

GENERAL AGREEMENT ON

RESTRICTED

L/6785

7 December 1990

TARIFFS AND TRADE

Limited Distribution

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ACCESSION OF PORTUGAL AND SPAIN TO THE EUROPEAN COMMUNITIES

Communication from the European Communities

The following communication, dated 6 December 1990, has been received from the Commission of the European Communities with the request that it be circulated to contracting parties.

The European Community has noted the notification circulated by the United States in document L/6774. It wishes in turn to make the following comments, for the information of the Contracting Parties.

The US communication makes reference to the bilateral agreement agreed upon by the Community and the US in January 1987, and states (at page 2) that this "temporarily compensated the United States" for the loss of certain bindings following Spanish accession to the EEC. The Community view is that this bilateral agreement concluded the negotiations between the two sides under Article XXIV:6 and that the compensation was therefore part of a final settlement. The agreement states, in its final sentence: "Upon approval of, and subject to, the above provisions BOTH PARTIES declare that this agreement constitutes a mutually satisfactory CONCLUSION of this Article XXIV:6 negotiation" - emphasis added. Similar language appears in the Title of the agreement and in the preamble (point I).

The communication states further that the Community "has refused to continue the review" which was to take place in the second half of 1990. This is factually incorrect: the review has been initiated, and the Community attaches great importance to continuing the process and has proposed further discussions. The review will determine what new action, if any, would be appropriate.

The United States appears to consider that this review provision represents a continuation of the tariff negotiations under Article XXIV:6. As indicated above, the Community does not share this view, since those tariff negotiations were concluded in early 1987 and the two parties are no longer in a tariff negotiation in terms of Article XXVIII. In any event

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the proposed action by the United States on 1 January 1991 is neither necessary nor justified: either GATT rights under Article XXVIII exist - in which case they are not time-limited, under the terms of the agreement - or such rights do not exist, in which case US action is illegal in GATT.

The United States quotas 1981-83 statistical data to show that its exports of corn (maize) and sorghum to Spain were at that time US\$624 million. This figure is irrelevant. The two parties based their tariff negotiations under Article XXIV:6 on the latest available data, i.e. initially on the two years 1983-84 and subsequently on 1983-85 when the 1985 data were also available. Spanish imports of the same products from the US in 1983-85 (average value) were no more than US\$280 million, and were on a rapidly declining trend (since the mid-1970s).

In addition, US exports of certain cereal substitute products (corn gluten feed etc.) were recognized in the bilateral agreement to be replacing corn and sorghum in the Spanish market for animal feeds, and under the terms of the agreement the EEC access commitment was to be adjusted downwards accordingly. The market for these products, which had not been traded prior to Spanish accession due to import restrictions, was opened when the restrictions were eliminated as part of the process of enlargement. In consequence, a figure of about US\$100 million, representing US exports of such products in 1989, should also be taken into account.

The Community reserves its GATT rights in respect of the action envisaged by the United States in its communication and, without prejudice to its view that the United States has no right to unilateral action under Article XXVIII, gives notice that the volume of EEC trade covered by the proposed action (US\$420 million, on 1989 data) is quite clearly excessive and totally unjustified. Should it prove to be necessary, the Community will bring both these matters - the GATT rights claimed by the United States and the excessive nature of the action they propose - to the urgent attention of the Contracting Parties.