

# GENERAL AGREEMENT ON

RESTRICTED

Spec(88)15  
22 March 1988

## TARIFFS AND TRADE

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Working Party on the Accession  
of Portugal and Spain to the  
European Communities

MEETING OF 17 FEBRUARY 1988

Chairman: Ambassador F. Jaramillo (Colombia)  
Note by the Secretariat

1. The Working Party held its fifth meeting on 17 February 1988. It adopted the agenda contained in GATT/AIR/2530.

A. Continued examination of the provisions concerning the accession of Portugal and Spain to the European Communities (L/5936 and addenda), in the light of the relevant provisions of the General Agreement, and of the issues which have arisen in the discussion (Spec(87)2, Annex I).

(i) Tariffs

2. The representative of the European Communities drew attention to L/5936/Add.6 which contained information on the new schedule of concessions of the EC/12 which had been submitted in December 1987. Tariff negotiations had been completed with most of the Communities' trading partners. In 1986 and 1987 there had been considerable reduction of tariffs and liberalization of non-tariff measures in the two acceding countries. Imports into both Spain and Portugal had increased substantially although this could not entirely be attributed to better market access. The volume of Spain's merchandise imports had increased on average by 19 per cent annually, and of manufactured products by 30 per cent. Moreover, when assessing the general incidence of the tariff changes, one had to bear in mind that imports into Spain and Portugal only amounted to 7 per cent of the total imports into EC/12 (see Annex I), and that 93 per cent of the imports of the EC/12 were not affected by the tariff changes. Increases in duties would affect less than  $\frac{1}{2}$  per cent of the Communities' total imports and it was impossible to argue that this could lead to a negative general incidence of tariff changes for the contracting parties as a whole. The Working Party had acknowledged that the outcome of tariff negotiations could have an impact on its conclusions. It was now in a position to reach the conclusion that on the tariff side the terms of accession of Spain and Portugal to the Communities conformed with Article XXIV:5.

3. The representative of Canada stated that it would be premature to proceed to conclusions on the tariff aspect of enlargement, since his delegation was still engaged in tariff negotiations with the Communities. This was unacceptable to the representative of the European Communities because the schedule of concessions of the EC/12 had been submitted to the GATT. The question of tariff incidence was therefore clear and outstanding matters relating to market access were of minor importance.

4. The representative of the United States had reservations with respect to the new schedule of concessions of the EC/12. The table circulated by the Communities was not new, except that it included information relating to 1985. A trade coverage method of analysis provided only part of the information which the Working Party would need for its examination. The incidence could only be measured if one had recourse to the duties collected analysis which the United States had presented to the Working Party (Spec 87(2), Annex II). This was a standard methodology used in tariff negotiations. The analysis had assumed that the EC/10 duty rates would be extended to the EC/12. Therefore, only the duties applied by the acceding countries would change and they had focused on that element. The analysis had found that accession would result in a net global impairment for third parties. Furthermore, nominal improvements in Spanish and Portuguese duties would not lead to benefits for them as a result of trade-diversion. The Communities' response to their analysis had not been satisfactory. One could not set aside the impact of variable levies by saying that they were sui generis measures driven by considerations which were outside the Communities' direct control. The Communities set the level of the levies which affected a vast amount of trade where conditions had worsened as a result of the unbinding of previous concessions. The effects of variable levies should be examined by the Working Party since they were recognized as a regulation of commerce by the European Communities.

5. The representative of the European Communities replied that although in tariff negotiations it was usual to look both at the volume of trade and at duty collections, this was not the case in Article XXIV:5 exercises which were of a broader nature. The United States ignored the 90 per cent of the total trade of the Communities where the incidence was certainly not more restrictive. The US presentation was flawed because it ignored the fact that unbound tariffs could be raised at any time. If the incidence of changes in unbound rates and of new bindings was assessed in the same way as of changes in bound rates, then participants in new customs unions might be encouraged in future to raise unbound rates just before accession so as to claim that the incidence of accession had been positive when they were subsequently lowered. This was contrary to common sense. Furthermore, the blanks had been filled and the Communities did not agree with the method used in the United States analysis for measuring the incidence of a movement from a bound tariff to a variable levy. Moreover, the tables only covered 2 of the 3 years which were the basis for the negotiations.

6. The representative of New Zealand thought that if a small contracting party joined a large customs union and in the process raised all its tariffs, addressing the fact that it accounted for only a small share of the enlarged customs union's total trade would be missing the point. The point would be that the said customs union would have failed to satisfy the requirements of Article XXIV:5(a). Even though the trade of Spain and Portugal might account for only 7 per cent of the EC/12's total trade, it was in that 7 per cent that the Working Party was interested. In Annex II of Spec 87(2), the United States had provided an assessment of tariff

changes based on both the trade coverage and duties collected approaches whereas the EC's assessment was based only on the trade coverage approach. The Working Party needed a yardstick to measure the height of duty changes which could only be provided by the duties collected approach. He therefore requested the European Communities to organize their data accordingly. It was also necessary to establish whether the information contained in the table circulated by the European Communities included variable levies and in which direction were moving the tariffs that were being unbound and those which remained unbound.

7. The representative of the European Communities replied that one could not reach conclusions under Article XXIV:5(a) by looking only at the two contracting parties which had joined the customs union. Article XXIV:5 referred clearly to the new customs union as a whole, though the United States presentation did not. The hypothesis put forward by New Zealand was not helpful because a contracting party joining a customs union could not raise bound tariffs without negotiating under Article XXIV:6. If all of its tariff was unbound, then it could, without any GATT rights being affected, raise it above the level of the customs union six months before acceding and lower it again afterwards, thus claiming the benefit of a positive incidence. Article XXIV:8 required members of a customs union to apply substantially the same duties to other contracting parties. Either the new members aligned their tariff with the existing external tariff of the customs union or a weighted average tariff was adopted. The CCT/10 could not have been aligned upwards to the tariffs of Spain and Portugal since this would have required the holding of Article XXIV:6 negotiations. The representative of the United States considered that the conclusion which they had reached would not be altered even if one took into consideration the trade of the EC/10 when assessing general incidence, though the relative proportions might be affected.

8. The representative of the European Communities suggested that when it came to drafting conclusions, the Working Party should note that Article XXIV:5 did not require it to conduct a negotiation but just an assessment of incidence. Furthermore, the Working Party could agree that duty collections would not change for the 90 per cent of the trade of the EC/12 which was accounted for by the members of the EC/10 and that therefore the incidence of accession was not higher for that portion of the EC/12's total trade.

9. The representative of Australia referred to the import figures into Spain and Portugal in 1986 and 1987 which had been mentioned by the representative of the European Communities and asked him to provide the break-down of increases in trade with the other members of the Communities, and countries with which the Communities had free trade or association arrangements. He could not agree with the European Communities' interpretation of Article XXIV:5 and could not accept that it be incorporated in the Working Party's conclusions. The representative of Hungary disagreed with the European Communities' view that the total volume of trade of the EC/12 should be taken into consideration when assessing

incidence. The representative of the European Communities did not think that they were required to provide detailed trade figures for Spain and Portugal, which were in any case generally available. While the imports of Spain and Portugal from the other constituent members of the Community had increased satisfactorily, experience showed that when the EC had been originally formed and subsequently enlarged, trade had at first increased more rapidly within it but that after a while, third parties had also experienced higher growth rates in their trade with the members of the Community.

(ii) Other regulations of commerce

10. The representative of Japan drew attention to his country's submission annexed to Spec 87(31) and requested further information from the European Communities on:

- (i) The reasons and motivations for the introduction by Spain of new discriminatory quantitative restrictions on 7 items mentioned in the submission, inter alia on tariff lines 84.45 (machine tools) and 84.51 (typewriters);
- (ii) The import restrictions mentioned in Paragraph III of the submission as they were concerned that contrary to the European Communities' assertion there might not necessarily be improvements in trade in the products concerned;
- (iii) The discriminatory quantitative restrictions listed in L/5936/Add.5.

11. The representative of Japan considered as unsatisfactory the reply provided by the European Communities to question 14 in L/5984/Add.1. As to discriminatory quantitative restrictions against Japan, there existed a discrepancy between EC Council Regulations and the Official Gazettes of Spain and Portugal. According to the Official Gazette of Spain, items 85.21 and 85.23 were subject to discriminatory quantitative restrictions against Japan, while Annex I of the EC Common Import Regulations did not refer to these items as such. If there was a discriminatory quantitative restriction, Japan would urge the European Communities to ensure that Spain eliminated it. Similarly, Annex I of the EC Common Import Regulations indicated that Portugal maintained a discriminatory quantitative restriction against Japan on item 87.02. However, according to the Official Gazette of Portugal this restriction was not discriminatory and therefore clarification was sought. As indicated in Japan's submission (Spec(87)31, Annex) Spain had introduced new discriminatory quantitative restrictions after its accession to the Communities, which contravened Article XXIV:4. Therefore Japan requested that all discriminatory quantitative restrictions against it which had no GATT justification be eliminated and that the Communities undertake commitments to that effect before the Working Party could proceed to drafting its report.

12. The representative of Hungary stated that the accession of Spain had resulted in the introduction by it of discriminatory quantitative restrictions on 94 headings and sub-headings, which were not consistent with Article XIII. These restrictions covered about one-fourth of Hungary's total exports to Spain and were contrary to Spain's obligations under the GATT vis-à-vis Hungary. Prior to its accession to the Communities, Spain had not maintained discriminatory restrictions against Hungary as was confirmed by five Spanish notifications. The EC had first stated that no new quantitative restrictions had been imposed in Spain after its accession to the Communities (Spec 86(60) para.24). Later on they recognized the existence of a specific trade régime for Japan and some other contracting parties (Spec 87(31), para.12), without giving any GATT justification in reply to the written questions or during the meetings of the Working Party. In another GATT forum, the EC recently stated that "... the introduction of new quantitative restrictions due to the accession of Spain and Portugal to the Community, ... had been made in order to align these two countries' trade régimes with the rest of the Community" (L/6282, para.16). Notwithstanding the fact that there did not at the moment exist a uniform system of import restrictions in the member countries of the Communities, the Hungarian delegation could not accept the EEC argumentation which could in no way amount to legal justification in the GATT. Article XXIV did not require a country which acceded to a customs union to align its trade régime with the more restrictive and discriminatory régime of the customs union. On the contrary, Article XXIV:4 clearly laid down that "the purpose of a customs union or a free trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories". The second of these criteria had not been met in relation to Hungary. These restrictions were contrary to Article XI and XIII, as Article XXIV did not release Spain, the European Communities or any other contracting party from their obligations under these Articles. Hungary also rejected the view of the European Communities that "Article XXIV:5(a) or any other paragraphs thereof, did not distinguish between measures that were or were not consistent with the GATT when making an assessment of incidence" (Spec(87)2, para.32). Newly established GATT inconsistent barriers could not be traded off against the alleged reduction of other barriers. Unless Spain and the European Communities eliminated immediately these discriminatory quantitative restrictions which were introduced as a result of Spain's accession, Hungary could not accept the Treaty of Accession as being in conformity with the General Agreement and would reserve fully its rights under the GATT.

13. The representative of the European Communities suggested that the views of the delegations of Japan and Hungary could be reflected in the report of the Working Party which would also record the points of disagreement. The Communities did not believe that any new quantitative restrictions had been imposed against Hungary after the accession of Spain, because all imports from state-trading countries had been subject to a specific régime in Spain, under which restrictions could be imposed. Nevertheless, Hungary had never brought a case against Spain in the GATT.

The Communities' specific trade régime for state-trading countries was covered by Protocols of Accession to the GATT. They were moving to a more transparent system whereby all such specific régimes would be eliminated. The purpose of the Working Party was not to reach conclusions on the nature of the prior Spanish régime. What had to be established was whether the Communities were trying to liberalize restrictions and other regulations of commerce. The Communities had submitted enough material for conclusions to be reached on this point and contracting parties which were not satisfied with this material could exercise their GATT rights if they wished. Article XXIV:4 was an objective and not an obligation, as could be seen when it was read in conjunction with the provisions that followed. The only test was whether the requirements of Article XXIV:5(a) and XXIV:6 were followed. With respect to the questions put forward by the delegation of Japan, he wondered why these had not been raised in bilateral discussions which had been held throughout 1987. The Communities had nothing to add to what they had said in previous discussions. Japan could not deny the fact that the incidence of quantitative restrictions on that country had been substantially reduced, even though there might have been a few cases where restrictions had been intensified.

14. The representative of Hungary replied that he could not agree with the Communities' interpretation of Article XXIV:4. Neither could Article XXIV:8(a) be read in such a way as to allow a country acceding to a customs union to introduce GATT-inconsistent measures. He also said that Hungary had not brought a case against Spain in the GATT, because the discriminatory quantitative restrictions about which it was complaining were new and had not existed before Spain's accession to the EEC. This Working Party's competence in that respect could not be questioned since the restrictions had been introduced when Spain acceded to the Communities. He also rejected the Communities' assertion that the discriminatory trade régime applied by the EEC vis-à-vis Hungary was justified by Hungary's Protocol of Accession to the GATT. On the contrary, Paragraph 4 of the Protocol of Accession of Hungary to the GATT called for the elimination of discriminatory quantitative restrictions not consistent with Article XIII and for the discriminatory element in these restrictions not to be increased. As far as the alleged benefits of the new trade régime for Hungary were concerned, as an illustration he cited some of the quotas introduced in Spain for 1988 which were for one colour television set, 3 sewing machines or 83 kg. of motor cycle side cars. These examples indicated that Hungary had a strong case for bringing the matter to the attention of the Working Party.

15. The representative of the United States stated that new quantitative restrictions inconsistent with the GATT had been introduced in Portugal for imports of oilseeds. Furthermore, the extension of the CAP to Spain and Portugal would lead to market losses in the two countries and also to indirect losses due to overproduction. Thirdly, following accession to the Communities, the number of quantitative restrictions in Spain were increasing from 50 to 400 as could be seen from the submission which his delegation had made to the Working Party (Spec(87)2, Annex III). The

previous Spanish régime had not affected US export interests whereas now some 110 tariff items covering \$350 million of trade were subject to quantitative restrictions. Both the issue of the GATT-consistency of the measures introduced in Spain after its accession, and their practical effects were relevant to the Working Party's mandate. Article XXIV did not provide for a derogation from the obligations contained in Articles XI and XIII. It was not satisfactory to argue as the Communities did, that the pre-accession Spanish import régime was nebulous. In other fora, the Communities had accepted that new restrictions had been imposed after accession. Article XXIV:8(a) did not allow for the imposition of new restrictions on the grounds of alignment to a community-wide régime.

16. The representative of Japan was disappointed to hear that the Communities had no intention of providing the additional information which his delegation had requested. Article XXIV:5(a) could not be interpreted as authorizing the imposition of new quantitative restrictions, merely on the grounds that the total number had been reduced after accession.

17. The representative of the European Communities thought that it was misleading to talk about quantitative restrictions presently in force, without acknowledging that the transitional period was not over. L/5936/Add.5 indicated that very few restrictions would remain at the end of this period. By mentioning only 7 restrictions as being new in Spain, Japan acknowledged that the others had existed prior to accession. The Communities had never said that Article XXIV provided a waiver from the obligations of Articles XI and XIII. They had simply said that they were seeking practical solutions to an existing problem. The effects of extension of the CAP had been discussed in great detail in Article XXIV:6 negotiations. As to the Portuguese oilseeds régime, it had to be made quite clear that as provided for in the Treaty of Accession, the régime was transitional and that the objective was total liberalization.

18. Referring to L/5936/Add.5, the representative of Australia stated that the United States' submission on the subject (L/6172) cast doubt on the picture provided by the Communities. Australia also had reservations about the list of non-tariff measures on agricultural products maintained by Spain and Portugal before acceding to the Communities. The document did not cover a number of agricultural products such as 01.04 (live sheep), 07.06 (manioc), 11.07 (malt), 23.02 (bran, sharps, residues), etc., perhaps because restrictions did not apply to them before accession. Since accession they were subject to variable levies which were a non-tariff measure having a severe restrictive effect on trade and should be taken into consideration when the Working Party made its assessment of incidence.

19. The representative of New Zealand noted that according to the US document the post-accession trade régime was more restrictive for at least 70 items. He considered further that there were grounds for doubting that the liberalization claimed could be taken at face value. For instance, the European Communities' submission claimed that trade in one product (04.04) had been under restriction in Portugal prior to its accession and would be

liberalized thereafter. In fact, even though trade in the item had been conducted by a state-trading organization, no restriction had applied to it. This was demonstrated by the notifications that Portugal had made, amongst others to the Committee on Trade in Agriculture. These notifications showed that a quota applied only to a sub-item (edam cheese). Instead, the heading would now be subjected to a variable levy which meant that trade in it would not be liberalized contrary to what was claimed by the European Communities in their own submission. Moreover, the Community-wide GATT quota arrangements for the heading in question had also remained unchanged. Therefore, New Zealand had come to the conclusion that the categories in the EC submission were unreliable. At least in these cases, in the absence of further data demonstrating that trade had increased after accession, a positive assessment in terms of Article XXIV(5)a would not be possible.

(iii) List of issues which have arisen in the discussion (Spec 87(2). Annex II)

20. The representative of the European Communities considered that some of the issues had been overtaken and suggested that the Working Party work on a draft report which would record the views which had been expressed. With respect to the list, he would only add that the Working Party should conduct a global assessment of the incidence of measures, rather than add up the incidence on imports from individual contracting parties. The Communities did not regard the Treaty of Accession as an interim agreement, but they did not oppose the right of the Working Party to make recommendations under Article XXIV:7(b).

21. The representative of the United States believed that preferential trade should not be taken into account when assessing improvements in measures because of the trade diverting effects of these preferences. The representative of the European Communities did not see how these preferences could be taken into account in assessing the incidence of accession. Similarly, he did not feel that domestic subsidies could be considered a regulation of commerce. The representative of the United States stated that preferential trade would not be affected by changes in MFN duty rates and therefore should not be taken into consideration when assessing the effects of these changes. His delegation did not share the views of the Communities on the Common Agricultural Policy and on subsidies because they had a direct impact on the trade interests of third countries.

B. Other relevant points, including the time-table for the adoption of the Working Party's report and the date of its next meeting.

22. The Chairman suggested that the secretariat be asked to prepare the draft of a report which, as in similar cases in the past, would summarize the discussion and record any points of agreement and disagreement. This draft report would be examined and hopefully adopted at the next meeting of

the Working Party. The representatives of Canada and Japan considered that it was premature for the Working Party to proceed to prepare its report because there were still outstanding matters to resolve. The representatives of the United States and Australia pointed out that the Working Party still had a number of tasks before it, including final statements by participants, consideration of conclusions by the Working Party and arrangements for reports on the implementation of the terms of accession. The representative of the European Communities believed that there was no point in having a further meeting of the Working Party unless a draft report was submitted to it or a delegation had a new submission to present. As regards reports on implementation of the terms of accession, the European Communities would not object to providing the usual reports as was the practice in other cases; but he did not think that it would be appropriate to innovate. After some further exchanges of views, the Chairman suggested that the secretariat prepare a factual summary of the discussion to date in the Working Party which would be used at the next meeting, to be held on 20 April 1988, as a basis for drafting the report. It was so agreed.

Annex

Note from the European Communities

This table shows the trade by tariff category from all GATT countries covered by the outcome of the Article XXIV:6 negotiations by which it was decided to extend the tariff of the Community of Ten to Spain and Portugal. The figures are imports expressed in millions of ECU and cover the period 1983/85.

	Total	Spain	Portugal	EC 10
Total imports from GATT countries	17 094	13 274	3 820	(239 831)
<u>of which:</u>				
1. Bound tariffs falling	4 895	4 281	614	
2. New bindings:				
at lower level	3 839	2 101	1 738	
at same level	4 318	4 065	253	
at higher level	2 136	1 741	395	
Total 1. and 2.	<u>15 188</u>	<u>12 188</u>	<u>3 000</u>	
3. Unbindings	701	701	-	
4. Bound tariffs rising	197	84	113	
Total 3. and 4.	<u>898</u>	<u>785</u>	<u>113</u>	
Bound tariffs remaining bound at same level	348	230	118	
Unbound tariffs remaining unbound	660	72	588	