

# GENERAL AGREEMENT ON

RESTRICTED

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## TARIFFS AND TRADE

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### DRAFT REPORT OF THE WORKING PARTY ON THE THIRD ACP-EEC CONVENTION OF LOME

1. On 4 March 1987, the Council of Representatives established a Working Party to examine in the light of the relevant provision of the General Agreement, the Third ACP-EEC Convention signed at Lomé on 8 December 1984, and to report to the Council.

2. The Working Party met on 18 November 1987 and [ ] under the Chairmanship of H.E. Mr. See Chak Mun (Singapore). The terms of reference and membership of the Working Party are set out in document L/6195/Rev.2.

3. The Working Party had before it, as background material, a communication from the Chairman of the ACP Committee of Ambassadors and the Head of the Permanent Delegation of the Commission of the European Communities transmitting the text of the Third ACP-EEC Convention of Lomé (L/6109 and Add.1) as well as the comments submitted by contracting parties and the reply thereto provided by the parties to the Convention (L/6265). Prior to the meeting of the Working Party, a number of additional questions were submitted by a member with the request that answers in writing be provided as soon as possible. The Chairman suggested that, without prejudice to the circulation of any additional information in writing, the oral replies to these questions provided at the Working Party meeting by the parties to the Convention could be reflected in the draft report of the Working Party.

4. In an introductory statement, the spokesman for the ACP States noted that the Third Lomé Convention, signed on 8 December 1984, applied to sixty-six developing ACP States and twelve developed EEC member States. The Convention had entered into force in May 1986 and would expire on 28 February 1990. The Third Lomé Convention constituted an extension and

uninterrupted continuation of the First and Second Conventions which maintained the policy of innovation in the field of international cooperation begun in 1975. In the Third Lomé Convention, a certain number of improvements had been made, in areas other than the trade régime, in favour of the least-developed, land-locked and island ACP States. The trade provisions as well as the pattern and structure of ACP-EEC trade under the Lomé Conventions had not changed fundamentally. Thus, the new Lomé Convention in no way prejudiced the interests of other countries, but rather constituted a very important first step towards a more balanced and equitable relationship between developed and developing countries. With due regard to the provisions of Article XXXVI of the General Agreement, the EEC had managed to adopt a number of measures to assist the ACP States which counted amongst its members three-quarter of the poorest countries in the world. The Convention was in conformity with the principles set out in Part IV of the General Agreement and with the commitments contained in the Punta del Este Ministerial Declaration concerning differential and more favourable treatment for the less developed countries. In their view, the Convention was also consistent with the obligations of the contracting parties and complied fully with the objectives of the General Agreement.

5. The representative of the European Communities said that the Third Convention of Lomé had to be placed in a historical and global perspective. The policy of cooperation being pursued by the European Communities and their member States with the ACP Group of developing countries was exemplary, original and irreplaceable. On the basis of Part Four of the Treaty of Rome, the European Communities had begun a process of negotiations with the ACP States that had led to cooperation on a contractual basis which ensured the respect of the sovereign rights of all the signatories of the Conventions. The renewed Conventions had been modified to take into account the interests and needs of the signatories as well as those of other trading partners. Noting that only the trade aspects of the Convention were relevant to the Working Party examination, he said that, in the view of the Communities, the Convention constituted a dynamic implementation of Part IV of the General Agreement which had had no

negative effects for the other contracting parties and had not undermined the unity of developing countries. The Convention provided an element of stability to the trade relations between the European Communities, and their member States with the ACP Group which reinforced the multilateral trading system. Thus, in the context of the Uruguay Round of multilateral trade negotiations, the European Communities had been able to submit a substantive offer in the Negotiating Group on Tropical Products.

6. Some members who are among the developing country signatories of the Convention said that, in their view, the Third Convention of Lomé was a stepping stone in the area of North-South cooperation which respected fully their sovereign rights. Noting that the Convention covered several areas other than trade, these members said that notwithstanding the globality of the approach reflected in the Convention and the stability which it provided for their mutual trade relations, they were active participants in the Uruguay Round of multilateral trade negotiations. These members expressed support for the trade liberalization and cooperation objectives of the Uruguay Round. In their view, consideration might be given at some point in time to the establishment of appropriate mechanisms to stabilize the export earnings of other developing countries similar to those provided in the Convention.

7. A member of the Working Party said that while recognizing the development objectives underlying the Third Convention of Lomé, her authorities had raised a number of questions which should help to understand better its justification and operation in terms of the General Agreement. Two issues which still gave reason for concern were the question of the relationship of the Convention to the provisions of the General Agreement and the need to ensure that the implementation of the Convention would not impair the rights of contracting parties under the General Agreement. In accordance with normal GATT practice, her delegation would expect periodic reviews of the implementation of the Convention on the basis of reports to be submitted periodically by the parties to the Convention. She noted, moreover, that this requirement which had been reflected in the reports of the earlier Working Parties had not been fully observed in relation to the Second Lomé Convention.

8. A member referred to the comments and the reply reproduced in document L/6265. His delegation had taken note of the statement made by the parties to the Convention that the successive Lomé Conventions had not limited the possibilities of trade liberalization in the EEC market for non-ACP countries. He expected that the detailed statistical information that would be provided by the parties to the Convention would enable his authorities to make a better assessment of the effects of the Convention on developments relevant to his country's trade interests. He added that following Article XXII:1 consultations with the European Communities, his authorities' concern with respect to the proposed discriminatory application of internal taxes by a member State of the European Communities had been solved satisfactorily.

9. A member noted that the statistical information provided by the parties to the Convention covered only the period up to 1985 and ten member States of the European Communities. The effect of the enlargement of the European Communities to twelve members thus could not be analyzed. Moreover, information was needed on the composition of the various country groupings identified, namely: developing countries, ACP and OPEC, as well as on the particular products eligible for m.f.n. and preferential tariff treatment, levies, quantitative restrictions, etc. This member requested that the parties to the Convention provide detailed statistical data on the trade coverage of the Convention as follows:

(I) ACP Exports to the EEC:

(A) What was the total value and percentage of imports into the EEC of products originating in ACP States in each of the three most recent years for which statistics are available, in the following categories:

(1) total imports; (2) industrial imports (excluding petrocarbons);  
(3) petrocarbons; (4) agricultural imports.

(B) For each of the categories of imports into the EEC from the ACP countries referred to in Question A above, what value and percentage in each of the three most recent years for which statistics are available:

(1) were eligible for duty-free treatment under m.f.n.; (2) were eligible for duty-free treatment, preferential tariffs, or reduced tariffs under the GSP; (3) were subject to customs duties including levies having equivalent trade effect; and (4) were subject to quantitative restrictions.

(II) ACP Imports from the EEC:

(A) What was the total value and percentage of imports into ACP States of products originating in the EEC in each of the three most recent years for which statistics are available, in the following categories:

(1) total imports; (2) industrial imports; (3) agricultural imports.

(B) What was the value (and percentage of total imports) in respect of the following categories of imports into the ACP States of products originating in the EEC in each of the three most recent years for which statistics are available: (1) imports of products on which customs duties and levies were not imposed on an m.f.n. basis; (2) imports of products on which customs duties and levies were imposed on an m.f.n. basis; (3) imports of products on which preferential treatment was granted on a non-m.f.n. basis (while Article 136 does not require reciprocity, residual voluntary preferences remain in certain areas).

10. The representative of the European Communities said that the statistical tabulations provided followed the Nimex and Eurostat classifications. The statistics reflected the fact that some ACP States were also members of OPEC. The figures indicated that excluding crude and refined petroleum products, the ACP share in extra EEC imports and exports had declined from 6.6 per cent in 1975 to 4.5 per cent in 1985 in the case of imports, and from 7.0 per cent in 1975 to 4.7 per cent in 1985 in the case of exports. Due to the high volatility of prices, if crude and refined petroleum products were included, the share of the ACP States in extra EEC imports had increased from 7.9 per cent in 1975 to 13.4 per cent in 1985. Orders of magnitude were provided with regard to the breakdown between industrial and agricultural products. The parties to the Convention undertook to provide detailed statistical data on the trade coverage of the Convention, for the information of the Working Party, as soon as possible.

11. With reference to the implementation of the Third Lomé Convention by Spain and Portugal, the representative of the European Communities said that certain transitional measures were in effect whereby, in the light of Article 133 of the Convention, the process of phasing-out import duties on

products from other members of the Community was also applicable to products originating in the ACP States. The regulations concerning the implementation of the Convention by Spain and Portugal had been published on 30 June 1987 and would be made available to GATT.

12. In response to a question concerning the precise meaning of Article 136 of the Convention which refers to the scope of the m.f.n. treatment accorded by the ACP States, the spokesman for the ACP States said that the ACP States in their bilateral economic relations were entitled to accord benefits more favourable than those accorded to the EEC member States. Thus, the ACP States could accord to other ACP States, a treatment which was more favourable than m.f.n. treatment which would not be extended to the European Communities. In their view, Article 136 of the Convention was fully consistent with the non-reciprocity principle provided for in Part IV of the General Agreement.

13. With respect to the application of the safeguard clause established in Articles 12, 13 and 24 of the Second Lomé Convention and in Articles 139 and 140 of the Third Lomé Convention, the parties to the Convention confirmed that up to now the European Communities had not applied any safeguard measures.

14. In response to a question concerning the mechanism or procedure involved in the allocation of the financial transfers provided for in Articles 147 and 170 of Title II, Part III of the Third Convention of Lomé to the sector or sectors concerned, or other appropriate sectors, and the point and circumstances under which the transfer funds entered the private sector, the spokesman for the ACP States recalled that in 1982 when similar questions had been raised in connection with the Second Convention of Lomé they had stated that, in their view, the STABEX system as such was not a trade issue and therefore did not fall within the competence of GATT. Nevertheless, he would try to provide the information requested. The ACP State concerned was the recipient of the financial transfers referred to in Article 170 of the Convention. Programmes or operations to which the recipient ACP State undertook to allocate the transferred resources were

decided by that State subject to compliance with the objectives laid down in Article 147. The private sector was not entitled to the financial transfers provided under the STABEX system. In the light of their economic and social development needs, the ACP States had decided that such transfers would be allocated to the agricultural sector. The member who had raised this question expressed concern that the STABEX system might result in trade diversion with respect to specific commodity sectors.

15. A member referred to Article 232 in Title III (Financial and Technical Cooperation) and enquired the conditions under which funds provided by the European Communities to promote economic development would be available for the purchase of goods and services from third countries. The representative of the European Communities said that paragraphs 5, 6 and 7 of Article 232 set the guidelines for the use of funds provided by the European Communities for purchases of goods or payment for services outside the member States of the European Communities and the ACP States. Article 254 of the Convention provides that the Council of Ministers shall examine any problems raised in the application of Articles 252 and 253. Hence, a request under Article 232 to make an outside purchase was not relevant to Article 254. The member who had raised this question said that her authorities wanted to know whether conditions were attached to the implementation of paragraph 7 of Article 232. Her delegation would await a reply in writing by the parties to the Convention. The representative of the European Communities said that Article 232 provided all the relevant information. In his view, this question went beyond the normal requirements of information because it referred to financial and technical assistance and not to trade issues.

16. With reference to Article 3, paragraph 1(a) of Protocol 1 concerning the definition of the concept of "originating products", the representative of the European Communities said that Protocol 1 would have to be revised to take account of the adoption of the Harmonized Commodity Description and Coding System. Nevertheless, as the general principle specified in Article 3 of a change in tariff headings would continue to be considered as sufficient working or processing for the purpose of the definition of

originating products, the effect on EEC-ACP trade of the adoption of the Harmonized System and the revision of Protocol 1 was expected to be neutral. The revised text of Protocol 1 would be notified to GATT when it became available.

17. In response to questions concerning the differences between the definition of origin in Protocol 1 of the Third Convention of Lomé and the definition of origin applied by the European Communities to imports from non-ACP countries, the representative of the European Communities drew the following distinctions. In the case of non-preferential trade arrangements the criteria for the definition of originating products was sufficient working or processing but these arrangements did not define what constituted sufficient working or processing. In the case of preferential trade arrangements, the definition of origin was more rigorous and the European Communities defined what constituted sufficient working or processing. He added that the rules of origin were specifically designed to prevent diversion of trade. There was no evidence of any trade diversion occurring by virtue of the definition of origin. Moreover, there was no record of complaints by third countries regarding prejudicial effects on their trade resulting from the definition of origin established in the Second Convention of Lomé.

18. In reply to a question, the representative of the European Communities stated that the European Communities had no intention, at this time, to conclude any other preferential trade agreements.

19. In response to the enquiry by a member for the reasons why the European Communities had not sought a waiver from Article XXV obligations for the Lomé Convention as the United States had done for the Caribbean Basin Initiative, the spokesman for the ACP States said that the Convention had been agreed on the basis of full equality between the ACP States and the European Communities and that all the parties believed that the Convention was in full conformity with the General Agreement including Part IV thereof. As there was no inconsistency with GATT, a waiver was not required. In this respect the representative of the European Communities



reiterated that there was no reason to request a derogation of GATT provisions. In his view, the Convention was in full conformity with the general principles of GATT and was entirely consistent with Article XXIV taken in conjunction with Part IV of the General Agreement. Moreover, the Convention reflected a wide ranging agreement subscribed to by equal partners with long standing historical links which represented roughly one-half of the membership of GATT. The Convention had followed a contractual approach and did not constitute a unilateral offer of preferential trade treatment. In taking note of the preceding responses, the member who had raised this question said that the differences of view with regard to this issue were well known in GATT.

20. With reference to the review of the operation of the Convention, the representative of the European Communities said that the parties to the Convention would abide by previous practice and provide biennial reports which could serve as a basis for the biennial review of its operation by the CONTRACTING PARTIES.

#### Conclusions

21. Having regard to the information and explanations provided by the parties to the Third ACP-EEC Convention of Lomé, there was wide sympathy in the Working Party for the view that the purposes and objectives of the Convention were in line with those embodied in the General Agreement, including Part IV, inasmuch as the Convention aimed at improving the standard of living and economic development of the developing country participants including the least-developed among them. While the parties to the Convention stated that the trade commitments it contained were compatible with the relevant provisions of the General Agreement as a whole and with its objectives, some members of the Working Party considered it doubtful that the Convention could be fully justified in terms of the legal requirements of the General Agreement. The Working Party noted that the parties to the Convention were prepared to submit reports concerning its operation, and to notify any changes which might be made to the Convention, for review by the Council on a biennial basis. It was understood in the Working Party that the Third Lomé Convention would in no way be considered as affecting the legal rights of contracting parties under the General Agreement.