ACCESSION OF PORTUGAL AND SPAIN TO THE
EUROPEAN COMMUNITIES

Additional Question and Reply

The following is the reply to an additional question put by a contracting party.

Question:

In terms of Article 129 of the Act of Accession the use of the composite terms British Sherry, Irish Sherry and Cyprus Sherry is authorized on the domestic markets of the United Kingdom and Ireland until 1995, after which date these arrangements will be reviewed.

The implication of this measure is that the continued use of similar composite names, for example South African Sherry, to describe other liqueur wines, appears to have been summarily prohibited, even though the right to the continued use of certain specified composite names, including South African Sherry, on the United Kingdom market was confirmed as an acquired right in a judgement by a British High Court in 1969.

Furthermore, the description of liqueur wine has not yet been regulated at Community level, with the result that the rules of the individual member states are supposed to remain applicable in terms of the relevant Community regulations (Article 54(1) of Reg. no. 337/79).

How does the EC reconcile the provisions of Article 129 with the provisions of Article XXIV:4 and Article XXIV:5, and the discriminatory element with the provisions of national treatment of Article III and the m.f.n. principle of Article I of the General Agreement?

Reply:

(a) It is the region of production which gives a liqueur wine its designation of origin. Consequently, it is the provisions of Article 15:4 of Council Regulation (EFC) No. 823/87 and Commission Regulation (EEC) No. 997/81 relating to the description and presentation of wines that apply.

(b) Up to 1 March 1986, the designation of origin "Jerez-Xeres-Sherry" was not a Community designation of origin and consequently the provisions
of Article 15:4 of Council Regulation (EEC) No. 823/87* were not applicable to Sherry.

As from that date, the designation in question, having become a Community designation of origin, is prohibited from designating wines other than those produced within the limits of the region of Jerez de la Frontera.

(c) Article 15:4 of Council Regulation (EEC) No. 823/87 constitutes a measure designed to prevent deceptive practices. It is therefore justified under Article XX(d) of the General Agreement.

(d) Article 129 of the Act of Accession introduces an exception to this measure. It concerns two products of Community origin and one product of Cyprus, which is linked to the Community by an agreement of association preparatory to a customs union. These exceptions are consistent with the GATT by virtue of Article XXIV, which permits customs unions to be formed in accordance with the needs of the integration process they plan to carry out. The only condition imposed - in the case in question - is compliance with paragraph 5 of that Article, the m.f.n. clause not being applicable to the mutual benefits between territories constituting such a union.

South Africa, consequently, cannot claim the benefit of the same exceptions that are granted by one constituent territory to another.

(e) As regards compliance with Article XXIV:5, the extension of protection to the description "Sherry" must be considered as being within the framework of the whole of the customs union's tariff and non-tariff measures which may not have a general incidence higher or more restrictive than that of the duties and regulations previously applicable in the constituent territories. The Community considers that it fulfils this condition.

* Which incorporates and codifies the provisions of Regulation 338/79