

GENERAL AGREEMENT ON

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TARIFFS AND TRADE

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

COMMUNICATION FROM THE DELEGATION OF THE UNITED STATES

The attached communication has been received from the delegation of the United States, on behalf of the delegations of Australia, Hungary, Japan, New Zealand and the United States, with the request that it be circulated to the members of the Working Party.

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

The following conclusions are presented jointly by Australia, Hungary, Japan, New Zealand and the United States for consideration, and eventual adoption, by the Working Party.

SUMMARY

The Working Party conducted a detailed examination of the terms of the accession of Portugal and Spain to the European Communities in light of the relevant provisions of the GATT, including in particular, Articles XXIV, XI, and XIII. Within the Working Party, there was a general sense (with the exception of the EC and their member states) that the EC had failed to demonstrate that it had met its obligations under the Articles XXIV:4, XXIV:5 and XXIV:6 with respect to duties and other regulations of commerce, and that new restrictions had been imposed as a result of enlargement which were not consistent with Articles XXIV, XI, and XIII. These members of the Working Party believed that the EC should take appropriate steps to meet its obligations, and that quantitative restrictions not consistent with the GATT should be removed immediately. They also called on the EC to report annually to the Contracting Parties on the specific steps taken to bring itself into conformity with the obligations of the General Agreement, in particular with the provisions of Article XXIV and called for the establishment of a Working Party at the end of the transition period to review the status of implementation, in particular the elimination of transitional measures, of the Treaties of Accession.

TARIFFS

The Working Party considered quantitative analyses regarding customs duties presented by the United States and by the EC (attachments I, and II, respectively). There was agreement that approximately one and one half percent of the enlarged Community's trade (measured in trade coverage terms) would experience higher duties as a result of enlargement whereas some four percent would be subject to lower duties. Only the EC took exception to the further elaboration of the analysis presented by the United States which demonstrated in duties

collected terms that there would be a net post enlargement increase in duties collected for imports from third countries of approximately ECUs 650 million. Most of the participants concluded that, on the whole, the general incidence of the duties was higher after enlargement than was the case prior to the formation of the enlarged customs union. This conclusion was reinforced by the realization that the lower duties generally involved small duty reductions spread over large volumes of trade which were unlikely to have a major trade impact, whereas the duty increases were generally concentrated on sensitive agricultural items and were expected to have a major adverse trade impact.

The EC argued that unbound positions should not be considered under Article XXIV:5 and that only trade coverage figures, and not duties collected data, constituted appropriate measures of the general incidence of duties within the meaning of Article XXIV:5. This view was not shared by other members of the Working Party, who considered that Article XXIV:5 very clearly referred to the general incidence of duties, and unlike XXIV:6, was not limited to bound positions. They also pointed out that XXIV:4, in noting that a Customs Union should not raise barriers to the trade of other contracting parties, was not limited to bound positions. Further, they considered that XXIV:5 contemplates an examination of the incidence of the duty changes, not just a simple trade coverage figure which could mask the overall incidence.

Most of the members of the Working Party rejected the EC's argument that Article XXIV provides for the unilateral transfer by the Community of "credits" generated by tariff changes on individual items as compensation for changes on other lines. They are of the opinion that the possibility that "credit" could be owed a customs union under Article XXIV, which could then be used to impair further bindings, is inconsistent with Article XXIV.

Finally, there was also a difference of views between the EC and a number of other members of the Working Party as to whether trade of Contracting Parties subject to preferential arrangements with the EC should be taken into account in assessing the general incidence of duties. The EC considered that there was no basis for excluding from consideration preferential trade, whereas others considered that only trade actually subject to most-favored-nation (MFN) duties should be included in any assessment of changes in the MFN duties.

QUANTITATIVE RESTRICTIONS

A number of members of the Working Party expressed concern regarding the introduction of quantitative restrictions not consistent with the GATT on agricultural products. One example cited frequently concerned quantitative limits on oilseed imports by Portugal. The EC maintained that these limits would be implemented in a non-restrictive manner.

A number of members of the Working Party expressed serious concern with the introduction of quantitative restrictions not consistent with the GATT on industrial products, some of which were introduced as transitional measures. These measures affected hundreds of millions ECUs and most were found to be without prior justification and were considered inconsistent with Article XI. The EC considered that the new regimes replaced more restrictive prior regimes with more transparent and open systems.

A number of members of the Working Party also drew attention to the fact that new discriminatory quantitative restrictions in violation of Article XIII were introduced as a consequence of the accession of Spain and Portugal. These members believed that Article XXIV does not sanction or require that the acceding member to a customs union should align its quantitative restrictions to that of the more restrictive, discriminatory regime of the union. Moreover, these members rejected the notion put forward by the EC that newly established GATT-inconsistent barriers could be traded off against alleged reductions of other barriers.

A number of members of the Working Party also considered that nothing in Article XXIV provided a derogation from other GATT obligations, especially those of Articles XI, XIII and XVI. The EC considered that it was beyond the mandate of the Working Party for it to attempt to make pronouncements regarding the GATT consistency of specific measures. Nevertheless, these members of the Working Party believed that, in keeping with the terms of reference, these Articles were relevant provisions of the General Agreement to examine.

OTHER REGULATIONS OF COMMERCE

A number of members of the Working Party expressed deep concern with the fact that the variable levy would be extended to numerous products in Spain and Portugal, with serious damaging consequences for the trade interests of third country suppliers. Over 1,000 million ECUs of grains alone would eventually be subject to variable levies in Spain and Portugal, to the detriment of third country suppliers.

Serious concerns were also expressed by a number of members of the Working Party regarding the effects on third country trade interests of extending the Common Agricultural Policy to Spain and Portugal. These members believed that experience had shown that the internal subsidies artificially encouraged production, displacing imports and eventually adding to surpluses, which in turn created problems in third country export markets. The EC, while considering that domestic subsidies did not fall within the terms of reference of the Working Party, stated that the new regime would not bring about any significant changes in agricultural production capacity. For instance, in the meat market, the Working Party was advised that "...there was no reason for providing an encouragement to production" and "[a]ny increase in domestic production would be in response to any increase in domestic demand."

ATTACHMENT I

TABLE 1
An Overview of the Effect of
Extending the Tariff System of the
EC-10 to All Non-EC GATT
Contracting Parties Trade with
Spain and Portugal:
(1983/84 Trade)

TRADE COVERAGE BASIS

1) Global trade with Spain and Portugal where tariffs are <u>decreasing</u>	<u>Total Imports of Spain and Portugal (millions of ECUs)</u>
a. Bound	4597.2
b. New Bindings	3294.6
c. Unbindings	85.1
d. Remaining unbound	5.0
	<u>7981.9</u>
2) Global trade with Spain and Portugal where tariffs are <u>increasing</u>	
a. Bound	156.1
b. New Bindings	2044.6
c. Unbindings	723.8
d. Remaining unbound	598.8
	<u>3523.3</u>
3) Global trade with Spain and Portugal where tariffs remain <u>the same</u>	
a. Bound	399.9
b. New Bindings	3815.0
c. Unbindings	0.6
d. Remaining unbound	1.2
	<u>4216.7</u>

TABLE 2
An Overview of the Effect of
Extending the Tariff System of the
EC-10 to All Non-EC GATT
Contracting Parties Trade with
Spain and Portugal:
(1983/84 Trade)

DUTIES COLLECTED BASIS

1)	Global trade with Spain and Portugal where tariffs are <u>decreasing</u>	Duties Collected or Foregone (millions of ECUs)
	a. Bound	-454.5
	b. New Bindings	-281.8
	c. Unbindings	-0.7
	d. Remaining unbound	<u>0.1</u>
		-737.1
2)	Global trade with Spain and Portugal where tariffs are <u>increasing</u>	
	a. Bound	10.3
	b. New Bindings	166.2
	c. Unbindings	623.2
	d. Remaining unbound	<u>586.6</u>
		1386.3
3)	Global trade with Spain and Portugal where tariffs remain <u>the same</u>	
	a. Bound	0.0
	b. New Bindings	0.0
	c. Unbindings	0.0
	d. Remaining unbound	<u>0.0</u>
		0.0

ATTACHMENT II

IMPORTS OF SPAIN AND PORTUGAL (1983-85) : MILLION ECU

<u>1) TARIFFS DECREASING</u>	<u>IMPORTS FROM GATT COUNTRIES</u>
a) Bound	4,895
b) New bindings	3,839
c) Unbindings	5
d) Remaining unbound	5
	<hr/> 8,744
 <u>2) TARIFFS INCREASING</u>	
a) Bound	197
b) New bindings	2,136 (1)
c) Unbindings (higher (variable levies)	- 696
d) Remaining unbound (higher (variable levies)	22 631 (1)
	<hr/> 3,682 (= 1.5 % of total EC-12 imports)
 <u>3) TARIFFS REMAINING AT SAME LEVEL</u>	
a) Bound	348
b) New bindings	4,318
c) Unbindings	-
d) Remaining unbound	1
	<hr/> 4,667
 Total imports of Spain and Portugal	17,094
EC 10 Imports	239,831
(no change in tariff incidence)	

(1) Note :The significance of these duty increases in assessing the overall level of tariff incidence is examined in the Community's note commentary on the US note of 4.12.86