

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
Spec(93)53/Rev.1
31 May 1994

(94-0957)

DRAFT REPORT OF THE WORKING PARTY ON THE
FOURTH ACP-EEC CONVENTION OF LOMÉ

Revision

The text of the fourth ACP-EEC Convention which was signed at Lomé on 15 December 1989 and entered into force on 1 September 1991, was circulated to contracting parties on 16 December 1992 (L/7153).

On 12 March 1993, the Council of Representatives established a Working Party with the following terms of reference:

"To examine in the light of the relevant GATT provisions, the Fourth ACP-EEC Convention signed at Lomé on 15 December 1989, and to report to the Council."

The Working Party met on 5 October under the chairmanship of H.E. Mr. Joseph W.P. Wong (Hong Kong). The terms of reference and membership of the Working Party are set out in L/7188/Rev.2. The Working Party had for its consideration the text of the Convention, questions and comments advanced by contracting parties, as well as answers supplied by the parties to the Convention (L/7296).

In an opening statement to the Working Party, the representative of the European Communities promised active participation with the hope of arriving at clear, unambiguous, and precise conclusions. He said that the ACP-EEC relationship, forged by time and events was, a vigorous, multi-dimensional, and living relationship. To forget that would be to go up a blind alley. It would make political nonsense to consider Lomé IV without recognising its splendid yet complex heritage. There was a relationship based on a balance of rights and obligations. This association built on the basis of the economic and social development of the ACP states was a generous construction. The Communities had borne the responsibility for the international community; this must be kept in mind when specific trade policies were examined. The political scope and motivations of economic ties between states at disparate levels

of economic development must also be kept in mind by the Working Party as it considered the answers to the questions raised by contracting parties. A consideration of isolated elements would be risky. The importance to world stability of an association stretching over time and space must be recognised. And together, the ACP countries and the Communities formed an important constituent of GATT. He said that it would be political nonsense, for the Working Party to seek watertight compatibilities of a relationship such as theirs with any particular provision of the General Agreement, and he stressed the importance of arriving at clear conclusions.

The spokesman for the ACP countries enumerated the multi-faceted provisions of the Convention which he said were unique: it was the most extensive co-operation instrument between regional groupings of industrialized and developing countries. The parties to the Convention had a long lineage of special ties. This Fourth Convention, though substantially unchanged, improved access for forty products and was valid for 10 years. Over a period of 30 years, the Convention had influenced trade and investment decisions and benefited the ACP countries, 57 of whom were contracting parties. They were confident that the Convention did not encroach on the interests of other contracting parties. The exports of non-Lomé developing contracting parties to the EEC had risen from 96,000 million ECU in 1980 to 113,000 million ECU in 1985 and to 128,000 million ECU in 1992. He called on the Working Party to come to the only possible just conclusion seventeen years after Lomé I; and put the matter beyond doubt that the Lomé Convention was genuinely compatible with Article XXIV and Part IV of the General Agreement.

The Deputy Secretary General of the ACP group of states stressed that Lomé IV, a logical and exemplary extension of earlier Conventions, set out to achieve social and economic development, promote international co-operation and facilitate the regional economic integration of ACP states. The Convention was a unique instrument of North-South co-operation that, at a time of unpredictable global and economic changes, helped to raise the living standards in ACP countries, among whom were a disproportionate share of the world's poorest. The Fourth Lomé Convention, though substantially unchanged, improved access for forty product and was valid for 10 years. Emphasising that trade provisions in the Convention were only a piece in an armoury of development policies, he pointed out that the core features of free access and nonreciprocity remained unchanged in Lomé IV. The purpose and objectives of Lomé IV were entirely consistent with the General Agreement. He urged an unambiguous endorsement of Lomé IV by the Working Party.

There was recognition by other members in the Working Party, that the Lomé Convention arose out of longstanding, relations between the ACP countries and the EEC; and was a commendable

and beneficial relationship between developing and developed countries. They thanked the parties to the Convention for providing answers to their questions. However many members of the Working Party disagreed with the argument by the parties to the Convention with respect to the basis on which the Lomé Convention was claimed to be in conformity with their contractual obligations under the GATT. One member said that in his view, the EEC's claim that the Lomé Convention was fully in conformity with the provisions of Article XXIV was unhelpful in maintaining the legal integrity of the General Agreement. He did not feel that the provisions of this Article could be extended to the Lomé Convention as it did not meet paragraph 8b requirements that "duties and other restrictive regulations of commerce ... are eliminated with respect to substantially all trade". Another member was concerned with GATT conformity and the need to ensure that the rights of other contracting parties were not impaired. He also cautioned against creating a restrictive and exclusive trading block. Some other members of the Working Party stressed that while they recognised the Lomé Convention as a praiseworthy initiative, it violated most favoured nation treatment and they could not accept that it was in conformity with Article XXIV and with Part IV of the General Agreement. They strongly affirmed that the Convention would be in conformity with the provisions of the General Agreement only if the parties to the Convention were granted a waiver of their contractual obligations under the provisions of Article XXV, as was done for the United States' Caribbean Basin Initiative and Canada's ~~Caribbean~~ CARIBCAN programme.

Some members of the Working Party recognised that the goals of Lomé Convention were very important in the relations between developed and developing countries. However they wanted to understand the legal link which made it possible for the parties to the Convention to conclude that Lomé IV was consistent with the General Agreement. They raised questions relating to noncompliance with Articles I and XXIV and Part IV. They strongly disagreed with the claim that EEC participation in the Lomé Convention is in conformity with Part IV provisions. They pointed out that the obligations in Part IV extend to developed contracting parties, not to developing contracting parties. Non generalized preferences among the Mercosur countries, for instance, is in conformity with Part IV provisions. The extension of nongeneralized preferences by a developed contracting party is not. They also disagreed that the Lomé Convention is in conformity with Article XXIV. One member asked the EEC whether they had considered the possible impact of the trade regime under Lomé IV on the trade of other developing countries, and whether the EEC had any intention of ~~extending giving uniform treatment comparable to the provisions of Lomé IV~~ to all developing countries.

The European Communities spokesman said he was pleased to note the universal recognition of ACP/EEC cooperation for development and praise for their aim of helping developing countries -

among whom were some of the poorest. He reminded members of the Working Party that preferences were also extended by the EEC to the Andean countries and said the question whether the Communities intended to extend the Lomé trade regime to other developing countries was beyond the mandate of the Working Party. He said he had failed to grasp the import of the comment by a member on the danger of forming an exclusive regional trading block. He noted that most members believed the Lomé Convention was consistent with the spirit of GATT; the disagreement was only about bringing such treatment in conformity with their contractual obligations under GATT. Their claim to conformity with the general agreement rested, he said, on provisions of Article XXIV. He recalled that preferences extended historically by certain member states of the EEC to certain ACP states were in accordance with Article 1 (2) of the General Agreement. As long as they were members of a free trade zone, member states could maintain different tariff regimes in conformity with provisions of Article XXIV:9. When a customs union was established, these preferential tariffs were incorporated in the tariff regimes of all member states. This was in accordance with Article XXIV:8(a) (ii). Because preferences were nonreciprocal, they were in conformity with Article XXXVI:8. He said nothing in Part IV of the General Agreement prohibited a Contracting Party from invoking Article XXXVI:8 in conjunction with Article XXIV. Nearly 96 per cent of ACP exports to the Communities were covered by the Lomé Convention. The Communities therefore maintained that the Lomé Convention was entirely consistent with Article XXIV taken in conjunction with Part IV of the General Agreement. The Communities did not think there was any necessity to request a derogation of GATT obligations under Article XXV. He expressed confidence that with this background, this Working Party would accept the GATT conformity of Lomé IV; as had the three preceding Working Parties on the Conventions of Lomé.

Some members of the Working Party rejected the Community's conclusion that other members disagreed only on the formalities of bringing the Lomé Convention in conformity with the General Agreement. Expressing their dissatisfaction with the responses to their questions they asked for a clear explanation of the consistency of the Lomé Convention with the General Agreement, and whether it was on the basis of Article XXIV both in spirit and letter, or in the spirit and letter of Part IV. Emphasising that Part IV only endorsed special treatment in favour of developing countries on a generalized basis, they were very concerned that acceptance of the Lomé Convention being in conformity with Part IV would effect the balance of rights and obligations of developing country contracting parties. One member reminded the Working Party that the Communities in past Working Party meetings on earlier Lomé Conventions had claimed Lomé was partially consistent with Article XXIV. Now he said the Communities not only claimed compatibility with Article XXIV but also with Part IV, and he rejected both these claims. Article XXIV could not be extended to the Lomé Convention which was in his view a trading entity, not a free trade area; and so also Part IV could add nothing.

A representative of an Andean country, present in an observer capacity in the Working Party, acknowledged that the EEC had introduced a preferential trade regime specifically in favour of Bolivia, Colombia, Ecuador and Peru. At the present stage of their development, he said the benefits from this regime were somewhat limited, he said, and were in no way comparable to the benefits from the Lomé Convention trade regime. He mentioned specifically that there were no preferences for bananas, one of the chief exports of the Andean countries.

The ACP spokesman said he had no doubt the Lomé Convention was in conformity with the letter and spirit of both Article XXIV and Part IV. He could not understand how there could be concern now on the effects of an arrangement that dated back to 1963. In his view disagreements arose only on the issue of nonreciprocity. He rejected any comparison with the Caribbean Basin Initiative which in his view was very different to the Lomé Convention.

A representative of an ACP country commented that the point at issue seemed to be the granting of preferential treatment under Lomé; and he said preferential treatment and nonreciprocity were the heart of Lomé. They had no adverse effects on other countries, who were continuing to increase their share in the Communities' market.

The Communities spokesman insisted that the Lomé Convention had not hampered their efforts either at multilateral liberalization or their efforts at generalized liberalization in favour of developing countries. Their liberalization efforts would continue, particularly those in favour of developing countries.

A member of the Working Party commented that Communities assurances on generalized liberalisation in favour of developing countries did not reassure him about the lack of access comparable to the Lomé trade regime.

Many members said the Communities' responses had not satisfied their concerns and insisted that this Working Party had to deal definitively with the issue of the compatibility of the Lomé Convention with the General Agreement. They said serious concern on this issue had been expressed in this Working Party as in past Working Parties on earlier Lomé Conventions. They rejected the EEC claim that nonreciprocal concessions on a nongeneralized basis such as those accorded under the Lomé Convention were in conformity with Part IV. Consequently the Lomé Convention could not claim to meet the requirements of Article XXIV:8(b).

Conclusions

~~There was general recognition in the Working Party that the objective of the Lomé Convention was commendable as it was aimed at improving the standard of living and economic development of the ACP countries, including the least developed among them. The parties to the Convention reaffirmed their view that the trade policy objectives resulting from the Convention were in conformity with the principles, rules and practices of the General Agreement, and entirely compatible with their obligations under Article XXIV and Part IV taken together. However, most other members maintained that the Convention was not in conformity with Article XXIV and Part IV. Some of these members suggested that the parties to the Convention should seek a waiver under Article XXV. It was understood in the Working Party that the Fourth Lomé Convention would in no way be considered as affecting the legal rights of contracting parties under the General Agreement.~~

There was general recognition in the Working Party that the objective of the Lomé Convention was commendable as it aimed at improving the standard of living and economic development of the ACP countries, including the least developed among them. The parties to the Convention reaffirmed their view that the trade policy objectives resulting from the Convention were in conformity with the rules and practices of the General Agreement, and entirely compatible with their obligations under Article XXIV in the light of Part IV. However, other members who were not parties to the Convention maintained that the Convention was not in conformity with Article XXIV and Part IV.