a limited number of restrictions in respect of third countries during a transitional period does not, in view of the effect of the overall liberalization produced by the enlargement, raise any problems with respect to the provisions of Article XXIV.

¹OJ EC L 367 of 31 December 1985, p. 28

²OJ EC L 54 of 1 March 1986, p. 25

Question 32

Article 43, paragraph 5 of the Treaty states that, where the EC Commission records by a decision that imports into Spain of a product listed in Annex III have for two consecutive years been less than 90 percent of the quota established for that product, Spain shall liberalize imports of that product from the present member States. Would the relaxation of these global quotas be performed on an MFN basis?

Reply to question 32

See reply to question 30.

The relaxation of intra-Community quotas does not concern third countries' trade.

Question 33

With respect to Article 41, specify the tariff quotas that existed on 1 January 1985, that Spain has the option of opening to third countries.

Reply to question 33

See reply to question 24.

Question 34

What quantitative restrictions were eliminated in Spain and Portugal on 1 January 1986, pursuant to Articles 44 and 202? Are more quantitative restrictions expected to be abolished under these articles?

Reply to question 34

The provisions 42 and 202 deal with trade between the Community of 10 and Spain and Portugal. (The reference to Article 44 is erroneous and should be made to Article 42.)

All quantitative restrictions between the Community of 10 and Spain and Portugal except those appearing in Annexes III and IV of the Treaty have been eliminated. The latter, (concerning about sixteen products) will be eliminated at the end of 1988 and 1989 respectively.

In the case of Portugal one restriction (on cars - Article 207 - Protocol XVIII) will however be maintained during 1986 and 1987.

Question 35

Article 48(3) states that exclusive import rights for the products listed in Annex V will be abolished by opening import quotas for products from the present member States. Will exclusive import rights for these products be abolished with respect to non-member countries? What will be the procedure by which exclusive import rights are abolished?

Reply to question 35

The purpose of Article 48 as well as Article 37 of the Treaty of Rome is to ensure that there is no discrimination between nationals of Member States of the Community regarding the conditions in which goods under monopoly are procured and marketed. It is in this context that Spain must modify State monopolies of a commercial nature, and it is to this end that exclusive rights to import products from other States Members must gradually be abolished. The provisions of Article 48, paragraph 3 do not alter the situation that existed previously vis-à-vis third countries.

Article 48, paragraph 4 simply emphasizes this situation in respect of certain specific products and draws attention to the need for compliance with the basic rules of free movement within the Community.

Question 36

Under Article 269, Portugal is to eliminate from 1 March 1986, all quantitative restrictions and all measures having equivalent effect on imports from the Community of products subject to the two-stage transition period. Please provide a list of the quantitative restrictions and other measures that have been eliminated. Have these restrictions also been eliminated on imports from non-member countries?

Reply to question 36

As regards agricultural products, quantitative restrictions on Portugal's imports in effect before its accession must all be eliminated by 1 March 1986 or by a certain date (at the end of the transitional period at the latest).

With respect to products subject to the two-stage transition period, Article 269 of the Treaty provides for the maintenance during the transition period of quantitative restrictions on imports from other Member States of certain products, some of which are listed in Annex XXIII to the Treaty. Article 280 of the Treaty provides for the same possibility in respect of restrictions on imports from third countries of the products, some of which are listed in Annex XXVI to the Treaty. These two lists are identical. It is not feasible to produce an exhaustive list of the products which were subject to quantitative import restrictions or measures having equivalent effect before Portugal's accession to the Community and which have been or will be eliminated. An indicative list will be transmitted as soon as possible.

Question 37

Article 202 requires Portugal to eliminate quantitative restrictions on imports from the EC. Will quantitative restrictions remain in effect for imports from non-member countries? If so, how long will these restrictions remain in effect? What is the GATT justification for such restrictions, in light of Article XI?

Reply to question 37

See reply to question 34.

Question 38

Articles 245 and 280 provide that Portugal may apply quantitative restrictions to imports of certain products from third countries. When will these measures be notified to GATT and what is the GATT justification for establishing or maintaining such measures?

Reply to question 38

The Committee considers that the maintenance and adjustment, during a transitional period, of a small number of restrictions which were in force previously with respect to third countries does not raise any problems under Article XXIV in view of the effect of the overall liberalization brought about by the enlargement.

The procedures governing the application of these quantitative restrictions are explained in Article 245 in respect of the products covered by that Article and by Council Regulation No. 3797/85¹ in respect of the products referred to in Article 280.

¹OJ EC L 367 of 31 December 1985, p.23

Question 39

- (a) Article 177 in the case of Spain, and article 364 in the case of Portugal, provide for the maintenance of quantitative restrictions on imports from third countries of products not liberalized in respect of imports from the EC. When will these restrictions be notified to GATT and what is the GATT justification for these measures?
- (b) Article 177 permits Spain to maintain quantitative restrictions on imports from other countries (including EC member States). What is the rationale for maintaining these quantitative restrictions until 1992? How will the Community advise Contracting Parties of annual changes in quotas?
- (c) Article 177 of the Treaty of Accession of Spain to the Community contains the rules governing the application of the common commercial policy. It appears from paragraph 3 and 5 of this article and from the Annexes attached to them that following the accession until 1 December 1991, and 31 December 1989, respectively, Spain will apply not identical but different régimes in the field of quantitative restrictions vis-a-vis the GATT contracting parties. What is the GATT justification of these differences in treatment?
- (d) Paragraph 5 of Article 177 of the Treaty of Accession of Spain to the Community provides for maintenance of quotas. On which bases has Spain established the size of the quotas for the year of 1986, in particular taking into account the provisions of Article XIII:2(d) of the GATT?

Reply to question 39

Articles 177 and 364 of the Act of Accession deal with the adoption by Spain and Portugal of the EEC common commercial policy towards third countries. It must be stressed that, apart from the derogations specifically provided for in the above-mentioned Articles, Spain and Portugal apply from 1 January 1986, the Community import régime set out in Regulations 288/82, 1765/82 and 3419/83; this common régime is far more liberal than the Spanish and Portuguese import régimes previously in force.

The progress in the elimination of quantitative restrictions in the industrial sector resulting from the accession of Spain and Portugal can be measured by comparing the list of QRs notified by these two countries before their accession to the Community and the list of restrictions which will remain in force according to the Act of Accession or to the EEC regulations.

A list of QRs in the industrial sector which have already been eliminated from the date of Accession will be communicated as soon as possible.

The enlargement of the Community must be considered on a global and overall basis and its realization is necessarily gradual in its completion; hence the need to maintain some QRs over a transitional period, and to adapt Spain's and Portugal's commercial-policy régimes progressively to that of the Community.

For that reason, paragraph 3 of articles 177 and 364 of the Act of Accession authorizes Spain and Portugal to maintain during a transitional period, a limited number of restrictions despite the fact that the same items are not restricted by the Community. Those restrictions, listed in Annexes XV, XVI and XXX of the Act, already existed and were already notified.

For these restrictions, quotas have been established, the level of which has been established according to the usual method of GATT, i.e. the average of imports realized during the three years preceding the negotiation of the Accession Treaty. The rate of increase, the quotas and the elimination of the non-utilized quotas are clearly specified in the relevant Articles and the Annexes of the Act of Accession.

Question 40

As it has been notified by Spain several times to the GATT, before acceding to the EEC Spain had not applied discriminatory quantitative restrictions on Hungarian exports. Has the accession resulted in a change in this respect?

Reply to question 40

Contracting parties will undoubtedly have noted with satisfaction that as one of the beneficial effects of enlargement the level of quantitative restrictions applied has been drastically reduced already in 1986 and this trend will continue all through the transitional period. The global effects of this liberalization will lead to a régime which is also less restrictive in its incidence on Hungarian exports.

Question 41

Spain has prohibited the importation of used and "seconds" for all types of products, including consumer goods. When will this restriction be lifted?

Reply to question 41

Before its accession to GATT, Spain maintained a general prohibition on the import of used products and "seconds". As a result of its accession, it will considerably reduce the number of such prohibited products.

IV. OTHER MEASURES

Question 42

What provisions has the Commission drafted pursuant to Articles 50(3) and 210(3)? What provisions does the Commission intend to implement pursuant to these articles?

Reply to question 42

On the basis of Articles 50, paragraph 3, and 210, paragraph 3, of the Act of Accession, the Commission has drafted the following Regulations:

- Commission Regulation (EEC) No. 296/86 of 10 February 1986 on the implementation of the arrangements for inward processing, outward processing and processing under customs control in trade between Member States of the Community as constituted on 31 December 1985 and Spain or Portugal and also in trade between the two new Member States for such a time as customs duties are levied in such trade.¹
- Commission Regulation (EEC) No. 526/86 of 28 February 1986 on transitional measures applicable to trade within the Community in goods obtained in Spain, in Portugal or in another Member State under a procedure for the relief from, or drawback of, customs duties or other import charges - compensatory levy.²

The Commission based these provisions on the action it took in connection with previous accessions.

¹OJ L 36 of 12 February 1986, p.5

²OJ L 52 of 28 February 1986, p.1

Question 43

For the following measures, please provide information concerning the effects of the enlargement on the Community of 10 as well as on Spain and Portugal. (With respect to those measures for which a common trade regulation of the Community of 10 is to be adopted by Spain and Portugal, please provide concrete explanations concerning the changes which will be made in the provisions of existing trade regulations, so that changes in incidence can be judged objectively.) If the enlargement will not immediately affect current measures, give the "plan and schedule" of the harmonization of these measures in the twelve member States:

- (a) Subsidies on exports and imports (including restitutions);
- (b) State trading;
- (c) Rules of origin; and
- (d) Technical regulations for safety and sanitary purposes.

Reply to question 43

By virtue of Article 2 of the Act of Accession the acts adopted by the institutions of the Communities will be binding on Spain and Portugal from the date of accession, including those relating to the subjects listed at (a), (b), (c), and (d) of the question. Answers on each of those specific points are as follows:

- (a) The rules of the Community's common commercial policy will be binding on Spain and Portugal from the date of accession; with regard to agricultural products, it has applied from 1 March 1986, subject to specific provisions laid down for products covered by the two-stage arrangements.
- (b) Articles 48 and 208 of the Act concerning the conditions of accession defines the reciprocal obligations of the present Member States and Spain and Portugal regarding the progressive adjustment of State monopolies of a commercial character within the meaning of Article 37 (1) of the EEC Treaty. This adjustment must be completed by 31 December 1991.

Further information will be provided in due course.

- (c) Community rules of origin will be applicable by Spain and Portugal from the date of accession.
- (d) The technical rules on safety and hygiene currently in force in the Community will be applicable in Spain and Portugal from the date of accession.

Question 44

With regard to the Aircraft Agreement:

- (a) When do the Parties to the Treaty expect Spain and Portugal to sign and ratify the Agreement?
- (b) When do the Parties to the Treaty expect Spain and Portugal to notify the Aircraft Committee of military purchasing entities not covered by the Agreement?

Reply to question 44 (a) and (b)

As recently announced in the Committee on Trade in Civil Aircraft, Spain and Portugal expect to be in a position to sign and ratify the Aircraft Agreement and comply with the various obligations arising therefrom, in the near future.

Question 45

With regard to the Standards Code:

- (a) When do the Parties to the Treaty expect Portugal to ratify its signature of the Code?
- (b) When do the Parties to the Treaty expect Portugal to establish an Inquiry Point as required by the Code?
- (c) When do the Parties to the Treaty expect Spain to be in full compliance with the Code?

Reply to question 45 (a) and (b)

The procedure for ratification of the GATT Standards Code by Portugal has been completed. Portugal will also shortly establish an enquiry point.

Reply to question 45 (c)

Compliance by Spain with the provisions of the Standards Code is a matter for discussion within the relevant Code; it is not relevant to Article XXIV procedures.

Question 46

With regard to the Government Procurement Code:

- (a) What is the status of Portugal's and Spain's efforts to implement Code-compatible procurement legislation?
- (b) What is the status of Portugal and Spain's efforts to prepare entity lists for submission to the Committee on Government Procurement?

Reply to question 46

- (a) Draft Procurement Legislation which is compatible with Code obligations has already been drawn up and submitted to the appropriate Portuguese authorities for approval. It is expected that this legislation will be in place by mid-summer 1986.

Spain has, by Royal Decree 931/86 of 2 May 1986 (BOE of 13 May 1986) modified its legislation on Government Procurement to bring it into line with Community legislation which itself is in conformity with the Code.
- (b) The Commission has already received a proposed entity list from the Portuguese authorities. The Spanish list is still in preparation: it is unlikely to be finalized before adoption of the legislation referred to under (a) above.

Question 47

With regard to the Subsidies Code:

- (a) Has Portugal met its 31 December 1985, deadline to modify its investment incentive programs to eliminate export performance requirements (the Integrated Investment Incentive System and the Incentive Program for Direct Foreign Investment)?
- (b) Has Portugal met its 31 December 1985, deadline to eliminate the Export Tax Incentives program under Decree Law 408/80?
- (c) Has Portugal abided by its commitment to conform to the OECD Arrangement's interest rate provisions for medium and long-term export credits?

Reply to question 47

- (a) On 1 January 1986 the Portuguese authorities suspended, de facto, the application of the provisions concerning export results under the Integrated Investment Incentive System and the Foreign Investment Programme. This new situation will be reflected in a law which is shortly to be promulgated by the Portuguese authorities.
- (b) On 1 January 1986 the Portuguese authorities suspended, de facto, the tax incentives provided for under Decree Law No. 408/80. The Portuguese Budget Law of April 1986 subsequently did away with these tax incentives.
- (c) Portugal is abiding by its commitments in connection with the OECD consensus.

Question 48

When do the Parties to the Treaty expect Spain and Portugal to implement the provisions of the Licensing Code?

Reply to question 48

As from the date of their accession to the European Communities both Spain and Portugal have started to implement the provisions of the Licensing Code.

Question 49

Is it anticipated that the extension of EC rules of origin to third country goods imported by Spain and Portugal will have any trade restricting or distorting effects?

Reply to question 49

In view of the situation prevailing in Spain and Portugal before accession, the Community considers that the application of Community rules of origin by these countries in the context of their trade with third countries is not likely to have any restrictive effects.

Question 50

Will Spain's requirement of certificates of origin for all imports be rescinded? If so, what is the effective date of the elimination of this requirement?

Reply to question 50

Spain may continue to require certificates of origin for imports in so far as Community legislation permits.

Question 51

Until now, the state monopoly directed Spanish tobacco imports exclusively to Spanish flag carriers. How will this requirement be modified as trade is gradually privatized? When will it be eliminated completely?

Reply to question 51

Reply to be provided by Spain.

Question 52

Article 48 requires Spain to dismantle state monopolies. However, paragraph 4 of this article appears to permit continued discrimination against non-member countries. How will Article 48 be implemented? How will export opportunities for non-member countries be affected by paragraph 4?

Reply to question 52

See reply to question 35.

Question 53

Article 208 requires Portugal to dismantle state monopolies by 1992.
Please list the monopolies that will be affected by this article.

Reply to question 53

According to the information communicated by the Portuguese authorities, the monopolies referred to in Article 208 of the Treaty of Accession in existence in Portugal on that date are:

(a) The alcohol monopoly, which is administered by the Administração Geral do Açúcar et do Alcool (A.G.A.).

(b) The petroleum products monopoly, which is administered by "Petrogal".

Question 54

Under Article 221, Portugal can maintain restrictions on the establishment of businesses in tourism (until 31 December 1988) and in the motion picture industry (31 December 1990). What is the rationale for continuing these restrictions? Why will Portugal not conform to the OECD Code on Investment?

Reply to question 54

In view of the generally admitted fragility of the Tourism sector and the motion picture industry in terms of the social and economic situation in both sectors in Portugal, the Community has accepted that the Portuguese Government can under Article 221 maintain restrictions on the establishment of business and free trade in tourism (until 31 December 1988) and in the motion picture industry (until 31 December 1990). Therefore the Portuguese Government has three and five years respectively to apply adequate measures in order to strengthen both sectors.

The complete liberalization of both sectors is reserved to all citizens of the Community who will be the only beneficiaries of this provision. This provision does not apply to citizens of non-Community countries.

The question of conditions of investment is not relevant to the Article XXIV exercise.

Question 55

Article 50 provides for the transit of goods and the publication of EC regulations thereto. When will the EC Commission publish implementing regulations?

Reply to question 55

Commission Regulation (EEC) No. 409/86 of 10 February 1986 on methods of administrative co-operation to safeguard during the transitional period the free movement of goods between the Community as constituted on 31 December 1985 on the one hand and Spain and Portugal on the other and between those two new Member States was published in Official Journal L 46 of 25 February 1986, page 5. This Regulation was supplemented by the provisions of Council Regulation (EEC) No. 846/86 of 3 March 1986 on the rules of origin for trade between Spain and Portugal in the period during which the transitional measures are applied (Official Journal L 83 of 27 March 1986, page 1); these provisions are based on Article 1 of Protocol No. 3 to the Act of Accession.

Question 56

- (a) How will the import charges on goods imported from third countries be affected by the adoption of the value-added tax system in Spain and Portugal?
- (b) Can it be considered that application of VAT (value-added tax) will have negative effects on trade with Cuba in the short term, and will consequently cause contraction of that trade?

Reply to question 56

(a) Among the functions which the common system of value-added tax was designed to fulfil was that of providing the fairest possible system of raising a general ad valorem tax on goods within a trading community. Its benefits are shared not only by Member States of the European Community, but - in equal measure - by all trading partners: they can be sure that no export from a State applying the common VAT system will be granted a disguised subsidy in the form of excess VAT repayment, and that no export to such a State will suffer disguised protection through any form of excess VAT payment.

In view of the foregoing the Community considers that the refund of indirect taxes currently in effect in Spain is fully consistent with the provision of the GATT and in particular with the requirements of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII.

Portugal's previous system of taxation was not of the cascade type, and its new VAT system need not, for the present, meet the detailed requirements of Community VAT law. That said, the Portuguese VAT system remains subject to the overall requirements of the Community legal order, which will ensure that no protection of imports or subsidy of exports is applied through internal taxation mechanisms.

(b) No.

V. AGREEMENTS OF THE EUROPEAN COMMUNITIES WITH THIRD COUNTRIES

Question 57

Articles 179 and 366 provide that, from 1 January 1986, Spain and Portugal must apply the provisions of the agreements with Algeria, Austria, Cyprus, Egypt, Finland, Iceland, Israel, Jordan, Lebanon, Malta, Morocco, Norway, Sweden, Switzerland, Syria, Tunisia, Turkey and Yugoslavia, and other agreements concluded with third countries and concerning exclusively trade in the products of Annex II of the EEC Treaty. The Treaty provides for the negotiation of Protocols with the contracting third countries and indicates that the transitional measures and adjustments have not yet been determined.

- (a) What is the time-frame contemplated for the signing of the Protocols?
- (b) At what stage will the Protocols be submitted for GATT consideration?

Reply to question 57

(a) The protocols to be negotiated with third countries should be completed very shortly. A number of protocols, namely, with the EFTA countries have already been initialled.

Negotiations are continuing with other countries, as well as with the ACP countries referred to in question 60.

(b) In accordance with the practice followed in this matter, the protocols negotiated will be notified to GATT after their signature.

Question 58

Article 180(1) provides, in part, that "in any case, MFN treatment shall be applied as from 1 January 1986, by Spain to countries listed in article 181". Does this mean that Spain will not apply MFN to countries not listed in article 181?

Reply to question 58

Spain's obligation to apply MFN treatment as from 1 January 1986 to the countries referred to in Article 181 of the Act of Accession does not exempt Spain from the same obligation it assumed under other international agreements, and especially GATT.

Question 59

Will the tariff preferences on citrus products currently administered by the EC for Morocco, Tunisia, Israel, etc., be maintained after the accession of Spain and Portugal?

- (a) If they will be revised, what will be the terms of the new preferences?
- (b) Will they affect the trade of non-member countries?
- (c) Do the parties agree that adjustments in these preferences could have a bearing on their consistency or otherwise with the General Agreement? Would they agree that the preferences in question should be examined by the Contracting Parties?

Reply to question 59

The tariff preferences administered by the EEC for the countries in question under the agreements concluded, before the accession of Spain and Portugal, on citrus products coming from Mediterranean third countries constitute part of the "acquis communautaire" and will therefore remain valid after the enlargement of the Community.

- (a) The adjustment of these preferences is envisaged in the context of traditional trade flows.
- (b) Such adjustments should not affect the trade of other third countries, as their application is confined to traditional trade flows.
- (c) The adjustments envisaged call in question neither the objective nor the content of these agreements; for this reason their development does not in any way prejudice their compatibility with the General Agreement. The relevant protocols will be notified to the Contracting Parties in accordance with the provisions of Article XXIV and will be examined in the usual way.

Question 60

What will be the practical arrangements for applying Spain's trade policy to the ACP and Mediterranean countries with which the EEC has preferential agreements?

Reply to question 60

See reply to question 57.

Question 61

Background: The EEC customs duty on Colombian fresh flowers is 24 per cent in spring and 17 per cent in winter (06.31.1 I and II), while the GSP includes only orchids and anthuria on which the rate is 15 per cent throughout the year.

It is our understanding that in 1985 preferential treatment existed for Israel in respect of flowers, which the EEC might improve by granting duty-free treatment within a period of six years (the same as for Spain), but limited to a quota equivalent to Israel's past export performance vis-à-vis the EEC. It is our understanding that this Community action is designed to avoid injury to countries receiving preferential treatment (i.e. Mediterranean countries) as a consequence of the enlargement of the EEC to 12.

Question: What action would the EEC take to avoid injury to other GATT member countries, particularly developing ones, as a result of the accession of Spain and Portugal?

Reply to question 61

In view of the effects of the overall liberalization produced by the accession of Spain and Portugal to the Community, countries members of GATT, including developing member countries, should not suffer any injury. In the case of fresh flowers and the preferential treatment that may be granted to such products, the Community would draw attention to its reply to question 59, in which it states that any adjustments of preferences would take place in the context of traditional trade flows and therefore should not affect the trade of other third countries. As regards Israel, it should be noted that this country has not hitherto been granted any preference in respect of this product and that therefore it has paid the full duties provided for under the Common Customs Tariff on its exports.

VI. COMMODITIES

Question 62

A number of changes have entered into effect on 1 March 1986, with respect to agricultural products. Under what GATT provisions has this action been taken?

Reply to question 62

Under Article 394 of the Treaty of Accession, the new Member States have been applying Community rules relating to production of and to trade in agricultural products from 1 March 1986. This application is fully in accordance with the provisions of Article XXIV concerning customs unions.

Question 63

Articles 68 and 236 provide for the setting of prices for agricultural products in Spain and Portugal where there is no definition of the price in these countries. Please provide a list of the products for which the prices have been fixed pursuant to these provisions and the level of the prices.

Reply to question 63

The products and prices determined in application of Articles 68 and 236 of the Treaty are listed in the following table:

Prices of agricultural products subject to the general transition régime¹

PRODUCT	SPAIN	PORTUGAL
	<u>Ecu/t</u>	<u>Ecu/t</u>
Wheat-maize	171.44	- ³
Durum wheat	204.48	- ³
Barley - grain sorghum	162.32	- ³
Rye	167.06	- ³
Rice	238.00	- ³
Beet	47.98	43.72
Sugar	627.8	492.4
Olive oil	1,297.1	1,981.8
Colza-turnips	402.8	464.1
Sunflower	401.1 ²	573.5 ²
Peas - beans - field beans ⁴	506.4 ²	506.4 ²
Peas - beans - field beans ⁵	324.8 ²	324.8 ²
Sweet lupins	441.5	482.5 ²
Soya	406.5	575.8 ²
Flax	458.5	554.1 ²
Dried fodder	148.04	178.92 ²
Cotton	960.2 ²	960.2 ²
Red wine	1.89	- ³
White wine	1.75	- ³
Butter	3,525.4	- ³
Milk powder	2,438.0	- ³
Meat of bovine animals	2,944.6 ²	- ³
Meat of sheep and goats	4,323.2 ²	4,323.2 ²
Pigmeat	2,033.3 ²	-

¹ The prices given in this table should be adjusted to take into account any monthly increases between the beginning of the season and 1 March 1986.

² Common price

³ These products are subject to the transition régime in two stages

⁴ Trigger price (animal consumption)

⁵ Target price (human consumption)

Question 64

Articles 69 and 237 allow for immediate alignment of price levels for agricultural commodities for which the price levels between the Community of 10 and the acceding countries are minimal. Which product prices will be aligned immediately?

Reply to question 64

All products for which price levels were aligned immediately under Articles 69 and 237 or other provisions are those covered by footnote (2) to the table presented in reply to question 63.

Question 65

Under Article 270, for products subject to the two-stage transition period, Portugal shall apply to imports from the Community during the first stage a system of price equalization or specific protection. Please provide the details of this system.

Reply to question 65

The products which, under Article 270, are subject to the two-stage transition period in Portugal are those covered by footnote (3) in the table presented in the reply to question 63. The domestic prices for these products are, during the first stage, set by the national authorities in the framework of the disciplines referred to in Article 265.

Article 270 is concerned only with Portuguese imports from other member States; imports from third countries fall under Article 277, which raises the principle of the application of Community regulations to imports from third countries.

Question 66

What will be the net effect of the new common external tariff, combined with the extension of CAP production and other aids to Spain and Portugal on:

- (a) The EC's imports of temperate agricultural products
- (b) EC's production of and self sufficiency in, temperate agricultural products
- (c) existing suppliers to Spain and Portugal.

Reply to question 66

In general, and subject to the specific replies given in connection with questions of the same kind, the adoption by Spain and Portugal of Community rules will not bring about any significant changes in the agricultural production capacity of these countries. Bearing in mind that agricultural production in these countries generally falls short of requirements, on the one hand, and, on the other, that agricultural production in the rest of the Community fails to satisfy requirements completely, and also in view of the CAP reform being carried out, the Community considers that no sudden or major changes will occur in the structure and total volume of trade in agricultural products.

The development of trade between the new and old members of the Community should not in general affect the overall deficits of the enlarged Community. For example, aggregate demand for cattle feedstuffs, and particularly maize and substitute products, should remain unchanged or even increase in the long run.

Question 67

How does Spain plan to dispose of production increases resulting from the application of EEC production aids? In which markets will the surpluses be disposed of?

Reply to question 67

Community production aids are in no way intended to create production surpluses but in general to ensure equitable remuneration for Community producers, and are related to quality requirements. Moreover, most of such aids are only granted subject to a guarantee threshold. In the circumstances, the second sub-question is pointless.

Question 68

Will the level of the minimum grower prices and processing aids applicable in the Community of 10 be affected by the accession of Spain and Portugal?

Reply to question 68

By virtue of their accession, Spain and Portugal benefit from Community support régimes. It is therefore logical that the administration of such régimes should take into account the evolution of all these products in Spain and Portugal as well. As regards price levels, Spanish and Portuguese prices are to be aligned with the level of common prices, processing aids being adjusted in the light of such alignment.

Fisheries

Question 69

Article 167 provides for the allocation of global fish quotas by Spain. How will these quotas be allocated?

Reply to question 69

(a) It should be noted that this question arises in connection with Article 163 of the Act of Accession, and not Article 167.

Article 168 of the Act of Accession provides for the elimination, over a period of seven years, of the tariff quotas granted by the Kingdom of Spain for fishery products coming from joint ventures which have been set up.

(b) A Community regulation for the application of these provisions is drawn up each year. For the period from 1 March to 31 December 1986, the following tariff quotas in respect of the products in question have been opened in Spain:

(in tonnes)		
CCT heading	Description	Zero-duty amounts authorized
03.01 B 1 c) 2	Hake, frozen	18,690
03.01 B 11 b) 1, 2, 6, 8, 9 ex 03.01 B 11 b) 14	Fillets, frozen	3,640
ex 03.02 A 1 b)	Cod, salted, not dried	1,650
ex 03.01 B 1 c)	Tuna, frozen	1,650
ex 03.01 A 1 b) ex 03.01 B 1 ex 03.01 C	Various fishery products, frozen	4,700
ex 03.01 B 1	Various fish, fresh	13,120
03.03 B IV a) 1 cc)	Squid (Illex), frozen	8,220
ex 03.03 B IV a) ex 03.03 B IV b)	Molluscs, fresh and frozen	7,150

ex 03.03 A I ex 03.03 A III b) ex 03.03 A IV c) ex 03.03 A V a) 1	Crustaceans, frozen	6,820
ex 03.03 A I 03.03 A II a) ex 03.03 A III b) 03.03 A V a) 2	Crustaceans, live and fresh	660
	Total	66,300

The allocation of the amounts indicated above is based on the 1983 pattern. It is effected by the competent Spanish authorities and may, if necessary, be subjected to partial allocations on a quarterly basis among common enterprises.

Question 70

As regards existing bound duty free quotas on fisheries products from non-EC exporters, can EC now indicate how and under what conditions this quota will be available to Spain and Portugal and how quotas will be administered in the future?

Reply to question 70

As from 1 March 1986, the bound tariff quotas are available to Spain and Portugal in accordance with Community rules on the opening of these quotas.

Relevant Community procedures governing the administration of these quotas remain valid.

Question 71

Article 174 provides that, in respect of certain fisheries products, Spain shall increase imports from the EC by 15% annually at the expense of third countries. What is the GATT justification for this requirement and for a similar requirement under article 361 in the case of Portugal? Article 174(4) provides that "beyond the threshold of intra EC share, measures limiting or suspending imports may be taken". Please explain the meaning of this provision.

Reply to question 71

Articles 174 and 361 relate only to trade between the Community, as it was constituted before its enlargement, and Spain and Portugal.

The 15 per cent increase in the intra-Community share of the forward supply estimate for the Spanish or Portuguese market does not affect the shares of the market in these two new Member States to which third countries are entitled. It makes it possible to determine the threshold beyond which it is possible, through Commission procedures, to limit or restrict imports of the products in question originating in other Member States of the Community when the market of one of the new Member States is disrupted or likely to be disrupted.

It does not imply any obligation to increase imports from other Member Countries.

Question 72

Article 176 provides that Spain, and article 363 provides that Portugal, may maintain quantitative restrictions on imports of certain fisheries products from third countries. What are the procedures for administering these restrictions and what are the quota levels? Will discretionary licensing of imports continue? What is the GATT justification for these measures?

Reply to question 72

In the event of the application of the quantitative restrictions provided for in Articles 176 and 363 of the Act of Accession, annual import quotas are decided upon before the beginning of each season, and are divided into four quarterly parts under a Community regulation.

The following quotas have been fixed for the 1986 season:

Annual Quotas for Imports from Third Countries and Quarterly Allocation
Provided for in Article 2 of Regulation (EEC) No. 360/86

A. In Respect of Spain (Tonnes)

CCT heading	Description	Annual import quota	Quarterly allocation			
			1	2	3	4
03.01 B I (h) 1	Cod, fresh or chilled	1 980	590	730	250	410
03.01 B I (p) 1	Anchovies, fresh or chilled	380	50	110	110	110
03.01 B I (t) 1	Hake, fresh or chilled	725	25	210	300	190
03.01 B I (t) 2	Hake, frozen	9 250	910	2 780	2 780	2 780
03.01 B I (u)	Blue whiting	690	60	210	210	210
03.01 B I ex (v)	Horse mackerel, fresh or chilled	20	2	6	6	6
03.01 B II ex (a)	Fillets of cod, fresh or chilled	1 050	110	330	270	340
03.01 B II (b) 9	Fillets of hake, frozen	2 330	290	880	880	880
03.02 A I ex (b)	Cod, not dried, salted or in brine	8 150	1 000	3 120	1 810	2 220
03.03 A III ex (b)	Spinous spider crabs, fresh, live	55	3	11	16	25
03.03 B IV (b) ex 2	Venus clams, fresh or chilled	450	55	90	55	250

B. In Respect of Portugal (tonnes)

CCT heading	Description	Annual import quota	Quarterly allocation			
			1	2	3	4
03.01 B I (h) 2	Cod, frozen	1 200	120	360	360	360
03.01 B I (ij) 2	Saithe, frozen	20	2	6	6	6
03.01 B I (k) 2	Haddock, frozen	20	2	6	6	6
03.01 B I (m) 2	Ling, frozen	20	2	6	6	6
03.01 B I (n) 2	Alaska pollack, frozen	20	2	6	6	6
03.01 B I (t) 1	Hake, fresh or chilled	20	2	6	6	6
03.01 B I (t) 2	Hake, frozen	7 000	850	3 500	1 800	850
03.01 B I ex (v)	- Horse mackerel, fresh, chilled or frozen	30	3	9	9	9
	- <u>Gadus macrocephalus, Brosme brosme</u> , frozen	20	2	6	6	6
03.01 B II (b) 1	Fillets of cod, frozen	20	2	6	6	6
03.01 B II (b) 3	Fillets of haddock, frozen	20	2	6	6	6
03.01 B II (b) 9	Fillets of hake, frozen	20	2	6	6	6
03.01 B II (b) 11	Fillets of plaice, frozen	20	2	6	6	6
03.01 B II (b) 12	Fillets of flounder, frozen	20	2	6	6	6
03.02 A I (b)	Whole cod, headless or in pieces, dried, salted or in brine	63 300	2 600	24 800	21 500	14 400
03.02 A I ex (f)	Products similar to cod (saithe, haddock, Alaska pollack, pollack, <u>Gadus macrocephalus, Brosme brosme</u>)	20	1	10	6	3
03.03 A IV ex (a)	Prawns and shrimps of the <u>Pandalidae</u> family, frozen	20	1	10	6	3
03.03 A IV (b) ex 2	Shrimps of the genus <u>Crangon</u> , frozen	20	1	10	6	3
03.03 A IV ex (c)	Other frozen shrimps	800	100	400	200	100
03.03 A V (a) 1	Norway lobsters, frozen	50	5	15	15	15
03.03 B IV (a) 1	Squid, frozen	7 000	800	2 600	2 300	1 300

A system of certificates, which are issued automatically until the quota laid down for each product is exhausted, has been introduced to ensure the administration of these quotas, replacing the system of discretionary licensing prevailing in the new Member States before their accession to the Community.

This is not therefore a question of new restrictions but of measures which will be revoked at the end of a transitional period so that the "acquis communautaire" can be respected.

Question 73

Can the EC indicate how bilateral fish arrangements with former EFTA countries (i.e. Portugal) are to be integrated into the EC system?

Reply to question 73

Existing arrangements concerning the fisheries sector were adapted in the course of the general adaptation of agreements between the Community and the EFTA countries.

See also the reply to question 57.

Question 74

Article 171 provides for a system of compensatory indemnities for sardine producers in Spain. How will this program be implemented?

Reply to question 74

The provisions of Article 171 are not subject to examination under Article XXIV of GATT.

Oil seeds, oils and fats

Question 75

What is the anticipated effect of the accession of Spain and Portugal to the EEC on its import requirements for oilseeds?

Reply to question 75

The Community does not think that, during the first five years, the expansion will have any major effect on the import requirements for oilseeds of the twelve States Members of the EEC as compared with the situation prior to accession. On the other hand, imports could increase considerably after that period because of the possible growth in demand for oils for human consumption and for oilcake for animal feed.

Question 76

What effect will the introduction of Community aids in Spain and Portugal have on the production and consumption of olive oil?

Reply to question 76

The measures in question will have no appreciable effect either on production or consumption, in view of the limitation of the production-aid benefit to areas planted prior to 1 January 1984 and the slow increase of the level of Community aids over a transitional period of ten years, to which must be added a prudent policy of guaranteed production prices.

Question 77

What effect will the introduction of Community aids in Spain and Portugal have on the production and consumption of oilseeds and products?

Reply to question 77

The production of oilseeds increased greatly during the last years prior to accession, particularly in Spain; this upward trend will now be limited by the introduction of the system of maximum quantities in the new Member States. As to consumption, it will initially be subject to a system of control aimed at ensuring that its expansion corresponds to the overall expansion of consumption of vegetable oils (see reply to question 81).

The consumption of oilcake for animal feed should increase, owing to the lower prices that should result from alignment with the Community's import régime.

Question 78

Articles 93(4) and 291(4) require that, for trade in processed vegetable oil products intended for human consumption, appropriate measures shall be adopted to take account of the differences in the prices of these oils in Spain and Portugal and the Community. What specific measures will be implemented?

Reply to question 78

In case of danger of competition distortion, a compensatory amount may be charged on imports into Spain or Portugal of certain oil-rich products both from other Member States and from third countries to cover the differences in the prices of these oils that might result from the control system provided for by Articles 94 and 292.

Question 79

Articles 95(3) and 293(3) require that aids for oilseeds produced in Spain or Portugal and processed in the Community, and aids for oilseeds produced in the Community and processed in Spain or Portugal, shall be adjusted to take account of the difference between the prices of these oilseeds and the prices of imported oilseeds. Please describe these adjustments.

Reply to question 79

The aid is adjusted so as to enable every Community operator (whether of the Ten or of the new Member States) to operate on the market on an equal footing of competition as regards seed prices, whether the seeds were produced in his own Member State, in any other Member State or in a third country. The procedures for applying the provisions of the Treaty are laid down in Regulation No. 478/86 of the Council and Regulation No. 522/86 of the Commission¹.

¹OJ EC L 53 and L 55

Question 80

What are the adjustments in the "acquis communautaire" that are referred to in Articles 92 and 290? How will these adjustments affect trade in oilseeds and products?

Reply to question 80

The adjustment in question relates to the Joint Declaration on the adjustment of the "acquis communautaire" in the vegetable oils and fats sector, annexed to the Act of Accession.

It concerns modifications to be made in the common organization of the market in order to adjust its conditions to the new situation of the 12-Member market. These measures will take account of the implications of trade concessions in favour of third countries, resulting from the enlargement.

Question 81

What is the purpose of the system of quantitative controls referred to in Articles 94 and 292? What effect will this system have on trade in oilseeds and products? How will this system operate?

Reply to question 81

The purpose of the system in question is to prevent the disorganization of the market that would result from the cessation, upon accession, of the national systems previously in force and, in particular, to ensure a development of the consumption of these oils corresponding to the overall development of the consumption of vegetable oils. For the operation of the system and its effect on trade, see the reply to question 84.

Question 82

How do the systems for quantitative controls that have been introduced in Spain and Portugal pursuant to Articles 94 and 292 differ from the régimes that previously existed in Spain and Portugal?

Reply to question 82

The systems for quantitative controls introduced in Spain and Portugal pursuant to Articles 94 and 292 do not differ substantially from the previous national systems, apart from the fact that they are now administered at Community level. This will result in greater transparency, owing to the elimination of State monopolies or discretionary licensing as well as of discrimination between economic operators.

Question 83

In light of the provisions of GATT Article XI, how does the EC justify the implementation in Portugal of new quantitative restrictions on imports of oilseed and products?

Reply to question 83

The machinery for controlling the quantity of oilseed products to be consumed in Portugal does not introduce a new quantitative restriction vis-à-vis the previous situation (see reply to question 82). On the contrary, the temporary system established under Article 22 of the Treaty ensures better transparency of operation and provides for the liberalization of trade in this sector, which will be complete in 1990. Consequently, this system is consistent with the provisions of Article XXIV.

Question 84

Article 94 provides that Spain (and article 292 in case of Portugal) shall apply until the end of 1990 a system of controls on imports of certain oils and fats. Controls are to take the form of quantitative restrictions applying to imports from the EC and third countries. How will the controls be administered, what will be the levels of imports permitted, and how will these levels be determined? Under what GATT articles are these measures justified?

Reply to question 84

This involves a flexible mechanism which is designed to control the quantities of such oils to be consumed in the Spanish or Portuguese domestic market and which limits imports only insofar as they are destined for those domestic markets: there is no quantitative restriction on oilseeds or their products which have other destinations.

The consumption levels are established on the basis of the consumption determined over a reference period and of the trend of requirements. The trade flows of the new Member States should therefore not be affected.

The system is applied in accordance with the provisions of the following regulations:

Regulation (EEC) No. 475/86 and 476/86 of the Council	L 53
Regulation (EEC) No. 1183/86 and 1184/86 of the Commission	L 107
Regulation (EEC) No. 1185/86 of the Commission	L 107.

The system is consistent with the provisions of Article XXIV concerning customs unions.

Question 85

What measures does the EEC propose to take to ensure Article 94(2) of the instrument of accession is complied with? If an export subsidy is to be applied what will be the effect on the international market for these oils?

Reply to question 85

The necessary measures were taken in Regulation No. 475/86 of the Council¹ and Regulation No. 1883/86 of the Commission.²

No Community export subsidy is planned. However, Spain is authorized to maintain for five years certain pre-existing national preferences within the limit of traditional export flows and for annually decreasing amounts. Consequently, this cannot have any substantial effect on the international market.

¹OJ EC L 53 of 1 March 1986

²OJ EC L 107 of 24 April 1986

Question 86

Under Article 25(3), the basic duties for products falling within headings 12.01(B), 12.02, and 23.04 of the CCT (oilseeds and meals) are to be fixed at a level representative of the 1984/85 marketing year. What are the basic duties for these products?

Reply to question 86

These duties are fixed by Regulation No. 3801/85 of the Council¹ at the rates reproduced in the following table:

CCT Heading No.	Description	Rate of duty (%)		
		Community at as present constituted	Portugal	Third countries
12.01	Oil seeds and oleaginous fruit, whole or broken:			
	B. Other:			
	- Cotton seed	6.8	6.8	6.8
	- Groundnuts, sesamum seed, safflower seed, and sunflower seed	4.1	4.1	4.1
	- Soya beans, copra, palm nuts and kernels, cruciferos oilseeds and oleaginous fruit	exempt	exempt	exempt
	- Caster seed	1.6	0.8	4.1
12.02	- Other	0.5	0.2	1.4
	Flours or meals of oilseeds or oleaginous fruit, non-defatted (excluding mustard flour):			
	A. Of soya beans	2.3	2.3	2.3
	B. Other:			
23.04	- Linseed or cotton seed	14	14	14
	- Other	2.3	2.3	2.3
23.04	Oil-cake and other residues (except dregs) resulting from the extraction of vegetable oils:			
	B. Other:			
	- Residues resulting from the extraction of cotton oil:	3.7	2.7	5
	- Of sunflower	10.7	10.3	11.8
	- Other	0.7	0.3	1.8

¹ OJ EC L 367 of 31 December 1985

Grains. Cereals

Question 87

Please explain how the import system for grains in Portugal will operate under Article 320. How will the licensing/tender system work? How will the variable levy be calculated? What is the threshold price in Portugal? How will this price be determined? Please explain the methodology for the calculation of the corrections for tenders relating to products of Community origin as provided by Article 320(b).

Reply to question 87

Under Article 320 of the Act of Accession, imports of basic cereals into Portugal are to be carried out by private operators in increasing percentages (from 20 per cent in 1986 to 100 per cent in 1990). The rest will be imported by the State monopoly (EPAC). The quantities corresponding to those percentages will be calculated on the basis of quantities imported during the preceding year. For 1986, the quantity allocated to private operators is fixed at 471,000 tons of cereals and 24,000 tons of rice. During the year, Portugal will offer one or more invitations to tender for those amounts, payable upon importation. In their tenders, private operators must take into account, on the one hand, the world market price and, on the other, the selling price of EPAC, at least as long as the share of the Portuguese market controlled by EPAC determines domestic prices. At the present stage, there is no import threshold price for basic cereals. Up to 1990, the Portuguese authorities may decide whether such a price should be introduced and its amount. Tenders relating to products from other States Members of the Community are corrected by a flat amount of 5 ECU per tonne, and by a correction factor reflecting the difference between Community market prices and world market prices.

Questions 88 and 89

88. The Treaty requires Portugal to reserve a certain minimum portion of its import market for grains for Community sources. How does the EC justify this quantitative restriction on imports from non-member countries under the GATT?

89. What effect will this new system of import controls on grains in Portugal have on imports of grains from the Community and from non-EC countries?

Replies to questions 88 and 89

Article 320 of the Treaty of Accession does not impose any new quantitative restrictions on imports from third countries. This provision is essentially aimed at the progressive dismantling of the State import monopoly: during the first four years following accession, as the market share allocated to private importers grows, the functioning of Community preference should enable Community operators to obtain minimum access to the Portuguese market. If that were not to happen, there would quite obviously be a distortion in the functioning of the Common Market associated with the existence of the monopoly.

It is only if this minimum economic objective were not obtained in the course of a year that the monopoly would bear an obligation in respect of the result: to "correct" (in the course of the following year) the distortion found to have occurred. It is therefore a potential obligation, limited in time (four years), which cannot be assimilated to a quantitative restriction. The Community considers this mechanism entirely consistent with the spirit of Article XXIV (preference within a customs union) and it does not think that it will be prejudicial to normal trade flows with third countries in view of the foreseeable growth of Portugal's cereal requirements.

Question 90

Please explain how the variable levy on Spanish grain imports will be calculated. How does the incidence of the variable levy on grain imports applied by Spain after 1 March 1986, compare to the incidence of the import charges applied by Spain before that date?

Reply to question 90

Since 1 March 1986, Spain has been applying to imports the Community levy, reduced by the accession compensatory amount. Previously, Spain already applied an import-levy type mechanism designed to compensate the difference between world prices and the Spanish domestic price.

The change that has occurred is therefore not one of substance, even if the use of the parameters in effect since 1 March has coincided with a certain increase in the amount collected, due in particular to variations in exchange rates and world market prices. In view of the characteristics of the Spanish cereals market, this change should not have a decisive incidence on imports in the future. As regards 1986, a large proportion of traditional imports seems to have been anticipated in the first months of the year.

Question 91

Will export refunds be available for exports of grains from Spain and Portugal?

Reply to question 91

As from 1 March 1986, Spanish exports may benefit from Community refunds as adjusted, if appropriate, by the accession compensatory amount.

During the first stage, the Portuguese Republic is authorized to grant national export aids or subsidies. The amount is limited to what is strictly necessary in order to ensure the disposal of the product in question on the market of destination (Article 283 of the Act). After the first stage, these exports will be able to benefit from Community refunds, possibly adjusted by the accession compensatory amount.

Questions 92 and 93

92. What is the anticipated effect of the enlargement of the EEC on its export availability of cereals to the world market? Is it anticipated that Spanish accession will increase export availability?

93. How is the application of the EC cereals régime expected to affect production levels for cereals in Spain and Portugal?

Replies to questions 92 and 93

The enlargement of the EEC to include Spain and Portugal should not have any substantial effect on the export availabilities of the EEC.

The influence of climatic factors on production and the trend of domestic consumption will be the preponderant factors as regards export availabilities. Production in Portugal could be affected by the alignment, during the second stage, with Community support prices, which are largely lower than Portuguese support prices.

On the other hand, production in Spain, which already prior to accession practised a system of supporting production comparable to the CAP, should not vary significantly.

Question 94

How does Spain envisage disposing of its wheat and barley stocks? Is the use of export subsidies proposed and to what proportion of stocks would they be applied?

Reply to question 94

Spain's publicly held stocks are to be sold on the internal market or on the world market in accordance with the Community procedures in force. However, quantities existing prior to 1 March 1986 and exceeding the normal carry-over stock, would have to be disposed of without benefitting from export refunds.

Question 95

How do the EEC Commissions's proposals for the modification of the CAP on cereals affect accession arrangements? Are the accession arrangements for cereals likely to be modified as a result of the Commission's proposals?

Reply to question 95

The proposals in question, as approved by the Council, do not affect the arrangements of the Act of Accession.

Question 96

Article 285(5) provides for the alignment of prices during the second stage for two-stage products. How will this provision be applied to Portuguese cereal prices?

Reply to question 96

Article 285, paragraph 2 (and not paragraph 5) provides, in case of differences between the common prices and the prices in Portugal, for movement towards the common prices. In view of the fact that Portuguese cereal prices are at present higher than in the 10-Member EEC, it is probable that the provisions of paragraph 4 of the same Article will be applied.

Question 97

Under Article 275, for products subject to the two-stage transition period, the Community will apply during the first stage the arrangements that it applies with regard to exports to non-member countries. Does this mean that the Community will provide refunds on exports of cereals to Portugal during the first stage? Will Spain provide refunds for exports of cereals to Portugal during the first stage pursuant to Article 4(1) of Council Regulation 3792/85?

Reply to question 97

No refunds will be provided on exports of cereals to Portugal, whether the cereals come from Spain or from other countries members of the Community, because of the level of Portuguese prices, which are higher than Community prices.

Question 98

How is accession likely to affect Spanish and Portuguese imports of rice?

Reply to question 98

As regards Portugal, the deficit character of production should continue. In view of Portuguese consumer habits, in quality and particularly in the use of husked rice, and of the inadequate availability of this type of husked rice in the Community, changes in Portuguese imports should remain minor. However, the progressive dismantling of Portugal's rice-importing monopoly and the influence of terms of sale - in particular, credit lines offered by certain suppliers of Portugal - might slightly modify import sources.

As regards Spain, the surplus character of production should continue. Imports, which prior to accession came under State trading and were possible only in the framework of inward processing traffic, were liberalized on 1 March 1986 and subjected to a levying system; they should therefore experience an increase, limited, however, because of the surplus local production.

Fruit and vegetables

Question 99

Article 144 provides for the establishment of quantitative restrictions on imports of fruits and vegetables from third countries. What are the detailed rules for application of these quantitative restrictions? What is the GATT justification for these measures?

Reply to question 99

Under Articles 77 and 144 of the Treaty of Accession, Spain may indeed maintain quantitative restrictions vis-à-vis third countries for a limited number of fruits and vegetables until 31 December 1989.

By Regulation (EEC) No. 3798/85 of 20 December 1985, the Council laid down the general modalities of the quantitative restrictions of imports into Spain of the fruits and vegetables concerned from third countries.

By Regulation (EEC) No. 636/86 of 28 February 1986, the Commission fixed the level of these quotas.

Generally speaking, in the quantitative restrictions which Spain may still apply at its frontier as regards the list of fruits and vegetables concerned, there is reason to note a certain parallelism between the import restrictions vis-à-vis third countries and those applied to the ten-Member Community and Portugal.

This régime constitutes a very definite improvement in Spain's opening to the world when compared to what prevailed prior to accession (strict import system based on discretionary licensing) since, apart from the restrictions which temporarily continue for a very limited number of products, there is total freedom of trade for all other products as from 1 March 1986.

Questions 100 and 101

100. To what extent will Spain's production of canned deciduous fruit increase as a result of EEC production aids?

101. How will the availability of Community aids affect the production of canned fruit in Spain and Portugal?

Replies to questions 100 and 101

Production aids for some canned fruit was already limited to certain quantities (quotas) in the ten-Member Community. That was the case for pears and cherries.

Upon accession, these quotas were adapted in the light of Spanish and Portuguese production, to which they thus also apply.

As regards peaches in syrup, the Act of Accession provides for limitation of processing aid to a given quantity during the first four marketing years in Spain following accession.

It must also be remembered that minimum prices and processing aids for these products have been substantially reduced in the Community for several years.

In view of these measures, the production of canned fruit is not likely to experience significant expansion in Spain and Portugal in the near future.

It should be noted that there is no Community aid for canned apples.

Question 102

What effect will the availability of Community aids for processing and refunds for exports for canned fruits and vegetables have on trade between Spain and Portugal and other member States and between Spain and Portugal and non-member countries?

Reply to question 102

Community aids should not, of themselves, have any effect on trade between Spain and Portugal and other Member States, since the level of these aids is calculated so as to ensure that the ex-factory price is the same throughout the twelve-Member Community.

Moreover, there are of course no refunds in intra-Community trade.

As to the trade of Spain and Portugal with non-member countries, in view of the fact that the aids available to them will be limited as indicated (see replies to questions 100 and 101), it will be primarily affected by the development of Spain's and Portugal's domestic consumption and by the development of trade with the other Member States, especially as a result of the tariff disarmament that will occur in the course of the transitional period.

Question 103

How will the accession of Spain and Portugal affect EC imports of citrus products from the EC's Mediterranean partners?

Reply to question 103

The accession of Spain and Portugal should not affect Community imports of citrus products, especially as the EEC, in the framework of its relations with its Mediterranean partners, has adopted as an objective the maintenance of traditional trade flows in the context of the expansion.

Sugar

Question 104

What is the anticipated effect of the enlargement of the EC on its export availability of sugar to the world market? Is it anticipated that new quota arrangements will constrain or enhance export availability?

Reply to question 104

As regards Spain, no effect is anticipated on the EEC's export availability of sugar to the world market, because sugar production and consumption in Spain are on the whole balanced. On the other hand, the accession of Portugal can be expected to have the effect of reducing the Community's export availability of sugar, since this Member State is highly deficitary, production on the basis of Portuguese raw materials being 3 per cent of consumption.

The production quota fixed for Spain will not have any effect of its own on Community exports, since it was established by reference to actual production (see above paragraph). As regards Portugal, the quota allocated is very small in comparison with Portuguese consumption.

Question 105

Is it envisaged that any Spanish/Portuguese sugar stocks accumulated will benefit from EC export restitutions after accession?

Reply to question 105

Under Regulation (EEC) No. 579/86, a normal carry-over stock at the date of 1 March 1986 was fixed for Spain and Portugal, its level depending on sugar consumption, production, traditional exports and the operating needs of refineries. Such stocks are for all intents and purposes considered Community sugar and are therefore entitled to benefit from export refunds. In the case of Portugal, however, its sugar should be entirely consumed locally, owing to the big deficit in production. Similarly, the by-and-large balanced situation of the Spanish market is not likely to lead to substantial exports, although it may be assumed that some quantities will go to the Spanish free zones, the Canaries, Ceuta and Melilla. On the other hand, any quantities on that date in the two countries in excess of the normal carry-over stock will have to be disposed of outside the Community without benefiting from the export refund.

Question 106

How is it expected that the EC sugar régime will affect the sugar productive capacities of Spain and Portugal?

Reply to question 106

The sugar production capacities of Spain and Portugal should not change significantly from the situation existing prior to the accession of the two countries, for the reasons indicated in the reply to question 104.

Question 107

What will be the nature and level of the support régimes for sugar in Spain and Portugal? How will the Community's surplus of sugar be affected?

Reply to question 107

See reply to question 104.

Meats and dairy

Questions 108 and 111

108. What is the anticipated effect of the enlargement on production of bovine meat and sheepmeat in Spain and Portugal? What are the implications for existing suppliers of any expansion in production?

111. To what extent is the application of the CAP régime operating in the meat and dairy sectors expected to affect Spanish and Portuguese production? Can a quantitative estimate be provided?

Replies to questions 108 and 111 (Meats)

The effects of the enlargement and the progressive application of the CAP to Spain and Portugal on domestic production and trade will depend primarily on the trend of domestic demand.

The policy of stabilization of the markets for the meat of bovine animals and of sheep and goats may promote structural change in stock-farming and eventually lead to improvement in meat quality in keeping with technical progress.

Existing suppliers may look forward to a transition from State-trading regulation, in reality a quasi-closing of the frontier, to a régime of trade liberalization in the framework of the Community.

Question 109

How will the EC's GATT quotas for beef imports be affected by the accession of Spain and Portugal? Will these quotas be extended to Spain and Portugal?

Reply to question 109

Spain and Portugal will participate in the GATT quotas for beef and veal imports on the same footing as the other States Members of the Community, in observance of the commitments entered into with third countries.

Question 110

After accession, will Spain and Portugal allow imports of cuts of meat down to 100 grams from third countries as permitted under the EC third country veterinary directive?

Reply to question 110

Spain and Portugal have already put into force Directive 72/462/EEC and, like other Member States, they may permit the importation of fresh meat in cuts of more than 100 grams, provided that the general conditions laid down in Article 18 of Directive 72/462/EEC are fulfilled.

Questions 111 and 112

111. To what extent is the application of the CAP régime operating in the meat and dairy sectors expected to affect Spanish and Portuguese production? Can a quantitative estimate be provided?

112. What, if any, provisions have been made for the application of the Community's milk quota scheme in Spain and Portugal?

Reply to questions 111 (dairy products) and 112

The Treaty of Accession provides that the milk superlevy and quota system is fully applicable to Spain as from 1 March 1986. For other purposes, guaranteed quantities have been fixed for Spain at current annual levels of 4,650 thousand tonnes for deliveries to dairies and at 750 thousand tonnes for direct sales. These quantities are broadly equivalent to actual Spanish deliveries or direct sales in 1983. In common with the Member States of the Community of 10, the above Spanish guaranteed quantities will follow the rules for reductions laid down in EC Regulations.

It therefore follows that after 1 April 1988 the annual volume of cow's milk delivered to dairies or sold directly in Spain should be about 3 per cent lower than in 1983 if payment of the superlevy is to be avoided. Due to the system of transition by stages, the Community superlevy and quota system is not applicable to Portugal during the existing period of validity of the system (until 31 March 1989), but during the first stage (until 31 December 1990), if any increase in Portuguese production takes place, Portugal shall apply, as provided by Article 265, paragraph 3 of the Treaty of Accession, the necessary national measures.

Other commodities

Question 113

Will the state monopolies governing the marketing and trading of tobacco in Spain and Portugal be eliminated as a result of accession? If so, please explain the provisions for doing so. What import régimes will Spain and Portugal apply for tobacco?

Reply to question 113

In accordance with the Joint Declaration on the elimination of existing monopolies in the new Member States in this sphere of agriculture, the new Member States take all adequate measures with a view to abolishing national monopolies concerning the production and marketing of agricultural products on 1 March as regards unmanufactured tobacco (page 480 of Act of Accession).

Consequently, Spain has already withdrawn unmanufactured tobacco from the Spanish tobacco monopoly (Boletín oficial del Estado /Official Gazette/ No. 286 of 29 November 1985, pages 37775-37777).

As to Portugal, there was no tobacco selling and trading monopoly.

For the import régimes, see reply to question 21.

Question 114

The treaty of accession provides for elimination of the four trade régimes existing in Spain and for their replacement by the Community régime. What advantages or disadvantages do these changes imply for Cuba as an exporter of products which were formerly subject to State trading in Spain, in particular unmanufactured and manufactured tobacco, coffee and petroleum?

Reply to question 114

See replies to questions 25, 27 and 35.

Question 115

What are the trade arrangements for walnuts in Spain, Portugal and the other member States after accession?

Reply to question 115

As part of its Mediterranean policy, the 10-Member Community granted tariff concessions for imports of common nuts from Lebanon and Turkey.

Spain and Portugal will progressively apply the preferences accorded, either autonomously or by agreement, by the Community as from the second phase and as from the second stage of the period of transition, respectively, in accordance with Articles 153 and 289 of the Act of Accession.

Steel and textiles

Question 116

- (a) What will be the effect of the restructuring of the Spanish and Portuguese iron and steel industries on third country suppliers of raw materials?
- (b) Article 212 requires Portugal to restructure its iron and steel industry over the next five years, under the conditions listed in Protocol 20. What measures does the Portuguese Government intend to take under this article? What is the schedule for implementation of these measures?

Reply to question 116

(a) It is generally admitted that for certain steel products over-capacities exist in Spain. On the other hand, the exports of Spain to developing countries are diminishing as a result of the increasing production in these countries. This being the case, consequences will appear in the imports of raw material, Spain importing most of the iron-ore, coal and all the oil used by its steel industry from third countries. This situation is due to the world market and not to the integration of Spain in the EEC.

The steel production of Portugal should remain at its level.

There will be no consequences on raw-material deliveries of foreign countries.

(b) The measures to be taken in Portugal have not been decided until now. However, as the Portuguese market is a small one (consumption of about 1 million t and production of less than 700,000 t), the measures will concentrate on modernization of the industry.

Question 117

Does the EC intend to enact any special provisions with respect to its bilateral voluntary export restraint arrangements, in particular on steel and textiles, as a result of the accession of Spain and Portugal? If so, please describe these provisions in detail. Do the Parties agree that adjustments to these agreements could have a bearing on their consistency with the GATT? Would the Parties agree that the agreements in question should be re-examined by the Contracting Parties?

Reply to question 117

As the steel arrangements are renewed annually, the arrangements for 1986 are applicable to the enlarged Community, including Spain and Portugal. These arrangements do not hold special provisions for Spain and Portugal. The provisions of the arrangements concern the Community as a whole. The inclusion of Spain and Portugal will not have a bearing on the consistency of the arrangements with the GATT.

The accession of Spain and Portugal to the Community involved their inclusion in the MFA. Therefore, the Community has entered into negotiations with the countries members of the MFA with which it has bilateral agreements, with a view to the signature of protocols of adjustment in accordance with the rules governing the operation of the MFA.

Question 118

Will implementation by Spain and Portugal of measures under the MFA result in further restrictions on trade in textile products?

Reply to question 118

In accordance with the provisions of the MFA, the implementation by Spain and Portugal of its provisions involves a progressive elimination of the restrictive policies that existed up to accession. Only products covered by bilateral agreements concluded under the MFA are subject to specific provisions contained in those agreements.

In cases where the Community was not able to initial the necessary protocols of adjustment prior to 31 December 1985, it has, in accordance with the provisions of Articles 183 and 370 of the Act of Accession of Spain and Portugal, taken measures designed to deal with this situation and concerning the necessary transitional adjustments to ensure that the agreements are implemented by the Community.

This represents an important step in the progressive opening of the markets of the two countries, which had hitherto practised a restrictive import policy.

VII. OTHER QUESTIONS

Question 119

What is the status of the Canary Islands now that Spain has joined the European Communities? Can it be confirmed that Canary Island import duties and charges are to be phased out on products from the EC? Will the twelve member States have more favourable conditions for exporting to the Canary Islands than third countries?

Reply to question 119

The status of the Canary Islands with respect to the enlarged Community is defined both by Article 25 of the Act of Accession and by the provisions of Protocol 2 annexed to the Act.

Article 6 of Protocol 2 defines the régime applicable to imports into the Canary Islands of the various products (including agricultural and fisheries products) originating in the customs territory of the enlarged Community. This régime consists of exemption from customs duties and from charges having equivalent effect, which is to be progressively implemented by 1 January 1993.

Article 7 of Protocol 2 stresses that the régime applied to the import into the Canary Islands of products originating in the customs territory of the enlarged Community may not be less favourable than the régime applied to the import into the Canary Islands of products from third countries.

Question 120

The Canary Islands retain their status as a free port and are not included in the customs union of the EEC. Nevertheless, following Spain's entry into the EEC certain changes are being made in their internal economic and fiscal régime. What effects will such changes have on Cuba's exports of unmanufactured tobacco and rum to the Canary Islands?

Reply to question 120

Article 1, paragraph 4 of Protocol 2 to the Act of Accession provides that the common commercial policy, directly linked to the import of goods, is not applicable to the Canary Islands.

In addition, Article 7 of that Protocol stipulates that the customs duties and the charges having an effect equivalent to such duties and the trade arrangements applied to the import into the Canary Islands of goods from a third country may not be less favourable than those applicable by the Community in accordance with its international commitments.

With regard to the fiscal aspect, it should be noted that the Community provisions concerning VAT are not applicable to the Canary Islands (see Annex I, section V(2) of the Act of Accession). As to unmanufactured tobacco and rum, there are no Community provisions regarding excise taxes.

For those reasons it is not thought that exports of the products mentioned above to the Canary Islands will experience any particular effects following accession.