

**CUSTOMS UNION BETWEEN THE EUROPEAN COMMUNITY  
AND THE PRINCIPALITY OF ANDORRA**

Questions and Replies

This document reproduces questions addressed to the Parties and the responses submitted by the Delegation of the European Communities. The questions and replies set out below are organized in accordance with document WT/REG53/3.

**I. BACKGROUND INFORMATION ON THE AGREEMENT**

**1. Membership and Dates of Signature, Ratification and Entry into Force**

GATT Article XXIV:7(a) stipulates that “Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the Contracting Parties...” It is our understanding that once the agreement has been signed by the Parties, it is considered that the contracting parties have decided to enter into such customs union and that any notification made afterwards beyond the date of signing is not in conformity with the said GATT Article.

We note that the Agreement between the EC and Andorra was signed on 28 July 1990, coming into force on 1 July 1991, while the said notification of the Agreement can be considered as established in March 1998, well after the original signing. Thus, we would like to express our concern over the lateness of notification, which, in turn, is not in conformity with GATT Article XXIV:7(a).

Could the parties explain why the notification was only made in 1998, when the obligation in Article XXIV:7(a) is “prompt” notification?

The European Community acknowledges that notification of the Agreement should ideally have taken place sooner. Appropriate action was taken to correct this situation in February 1998. It is also relevant that at the time of signature and entry into force of the Agreement in 1990/91, the Principality of Andorra did not enjoy the same international status it does now, following the constitutional settlement of 1993.

### 3. Scope

**This Agreement on the Customs Union only includes industrial products. Thus, as it does not cover agricultural products, we consider that it is not in conformity with GATT Article XXIV:8(a).**

The Agreement contains provisions applicable to trade in all sectors. A customs union applies to products falling within Chapters 25 to 97 of the Harmonized System (HS); other provisions within the Agreement are applicable to trade in agricultural products (HS Chapters 1 to 24). The Parties are engaged in discussions on the future evolution of the Agreement.

**It is clear that the Customs Union covers only industrial products and that agricultural products are excluded from it. It is not clear to us that this agreement satisfies the “substantially all the trade” provisions of Article XXIV:8(a). Further, it appears that products which are not part of the Customs Union are eligible for “preferential” - less than MFN but greater than zero - tariffs. Article XXIV provides for the elimination of tariffs not the reduction of tariffs. How do the parties justify the reduction, but not elimination of tariffs on intra-trade? This would appear to us to constitute the raising of trade barriers to third parties outside that allowed by Article XXIV. We see no legal basis for the maintenance of such non-zero preferential tariffs.**

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The European Community does not share the view that Article XXIV forbids partial tariff liberalization between the Parties to a Customs Union or Free Trade Area, or that this constitutes a raising of trade barriers to third parties. The requirement of Article XXIV:8 is for the elimination of duties on substantially all the trade between the parties, while the general requirement of Article XXIV:5 is that the level of duties applied to imports from third parties should not be raised.

### 4. Could the Parties explain the specific rules applying to agriculture in this agreement?

Products falling within HS Chapters 1 to 24 are not covered by the Customs Union. Such products originating in Andorra are exempt from import duties when imported into the Community; products originating in the Community are subject to the MFN duty rate when imported into Andorra, except for products covered by Headings 24.02 and 24.03 which pay 60 per cent of the MFN duty.

## II. TRADE PROVISIONS

### 1. Import Restrictions

#### 1.3 Common External Tariffs

- (i) **Please explain, if any, the difference between this common external tariff with that of the EC system.**
- (ii) **Please indicate whether there were any customs areas which had to apply higher tariff rates than the concession rates when introducing this common external tariff.**

**(iii) Please explain the average tariff rate before and after the introduction of this common external tariff.**

For products covered by the Customs Union (HS Chapters 25-97), the common external tariff is the same as that of the EC. There is no common external tariff applicable to products in HS Chapters 1 to 24.

The average tariff rate on imports into the EC of products covered by the common external tariff remained unchanged after entry into force of the Agreement. The average EC tariff on industrial products at the time was approximately 5.7 per cent (calculated on a trade-weighted basis) or 6.5 per cent (calculated as a simple average). EC duties were not raised as a result of the introduction of the common external tariff.

For imports into Andorra of goods covered by the Customs Union, the EC common external tariff replaced the "Taxa sobre al consum" (consumption tax) which was previously applied. This tax took the form of a charge based on the national consumption tax law, approved by the Andorran Parliament on 30 December 1985. Prior to the EC-Andorra Agreement, this tax was the only customs charge collected on goods imported into the customs territory of the Principality of Andorra.

### **3. Rules of Origin**

**Please explain whether the provisions on rules of origin require high-value added conditions that would become restrictive measures to the non-parties.**

The rules of origin foreseen in the appendix to the Agreement are applicable only to products falling within Chapters 1 to 24. The criterion applicable is that of "wholly obtained products" and as such there is no value-added requirement.

**Could the parties further explain the rules of origin applying to goods covered by the Customs Union and goods outside the Customs Union? Is it correct that the pan-European cumulation regime does not apply to this Agreement?**

For the products covered by the Customs Union, no rules of origin are applied.

For the products outside the scope of the Customs Union, the rule of origin applicable is that of "wholly obtained products". Andorra is not directly part of the system of pan-European cumulation on rules of origin. Nevertheless, for products covered by the Customs Union, the declaration annexed to each bilateral protocol on rules of origin applies.

### **4. Standards**

**Do the Parties have plans to negotiate any provisions on technical barriers to trade or sanitary and phytosanitary measures?**

The Parties have no such plans.

### **5. Safeguards**

**Could the Parties explain the provision on structural adjustment? Has this provision ever been used?**

The scope of this question is unclear: what "provision on structural adjustment" is being referred to?

- (i) **Please clarify whether the provisions on safeguard measures in the Agreement will be applied without discrimination to the parties and the non-parties.**
  - (ii) **When applying the safeguard measures according to GATT Article XIX and to the Agreement on Safeguards, are these measures enforced based on rule of non-discrimination?**
  - (iii) **What is the relationship between the provisions on safeguard measures in the Agreement and the related provisions of the WTO Agreement? Are these provisions the same or are there differences between the two? If the safeguard measures according to GATT Article XIX and to the Agreement on Safeguards are not applied to the parties and are thus applied in a form which is not in conformity with Article 2(2) of the Agreement on Safeguards, this will become a source for concern.**
- (i) The relevant provisions of the Agreement (Article 10) establish a bilateral mechanism which does not entail any discrimination.
  - (ii) The Agreement does not contain any provisions which in themselves permit the application of safeguard measures according to GATT Article XIX and the WTO Safeguards Agreement.
  - (iii) The Agreement does not contain any provisions which relate to or affect the imposition of safeguard measures according to GATT Article XIX and to the WTO Safeguards Agreement

**Could the Parties explain how balance-of-payments (BOP) measures would be applied toward the other Party to the Agreement?**

The Agreement makes no provision for the application of BOP measures.

## **6. Anti-Dumping and Countervailing Measures**

**Please clarify whether the automatic extension on anti-dumping was imposed or not when the Agreement between the Parties became effective.**

Under Article 7 of the Agreement, Andorra and the EC apply a common anti-dumping regime on products covered by the Customs Union.

## **9. Other**

**Has Andorra adopted the EU's non-tariff measures regime? Does Andorra ban the importation of meat from animals treated with hormones? Does Andorra apply the EC's import licensing regime for bananas?**

Under Article 7 of the Agreement, Andorra adopts, for all products covered by the Customs Union, the laws, regulations and administrative provisions applicable to customs matters in the Community and necessary for the proper functioning of the Customs Union.

Annex II of the Agreement provides for the possibility that the Joint Committee may decide, at the request of the Principality of Andorra, on derogations from the provisions of trade policy adopted by the Principality of Andorra under the Agreement, in order that imports of products consumed in Andorra should not be affected by the Agreement. In this regard, Decision 2/96 of the Joint Committee of 1 July 1996 (extended by Decision 1/98 of 20 October 1998) established a surveillance procedure with a framework allowing for re-export to the EC of:

- certain textile products originating in third countries, released for free circulation in the Principality of Andorra and covered by HS Chapters 50-63;
- certain products originating in the People's Republic of China, also released for free circulation in the Principality of Andorra.

As a supplement to the Agreement, in May 1997 the European Community and Andorra agreed a Protocol on Veterinary Matters, which entered into force on 1 March 1998. The purpose of this Protocol is to maintain traditional flows of trade in these products between the Parties. Under the Protocol, Andorra applies Community veterinary rules applicable to trade in live animals and animal products. A list of the Community veterinary provisions to be applied by Andorra should be drawn up by the Joint Committee.

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