GENERAL AGREEMENT ON TARIFFS AND TRADE

COMMUNICATION FROM THE EUROPEAN COMMUNITIES TO THE GATT WORKING PARTY ON GERMAN UNIFICATION

Second Questionnaire

(Replies to Questionnaires from Participants in the Working Party)*

INTRODUCTION

During and after the first meeting of the Working Party on German Unification on 28 May supplementary or follow-up questions were put by New Zealand, Australia, the United States on its own as well as on behalf of other participants, and Cuba. The Community considers that some of these supplementary questions may have been elucidated during the oral debate which of course will be continued. Furthermore it is the intention to supply all relevant information pertaining to the GATT aspects to the Working Party as and when internal Community reports will become available. For the rest, the following purports to give replies to those questions not yet answered. The numbers refer to the questions put in writing.

Questions from Australia

Question 1

Australia requests figures on the levels of utilization of duty-free import quotas, and the value of these imports, for individual items. In particular:

- coal, coke and briquettes (for coal separating figures for lignite from those for black coal);
- iron ore;
- non-ferrous metals and alloys;
- cereals (wheat).

Reply to Question 1

The enclosed annexes contain the import figures for the last quarter of 1990 and the first half of 1991 for the use of transition regulations (customs exemption for imports from the previous Comecon countries and Yugoslavia in the accession area). These annexes are in most cases listed according to group of goods.

*Cf. GATT Council Decision of 13 December 1990 - L/6792

91-1670
Iron ore is according to the common customs tariff exempted from customs duties; a claim on the special regulations is thus inapplicable.

For import of grain there are no transitional measures.

Imports of "Non-Ferrous metals and alloys" liable to customs duties from USSR, Poland, Czechoslovakia and Hungary did only take place on a small scale (see details in the enclosed table).

For coal see the reply below to Question 2.

Australia 1 (new)

Hungary is the only Member State of the former CMEA, entitled to duty free imports of wheat into the former GDR. At present no duty free imports of wheat take place.

Question 2

Regarding the coal industry:

- What has been the total production and consumption of coal in the New Lander?
- What has been the level and source of coal imports by this region?
- Are there any forecasts available for coal production, consumption and imports for future years?
- Will there be any trade measures, arising from the waiver or otherwise, favouring coal suppliers from former CMEA countries in the period after 31 December 1992?
- Will there be any residual impact on coal imports after 31 December 1992 resulting from the duty-free access available to CMEA coal exporters in the period till the expiry of the waiver?

Reply to Question 2

The enclosed list gives an account of the development of the coal situation during the last years (production, consumption, import and export) in the accession area.

The demand for lignite briquettes will, during the next few years, be considerably lower; according to present estimates it will, until the year 2000, be reduced to less that 8 million tons per year. The production of lignite will in the same period be expected to fall well below 150 million tons.
The strong downward tendency of the consumption of coal (including coal briquettes) will probably continue until the middle of the 90s. However, from this time onwards an increase of consumption of about 7 million tons per year will be expected until the year 2000. This follows from the expectation of an increased industrial use of coal and the intended construction of coal power stations.

No regulations favour coal deliveries from the previous Comecon countries in the accession area. Since 3 October 1990 the coal deliveries in the accession area are exempt from customs duties and exempt from quantitative limitations regardless of their origin (Regulation No. 29 amending the Regulation on Customs Tariffs of 29 November 1990 ([Bundesgesetzblatt 11, page 1467]). This Regulation has no time-limit.

**Question 3**

In the EC's response to our earlier question 6 (page 9 of Spec(91)10) they claim that, in the medium term, there will be significant reduction in agricultural production. This seems possible in the case of milk, cereals and potatoes because of quotas and set asides. However, no production controls are mentioned in relation to pork and beef. The EC states that there has been considerable export of live animals from the former GDR to the EC in the second half of 1990, and also to the USSR (answer to New Zealand question 12). Australia is concerned that beef exports from the former GDR to the EC could lead to rising stocks in the EC and the possibility of it disposing of these stocks on export markets, (e.g. Eastern Europe and the USSR).

- Australia would appreciate figures on the levels of exports of beef from the New Länder to the EC, and figures of these exports as they stood before unification.

We also note that under Commission Regulation 3775/90 the GDR is to export between 178,800 and 192,840 tons of beef to former CMEA countries (answer to New Zealand question 7, page 17 of Spec(91)10).

- How much beef has been sold under this Regulation? Are deliveries of agricultural products from the New Länder to the USSR under FEO/EEC aid programmes counted separately from exports under this Regulation? If so, what have been the levels of aid deliveries for the items covered by this Regulation?

**Australia 3 (new)**

The Commission does not have in its possession specific statistics on trade between the five new German Länder and the other Member States of the Community. Consequently, it cannot answer the question on comparing the export figures as from mid-1990 in relation to those recorded during the previous years.
Regulation (EEC) No. 3775/90 does not contain any obligation for exporting beef. The objective of this regulation is to allow that sales contracts concluded before the day of unification can be carried out under the terms as agreed between the two parties involved. The support by the Community in this corresponds to the normal level of export refund applicable throughout the Community. The implementation of this regulation is not connected to specific aid programmes.

**Question 4**

Regarding the longer-term agreements listed in Annex II to Regulation 3568/90, we note from the EC's response to our question 1 in Spec(91)10 that their stated intention is that distortions resulting from the CMEA trade system should disappear. Presumably, this intention will be reflected in the EC's attitude to renegotiating the longer-term agreements.

- Are the agreements between the former GDR and third countries referred to in Commission Regulation 3775/90 to be renewed?
- If so, will they be renewed on commercial terms?
- Finally, can the refund supplement from German national funds result in total refund for exports of products from the former GDR under these agreements exceeding the amount of export refund fixed by the Community?

**Australia 4 (new)**

- Since Article 1, paragraph 1 of Regulation 3775/90 covers only agreements concluded by the Government of the former GDR before 3 October 1990, it can be excluded that new derogations of that kind might occur.
- Due to the exceptional difficulties on this specific market Germany was authorized to grant national refunds for the exports of 10,000 tons of sheepmeat according to agreements concluded before 30 June 1991 (Regulation 139/91).
- Generally, only a supplement to the export refunds can be granted from German national funds for exports of products from the former GDR. However, in some of the cases where no Community refund is paid (sheepmeat), a national refund can be granted.
- Since Germany is authorized to grant a supplement to export refunds the total refund exceeds the amount fixed by the Community.

**Questions 2 and 6 - US question on initial EC response**

Concerning the responses to Australia 2 and Australia 6, the EC's failure to describe more fully the implications of its legislation providing aids for German production is disappointing. The provision of
subsidies in the former GDR will certainly impact on its trade position and the competitiveness of third country trade. These aids are part of the transitional package through which this territory is to be incorporated in the EC and by extension of the GATT system. As such, they appear to qualify for examination under the terms of reference of the Working Party, even if they are not covered by the waiver in L/6792. We respectfully resubmit the questions for response and urge the Community's co-operation and responsiveness on this point.

Additional reply to Australia's initial Questions 2 and 6

The EC have replied to questions 2 and 6 submitted by Australia.

As far as agriculture is concerned the following is a more detailed reply to Question 2:

The delivery of EC agricultural products to former CMEA countries under aid programmes, sales, exempted sales, or barter or counter-trade arrangements is not affected by the suspension of import duties as provided for in Council Regulation No. 3568/90.

The trade agreements between the former GDR and its CMEA partners and Yugoslavia did not constitute legal obligations for trade in specific quantities of goods. Only in order to protect legitimate expectations the EC suspended customs duties for imports from the CMEA Member States and Yugoslavia into the former GDR-territory in various sectors including agricultural goods in so far as trade existed in the past.

With regard to Question 6, the Community's principal aim is to adapt the production in the former GDR to the conditions laid down in the Common Market organizations.

This led to a reduction of the production and limits the commercialization of East-German products in other parts of the Community. Consequently, the export opportunities of third countries to the EC and to third markets will not deteriorate. This is also the case in the sheepmeat sector.

The measures taken both by the GDR before unification and by the EC after 3 October 1990 have already been indicated in the reply given to Question 6.

Stocks existing on the day of unification are covered by the export agreements concluded by the GDR before 3 October 1990. Most of the obligation resulting therefrom have been fulfilled. Certain difficulties exist only in the beef sector.
Questions from Canada

Question 1

Along with some other members of the Working Party, we believe that the request for historical trade data (for the items under duty-free preference under the waiver) is a fair question to which the European Communities should be willing to respond.

Question 5

With reference to the renegotiation of Trade Agreements which existed between the former GDR and its trading partners, does the European Communities envisage that any of the contents of the new agreements between the European Communities and former CMEA member States will contain terms that will require a waiver from any GATT Articles (for any of the GATT members involved)? If so, please give details.

Question 7

Canada believes that the Working Party has a legitimate interest in the accuracy of International Trade Statistics which relate to the subject matter under review, and believes that the European Communities should be willing to respond to the question.

Questions from Cuba

Question 1

Considering the volume of trade between Cuba and the former GDR and the fact that the two countries had concluded bilateral trade agreements providing for duty-free entry of specific goods up to a maximum quantity or value, as well as long-term co-operation agreements, can the non-inclusion of Cuba among the beneficiaries of the transitional measures adopted by the EEC be considered discriminatory treatment?

Question 2

To what extent is such action justified in light of the basic GATT principle of elimination of discriminatory treatment in international trade?

Replies to Questions 1 and 2

The Commission would like to point out that GATT provisions, in particular Article XXIV:6, are not applicable to the case of German unification. Unification led to an extension of the application of the treaties establishing the European Communities without a third State joining the Communities. Furthermore, any access facility that third countries may have had to the former German Democratic Republic’s market cannot be considered as a benefit accruing to them directly or indirectly
under the GATT, as the GDR was not a contracting party of it. Similarly, the Community has not increased any rate of duty inconsistently with the provisions of Article II of GATT, as the import régime applied by the GDR's State-trading system was not consolidated in the GATT.

The Commission would also like to stress that the transitional tariff measures adopted by the Community (Council Regulation (EEC) No. 3568/90 of 4 December 1990 and Commission Decision (ECSC) No. 3788/90 of 19 December 1990) in favour of European Member States of the Council of Mutual Economic Assistance and of Yugoslavia are strictly autonomous measures. Moreover, these measures are covered by the waiver decision granted by the GATT Council on 13 December 1990 (L/6792).

Question 3

In the light of the objectives of the General Agreement as set forth in its preamble, i.e. that it is directed to the substantial reduction of tariffs and non-tariff barriers affecting trade among contracting parties, how are the new barriers erected towards Cuban exports to the former territory of the GDR, by virtue of previously existing trade flows, to be interpreted?

Reply to Question 3

Cuba has no GATT rights vis-à-vis any GDR tariff. Moreover, it is obvious that the Community cannot maintain forever a special tariff zone in the former GDR. Hence the general Community régime for external trade will have to be applied also at the external borders of the former GDR. Although tariffs may be higher than in the former GDR, almost all products can be freely imported without restrictions related to their being listed or to the quantities mentioned in the CMEA trade protocols.

Question 4

Does the EEC consider that the transitional measures adopted in favour of the Eastern European countries are consistent with Article XXXVI of the General Agreement, in particular paragraphs 2 and 4, taking into account Cuba's dependence on exports of a limited range of primary products, of which it used to export to the GDR some that were fundamental for its revenues, such as sugar and tobacco, among others?

Question 5

Could the EEC indicate how it would fulfil the commitment in Article XXXVIII:1(b) 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"?
Question 6

How would the new barriers faced by Cuban exports destined for the former territory of the GDR be justified in the light of the commitments adopted by Ministers in the Punta del Este Declaration, including the standstill commitment?

Question 7

To what extent has the EEC taken account of Cuba’s trade interests in applying these measures? Are its actions in keeping with the provisions of Article XXXVII:3(c)?

Question 8

Can the EEC guarantee that it will not reduce access to its market for other countries not included in the exemption which are former suppliers to the GDR of products such as sugar, tobacco, citrus fruits and nickel? If so, could it indicate how?

Reply to Question 8

The great difference between the former GDR and the EEC is that the latter, being a market economy, can hardly give any guarantees on trade levels or market access in quantitative terms. Even for the countries included in the exemption, there was no such guarantee. In spite of the possibilities offered to them, they could not achieve the same market penetration in goods which they used to trade with the GDR because of the structural changes in their economy. How could the Community then provide such guaranteed market access to Cuba?

Question 9

Does the EEC intend to adopt additional measures to maintain levels of trade with other former trading partners of the GDR which did not benefit from the transitional measures covered by the exemption?

Reply to Question 9

There exists no legal obligation for the European Communities to provide Cuban products with preferential conditions of market access in order to take account of traditional exports to the former GDR. Furthermore, it should be noted that the benefit of the GSP was extended to the former GDR on 1 July 1990.

Further United States questions on replies to other countries

Question from Finland (on behalf of Norway)

Please explain why the long-term agreement of Norway with the former GDR providing for imports of a certain quantity of hardened marine fats free of duty has not been accorded the same consideration as the
now-defunct agreements and protocols that underlie the preferences granted for imports from the former CMEA countries and Yugoslavia?

Reply to Finland's question (on behalf of Norway)

The European Community already stated in Spec(91)10, page 14, that it was not informed of the existence of an agreement between Norway and the former GDR providing for the imports of 10,000 tons of hardened marine fats. This position has not changed; despite diligent research no such agreement has been found among the hundreds of GDR-Agreements which are now in the possession of the Commission.

As was explained in II(1) of Spec(91)10, the European Community was willing to take certain autonomous measures in favour only of certain traditional trading partners of the former GDR in Europe. Norway is not in this group of countries and, for reasons related to its own position in this matter, cannot avail itself of the EC's willingness in principle to discuss the fate of treaties concluded by the former GDR.

Question from Hong Kong D

The EC response to this question appears to state that derogations from national treatment of imports required under the Standards Code are covered by the waiver contained in L/6792. However, L/6792 explicitly grants the waiver only on the provisions of Article I of the General Agreement. In addition, in its response to question US32, US33 and US35, the Community appears to acknowledge that the derogations from technical and health requirements provided for in Council Directives 90/650, 90/654 and 90/657 are not totally covered by the waiver, i.e., at least to the extent that they apply to imports not covered by preferences.

Could the EC please elaborate on its justification under the General Agreement and the Standards Code for the discrimination in the application of the "technical rules" covered by these Directives?

Reply to Hong Kong D

In so far as Hong Kong has argued that a separate waiver under the Standards Code is necessary, the EC has replied during the meeting of 28 May 1991 that, since the Standards Code does not provide for the possibility of a waiver, a reasonable legal interpretation of the waiver contained in L/6792 would require that it is considered to cover also the Standards Code, in so far as this Code forms a further development of those GATT Articles covered by the waiver.

In so far as the United States seems to argue that there is something amiss with the waiver in so far as the derogation from technical and health requirements in Council Directives 90/650 and 90/657 apply to imports not covered by preferences, this is incomprehensible, since it was clearly stated in the reply to US32 (Spec(91)10, page 31), that such derogation can only be extended to products covered by tariff preferences. In so far as Annex I(2) and Annex II.I.1.b of Directive 90/654 refer to the "limits of
traditional trade flows" instead of the products covered by preferences, there is no difference in practice between these two categories, since the only imports in the GDR of plants not complying with the EC plant health standards and of seeds not certified according to EC standards came from CMEA Member States and were covered by quantities listed in trade protocols.

Finally, in so far as any aspect of the derogation from technical and health requirements were not to be covered by the waiver in L/8792 and individual contracting parties might wish to insist on an alleged right to import goods below EC standards but in conformity with GDR standards into the five new States of Germany, the Community would be willing to consult on any specific problems that might arise, but it is convinced, at the same time that, in practice, such wish will hardly exist and that the actual problems will be minimal.

Questions from New Zealand

Question 1

We appreciate the extensive information provided in II general observations on management and control of the transitional tariff measures. Safeguards would appear to depend on the audit system, (paragraph 2, F and G) backed up by the possibility of administrative fines and withdrawal of end use authorization. In paragraph F, it is mentioned that audits occur as a rule every three years. Is it the intention to conduct audits in this particular case on a more regular basis to minimise possibility of circumvention?

Reply to Question 1

A general change of the rule about the rhythm of investigations of firms (normally every three years) is not foreseen. For products imported duty-free in the framework of the transitional régime from Comecon countries and Yugoslavia, there will be additional investigations by the importers. Until now, about 20 per cent of these imports have been examined, without discovering irregularities.

Question 2

In New Zealand's question 4, we sought information on imports into the GDR in 1988, 1989 and 1990 of the products listed in question 3, comparing these with the maximum values and/or volumes contained in the trade protocol relevant for each year. Could the EC now provide details sought in this question?

Reply to Question 2

No details can be given. The structure of the annual protocols, which are not established on HS-nomenclature, does not admit the comparison of the real imports and the import possibilities for the mentioned products. A survey about the use of the annual protocols in 1988, 1989 and 1990 by
products is not available. For the mentioned period, global statistics of external trade are available, which contain to some extent data about imports by countries and product groups.

Question 3

We look forward to receiving the additional information from Germany in response to our original question 7.

Reply to Question 3

Exports of milk products from the ex-GDR.

On the basis of commercial agreements between the Governments of the USSR and the ex-GDR, the following quantities had to be delivered to the USSR:

- 77,000 tons of butter;
- 9,000 tons whole milk powder.

The sales price for butter was DM 2,085 tons f.o.b., and for whole milk powder DM 1,872 per ton f.o.b.

The delivery contract was totally settled by end of June 1991.

For the reduction of butter surplus in the GDR the export refunds for butter had been fixed by tender procedure. In case of adjudication the butter had to be exported within ninety days.

The EC took over refunds of DM 4,119.81 tons of butter in accordance with Article 1, paragraph 1 of Regulation (EEC) No. 2762/90. The surplus amount had to be paid by the German Government.

Fifteen thousand tons of butter had been exported before 31 December 1990. For exports of 2,000 tons of butter the export licence of ninety days was extended until the end of January 1991.

Question 4

What is the extent of additional national subsidies and size of public stocks taken over from the agency of the former GDR under EC Council Regulation 3577/90 of 4 December 1990, Article 6?

New Zealand 4 (new)

Eight-hundred-and-forty thousand tons of cereals have been taken over by the Community on a depreciated value.

The United States delegation supports the request by New Zealand for trade data covering historical trade flows. The EC statement in its written responses that this information is not "relevant" needlessly undercuts the point made many times by the EC that the data confirm a
downward trend in trade between the former GDR and the former CMEA members. The analysis of this data should be left to the contracting parties who have requested it.

**Question 5**

In reply to question 13, the EC has stated that contracts for the subsidised export of sheepmeat must have been agreed before 30 June 1991. However, EC Commission Regulation 3775/90 of 19 December 1990, Article 1.2 restricts national export refunds for sheepmeat exports for which agreements were concluded by the former GDR before 3 October 1990 or where a specific refund was guaranteed in writing by the former GDR before 3 October 1990. The validity of the export licences and advance fixing refund certificates issued by the former GDR can be extended to 30 June 1991 (3775/90 Article 2.3), but how can refunds legitimately be provided in respect of contracts concluded after 3 October 1990?

New Zealand 5 (new)

Regulation (EEC) No. 139/91 of 21 January 1991, which allowed Germany to pay an export refund out of national means for a maximum of 10,000 tons of sheepmeat, is based on Regulation (EEC) No. 3577/90 of 4 December 1990, especially on Article 3. In accordance with this Article, supplementary measures can be taken in view of a harmonized integration of the ex-GDR into the CAP. Those measures can be taken until 31 December 1992.

Granting national export refunds in the sense of Regulation (EEC) No. 139/91 is one of these measures.

**Question 6**

What is the destination of the 10,000 tonnes of sheepmeat exports?

New Zealand 6 (new)

Regulation (EEC) No. 139/91 does not contain specific provisions on the countries of destination. Most of the sheepmeat will be exported to Eastern-European countries. Export licences for 1,896 tons for live animals and for 250 tons for meat are given for the following destinations: Lebanon, Syria, Hungary, Austria and the USSR.

New Zealand 7 (new)

For how long does the EC intend to "guarantee performance" of the agreements referred to in this question?

**Questions U8 1 and 2**

animal and vegetable products produced and sold in the former GDR through December 1992. Does this response mean that there will be no relaxation of the requirements outlined in this Directive for imports covered by the waiver?

Replies to Questions US 1 and 2

As far as Council Directive 90/654/EEC is concerned:

In the reply to US Question 31 the two possible exemptions concerning imports from some of the CMEA trading partners of the EC have already been indicated.

One of these exemptions i.e. Directive 77/93/EEC is a purely theoretical one, for no request has been submitted.

The derogations concerning importations of plant-propagating material originating from some Eastern European countries will not affect the imports from other third countries, which will generally fulfil the standards laid down in the relevant Community Directives.

Already during the meeting of 28 May 1992, the EC representative said that the omission of Directive 90/654/EEC from the answer to these questions was an oversight and that the reply to US 31 (Spec(91)10, page 31) made this clear. Further details of this Directive have been covered in the additional reply to Hong Kong D.

Question US 3

Annexes I and IV do not provide the import data at the one-digit level of disaggregation, as requested. We would appreciate the EC's co-operation in this matter. Will the EC provide this data?

Reply to Question US 3

It is not entirely understood what is meant by the expression 'one-digit level of disaggregation'.

Question US 4

Why will the interim report to the European Parliament only form 'the basis for' the EC report to the contracting parties on the operation of the transitional measures? Is there some reason why the contracting parties cannot be shown the report itself?

Reply to Question US 4

The earlier reply to this question was purely factual and intended as such. Reports to the European Parliament, like reports to parliaments everywhere in the world, are in the public domain and can be procured by or given to the contracting parties.
Question US 5

The EC's answer to this question is not fully responsive. An informal comparison of the product categories listed in the Directives concerning derogation from EC standards to the list in Annex II cannot have the same value to this review as a list provided by those familiar with the operation of the Directives in the context of the transitional measures. We request again that the EC specify the tariff lines where such derogations will be permitted.

Question US 8(a)

(a) What status will Annex II have after it is published? Will the volumes and values listed become the definitive limit of the duty-free treatment, taking into account the other criteria described in the 'General Observations' of Spec(91)10?

Reply to Question US 8(a)

The European Communities published the content of Annex II on 10 June 1991 in the Official Journal C 151. The volumes and values listed therein are the definitive limits of the duty-free treatment. The procedures and controls detailed in Part II:2 of the Communication of the EC of 17 May 1991 (GATT Spec(91)10) apply to the importation of all goods contained in the list of products, provided they are imported according to Council Regulation (EEC) No. 3568/90 or Commission Decision (ECSC) No. 3788/90.

Question US 8(b)

(b) While the trade statistics provided by the EC in Annex II indicate both the CMEA and HS (4-digit) nomenclature numbers for each product, we would still appreciate a copy of the concordance, or conversion key, used for developing these statistics. Will the EC supply this document to the contracting parties?

US Annex II, Introduction

Question

In the introduction, it is stated that the value is noted in units of ECU 1,000, converted from the original Transferable Roubles (TR) at a rate of exchange of 1 TR to ECU 1.13389. How does this rate compare with that being used to value existing balances in CMEA clearing arrangements in the various former CMEA countries?

The calculation of a level of "token entry" or "p.m." for duty-free treatment based on 1987-1989 trade, as provided for in note 2 of the introduction to Annex II, appears to be a departure from the description of trade coverage of the preferences as provided for in the waiver and in Council Regulation (EEC) No. 3568/90 of 4 December 1990. Can the EC representative explain the apparent contradiction?
In the wake of the introduction of German economic and monetary union, the former GDR introduced, after consultation with the FRG, the conversion rate of DM 1 = TRbl 2.34 for foreign trade clearing operations. This decision of the GDR Council of Ministers reflected the inner-German conversion rate of DM 2 = DM 1 since TRbl 1 had previously been worth DM 4.68.

The determination of the value of existing clearing payment balances of the former GDR with former CMEA trading partners is a matter of negotiation between the FRG and former CMEA Member States.

The language of Article 1(1), first alinea of Regulation 3568/90 is in fact unambiguous: "up to the maximum quantities of values established by the said agreements" (i.e. the agreements mentioned in Annexes I and II).

On the face of it the expression "p.m." does not indicate a maximum quantity or value. Its presence indicates that trade in the product concerned was intended to be possible between the CMEA States involved, but that no specific quantity was planned and that therefore everything depended on the eventual contracts concluded between State-trading enterprises. This is almost equally true, however, for those products for which maximum quantities or values are mentioned in the protocols, as such quantities or values - as is clearly stated in the fourth preambular paragraph of Regulation 3568/90 - do not entail legally binding obligations, but only have indicative value. In this sense the difference between a maximum and a "p.m." line in the annual trade protocols between CMEA countries is slight.

According to the fifth preambular paragraph the purpose of Regulation 3568/90 is to attenuate the impact of German unification of the agreements mentioned in Annexes I and II. This is a fortiori true for the Agreements of Annex I (the annual protocols), which will not be, and have not been, renewed after 31 December 1990. The idea was to avoid serious repercussions on enterprises in (former) CMEA countries and on the stability of the economies of these countries. This principle has been retaken in the first ("... to take account ... of the legitimate expectations with respect to traditional trade flows ...") and second consideration ("... to facilitate the adjustment of trade ... to the new situation") of GATT Council Decision L/6792 of 13 December 1990.

The Commission of the European Communities considers it therefore reasonable to give an interpretation of the words "maximum quantities or values" in relation to "p.m." - lines, which will take full account of this underlying purpose of the Regulation, i.e. to facilitate the continuation of traditional trade flows
with a view to avoiding serious negative consequences for the economies of the former GDR and its European CMEA partners.

Seen in this perspective, a broad interpretation of the words "maximum quantities or values", when they have to be applied to "p.m." - lines in the annual trade protocols, has been made when establishing the product lists published in O.J. C 151 on 10 June 1991. An average figure of actual trade in such goods over the years 1987-1989 has been used in thirty-six cases to constitute such "maximum quantities or values".

**Question US 13**

We are still unclear as to the significance of the parentheses included on some figures in the summary data in Annex I to the original EC documentation. Are the data contained in these parentheses to be interpreted as negative imports, i.e., exports, or are they sub-categories of other numbers that immediately precede them?

**Reply to Question US 13**

The full meaning of the question is not understood since the table appears to the Community to be very clear.

**Question US 16**

Please explain what is meant by "the trade policy framework necessary for the continuation of these agreements...". Is the Community willing to submit the results of renegotiated agreements, in so far as such agreements include government and government-sanctioned actions, to the contracting parties for review of GATT consistency?

**Question US 17**

We understand that Hungary currently grants duty-free treatment to imports from the former GDR contemplated by the agreements and protocols covered by the waiver. Does the Community have any knowledge of this treatment? Is this part of any bilateral trade agreement currently in force or under negotiation between Hungary and the Community?

**Question US 18**

Did the former GDR have agreements with countries other than the former CMEA countries and Yugoslavia that contemplated duty-free treatment on products that are now dutiable when imported into the EC? If so, please elaborate, and outline why these products do not receive similar treatment.

**Reply to Question US 18**

The duty-free treatment of certain imports into the GDR was never explicitly granted in the agreements with other CMEA countries or with non-CMEA countries which applied certain aspects of the so-called socialist
planning system; it was simply inherent in this system. As has been explained earlier, this absence of duties was not consolidated in the GATT and no GATT rights can be derived from it.

The special autonomous treatment for the European CMEA partners and Yugoslavia, for which the waiver in L/6792 was requested and obtained, was granted in the light of the considerable interdependence and simultaneous efforts at economic and political restructuring in these neighbouring economies and with a view to providing them, if possible, with a "soft landing". Other countries which had some agreements with the GDR, which are comparable to those between the GDR and its East European CMEA partners, (one may think here of Angola, Mozambique, Cuba, Nicaragua, Vietnam, China and Laos) were not dependent to the same degree on trade relations with the GDR and were not engaged in comparable efforts at restructuring and, therefore, were not in need of a transitional régime as offered to CMEA countries of Central and Eastern Europe and Yugoslavia.

As far as Council Directive 90/654/EEC is concerned it has to be kept in mind that the existing Community legislation:

- prohibits the use of additives unless they are admitted;

- prohibits the use of "Candida" as it might cause health problems (allergies) for persons dealing with the substance during manufacturing processes.

The application of this existing EC legislation without any transitional period would have caused difficulties for the industry on the territory of the former GDR and would have been inadequate in the existing circumstances. The additives for the production of animal feedingstuff, mentioned in Directive 90/654/EEC and used in the former GDR have, for example, not been prohibited because they were to be considered as dangerous, but because no request for admission within the EC has been submitted up to now. It cannot be excluded that Germany might ask for their admission which then would have to be examined according to the existing rules.

The European Communities have provided for a limited derogation from Community standards for this territory because the additives for the production of animal feedingstuff do no change the nature of the product for which they have been used.

The application of these substances cannot damage the health of the final consumer. It is the same for Candida, for plant-propagating material and derogations from plant health rules. Consequently, it can be stated that no legitimate interest of third countries exists to limit or to refuse the importation of such products.


The responses to these questions are inadequate. Reference to Community legislation that has not been provided to the members of the WP
is not responsive to questions seeking a description, for the record, of how "Community origin" is to be conferred on the preferential trade. These questions relate to the use of the imports for production for trade in other parts of the EC and for export as well. It is not obvious how the rules of origin normally used by the EC in this regard can be applied to imports that cannot even be satisfactorily described by HS tariff number.

Please outline for the WP how the imports covered by the waiver can be "transformed" for trade outside the former GDR. Please include reference to how derogation from the technical and health requirements in Council Directives 90/650, 90/654 and 90/657 might affect the use of such products in goods destined for sale in other parts of the Community or in third countries, whether or not they are covered by the waiver.

Question US 30

The EC averts that compensatory aid to agricultural income under its transitional legislation (is "not covered by the waiver (not relevant)). Although it may not be covered by the waiver, per se, such aid certainly could have widespread implications for the competitiveness of contracting parties' agricultural trade in the former GDR. Inasmuch as the WP's formal name is "Working Party on German Unification - Transitional Measures Adopted by the European Communities", and the WP's terms of reference are "to examine the matter in light of the relevant provision of the General Agreement and in light of the waiver decision in L/6792, and to report to the Council", this matter is within the WP's purview.

Reply to Question US 30

Article 4(1) of Council Regulation No. 3577/90 of 4 December 1990 on the transitional measures and adjustments required in the agricultural sector as a result of German unification, states that aid may be introduced in the ex-GDR to compensate for agricultural income losses incurred there as a result of the switch to CAP. The aid must be regressive and anyway be repealed by the end of 1993.

Article 4(2) of the same Regulation states that the Article 93(3) procedure applies to such aid, implying an examination of its compatibility with the common market having regard to Article 92 of the EEC-Treaty.

The aid concerns measures to resolve the debt problem required if agriculture in the ex-GDR is to adjust to the requirements of a market economy and the CAP. It is also clear that farmers based there are suffering from an acute liquidity shortage which is preventing the necessary investments from being made.

The most important of the measures taken up to now serve to back up the adjustment aid measure totalling ECU 1.46 billion introduced by the GDR authorities in 1990 which was designed to boost farmers' liquidity, in that the ex-GDR has already begun to apply the CAP, and thus be exposed to its constraints, as of the date of introduction of economic, monetary and social union with the Federal Republic of Germany.
Without further adjustment aid a high percentage of farmers will face bankruptcy, many of whom after restructuring of the holding and resolution of their pre-unification debt problem would otherwise be viable. These bankruptcies will in turn lead to the destruction of productive assets of economic value.

Therefore authorization was requested by the German authorities to grant a further aid of ECU 583 million for 1991 in the form of grants, of which:

- ECU 388 million aid to adjust to the drop in prices and to ensure solvency;
- ECU 194 million less-favoured area supplements.

This aid has now been paid.

The adjustment aid serves also to offset non-payment to the ex-GDR holdings of the socio-structural income compensation aid.

The less-favoured area aid constitutes the continuation until 1992 of an aid granted by the GDR; eligible holdings have a legal entitlement to this aid. It will range from ECU 24 to ECU 126/ha. which approximates to the mean compensatory allowance payable to eligible West German holdings.

The legal basis of the measure is an "aid guideline" (Förderrichtlinie) which will allow rapid disbursement of half of the aid ahead of adoption of the corresponding draft German Regulation amending the conditions of the scheme as it was introduced in 1990 by the GDR authorities.

In conclusion, this measure may be considered compatible with the common market and so enjoy the waiver provided for by Article 92(3) of the EEC-Treaty.

**Questions US 31 and US 32**

We would appreciate further information on the "adjustment periods" which are envisaged and any other elaboration which the EC can provide on the "design, composition, labelling and marketing of industrial products". Based on the EC's reply, we presume that only the imports listed in Annex II would benefit from a temporary relaxation of Community standards.

**Question US 34**

In the response to this question, the EC indicates that it does not intend to tell the contracting parties about standards derogations granted under Council Directives 90/650 and 90/657 until December 1991. Can we infer from this that the EC is not monitoring derogations under these Directives? Why has the EC refused to give this information to the contracting parties?
Note: In the view of the United States, the matters discussed in the EC's reply to US questions 31 through 34 are within the scope of the working party. While we appreciate the EC's willingness to consult on individual problems which may arise, we would appreciate a more thorough response to these questions at this meeting.

Reply to Question US 34

As is clear from the earlier reply to US 34, the monitoring of the derogations under Directives 90/650 and 90/657 is based on the reporting requirements imposed on the FRG by Article 3, paragraph 2, of both Directives. Article 6 of Directive 90/654 imposes a similar reporting requirement on the FRG. The results of the monitoring are set out in the report to the Parliament and the Council.

As to the note added to this question, the EC is not aware of having suggested that Questions 31 through 34 were outside the scope of the working party.

With regard to animal nutrition law, two derogations have been granted to Germany:

- the first derogation concerns the possibility to use three additives in conditions not provided for in Council Directive 70/524/EEC on additives in animal foodstuff. In the conditions in which they are used, these three growth factors do not alter the characteristics of the animal products and, therefore, present no risk to the safety of consumers;

- the second derogation concerns the use of yeasts of the "Candida" type as ingredients in foodstuff for animals. In this case there is no risk to the consumer since the only potential danger is to workers producing or handling the product;

- while this argument is equally valid for BST and the hormones authorized in the United States, it should be noted that, with regard to the use of additives on ingredients in animal feed, many third countries have rules which are different from these in the EEC but that this has not, up to now, caused obstacles to trade; the only reason which could lead to restrictions or a ban on imports would be the presence of residues dangerous to health, in the products to be consumed.

Moreover, it should be stressed that these two derogations expire:

- on 31 December 1992 for the three additives "Olaquindox", "Nourscothrcine" and "Ergambur"; and

- on 31 December 1992 for the "Candida" yeasts.
Question US 35

The EC did not respond to the question. How can such derogations be justified under GATT Articles and the Standards Code?

Reply to Question US 35

See reply to Hong Kong D in fine.

Question US 38

Please indicate how soon the reports referred to might be available.

Reply to Question US 38

Report by the Commission of the European Communities to the Member States concerning the transposition of transitional measures for the integration of the new Länder of the FRG into the Community's agricultural sector.

The regulations and directives adopted by the European Communities, which are intended to foster the integration of the new Länder of the FRG into the common agricultural policy arrangements, include for Germany a series of obligations to provide information which must be complied with at various times. In this way, the Commission, the other institutions of the Community and the Member States are to be kept informed of the measures taken in Germany.

1. Under Article 10 of the Council Regulation (EEC) No. 3577/90 of 4 December 1990 on the transitional measures and adjustments required in the agricultural sector as a result of German unification (OJ L 353, 17 December 1990, page 23), Germany must notify to the Commission, at the earliest opportunity, the measures taken pursuant to the authorizations provided for in the Regulation. The Commission, for its part, is required to inform the Member States.


In so far as the adjustments and interim rules in the agricultural element of the 'German unification' package were to be supplemented by or transposed into national law, this has been achieved in principle through the German Government's Regulation of 18 December 1990 governing transitional arrangements for the implementation of Community law (BGBl.1, page 2915). This Regulation was notified to the Commission on 11 January 1991 and had been the subject of consultations with the Commission before it entered into force. The
German measures do not go beyond the limits laid down by the authorizations in the above-mentioned Community legal instruments.

2. Under Article 4 of Commission Regulations (EEC) Nos. 3780/90 and 3781/90 of 19 December 1990 laying down detailed rules for the implementation of Council Regulation (EEC) No. 3576/90 as regards the temporary suspension of the import compensation mechanism and of customs duties on fruit, vegetables and wine products originating in Spain and Portugal released for consumption in the territory of the former German Democratic Republic (OJ L 364, 28 December 1990, page 11, 14), the quantities of products benefiting from suspension in the previous month are to be notified on a monthly basis. The Commission will inform the Member States of the notifications it receives, through the Management Committees of the market organizations concerned.

3. Further obligations involve reports which Germany is required to make at a later date. The Commission will inform the Member States at the appropriate time.

Question US 40

Article 4, paragraph 1 of Council Directives 90/650 and 90/657 appears to provide for "measures involving adjustments to fill obvious loopholes and technical adjustments". Does this provision include authority to expand the scope of the relaxation of regulations covered by the Directives?