

WORLD TRADE ORGANIZATION

RESTRICTED

WT/REG3/M/3

23 April 1997

(97-1769)

Committee on Regional Trade Agreements Eighth Session

EXAMINATION OF THE ENLARGEMENT OF THE EUROPEAN COMMUNITIES: ACCESSION OF AUSTRIA, FINLAND AND SWEDEN

Note on the Meeting of 19 February 1997¹

Chairman: H.E. Mr. John Weekes (Canada)

1. The Committee on Regional Trade Agreements continued its examination of the Treaty of Accession of Austria, Finland and Sweden to the European Communities (EC Enlargement) under agenda item B.I of its Eighth Session. The following items were treated:

- A. General Remarks
- B. Examination of the Goods Aspects of EC Enlargement
- C. Examination of the Services Aspects of EC Enlargement

A. General Remarks

2. The representative of the European Communities recalled some points from the Committee's examination of EC Enlargement last July. His delegation had at that time indicated that it would provide written confirmation of its oral responses; it would be in a position to do so later this week. The Article XXIV:6 process had been concluded, as communicated in document G/L/65/Rev.1. The Article XXIV:5 process of determining the general incidence of duties and other regulations of commerce had not yet finished, as there were methodological difficulties. Data on trade creation and diversion had been requested in questions 6 and 7 in document WT/REG/3/2 from the previous examination; such data was now available, as much research had been conducted. The information included descriptive and econometric analyses, which showed a trend of liberalization. There had been trade creation through import penetration, and there was little evidence of trade diversion. His delegation found the data reassuring.

3. The Chairman said he was not yet prepared to lead a discussion on the question of the calculation of general incidence. There had been informal consultations on this. He hoped that the Secretariat would be able to circulate a note on the subject in the near future.

¹The meeting was convened in WTO/AIR/518.

B. Examination of the Goods Aspects of EC Enlargement

4. The representative of Uruguay said that the comments by the EC delegation had been useful and informative, but that, as far as he was aware, the Article XXIV:6 negotiations with Uruguay were still underway.

5. The representative of Switzerland said that his delegation's negotiations with the EC under Articles XXVIII and XXIV:6 had not yet been completed. In view of the fact that a mutually satisfactory solution had not yet been reached, his delegation requested that the EC authorities respond to its invitation to propose compensation at a level corresponding to the losses incurred as a result of EC Enlargement - compensation for which his delegation had given the EC delegation detailed figures.

6. The representative of Canada said that, regarding the tariff Schedule of the enlarged EC (EC-15), Canada had completed its Article XXIV:6 negotiations. The Schedule had been circulated to Members, but it still needed to be certified. Many issues needed to be sorted out, especially technical matters. The Committee should pursue this actively.

7. The representative of the United States said that his delegation hoped that Article XXIV:5(a) general incidence consultations would be completed in a timely manner. From a procedural standpoint, it would be helpful if summary records from previous meetings could be issued since they would enable the Committee to make progress. If answers and data were distributed well in advance of meetings, it would help Members prepare for subsequent examinations. Dealing with such procedural issues would allow the Committee to concern itself with the substance of its mandate.

8. The representative of Argentina said his delegation appreciated the information provided by the EC delegation and would welcome the circulation of written replies and data, which were necessary if the Committee was to move ahead. As his delegation had said during the examination in July, it was concerned over regulations for the transition period. In particular, there was concern over how Sweden's accession would affect Argentina's market access in meat. At July's meeting, the representative of the EC had specified that, as of 1 January 1998, the transitional period would be ended and the EC regulations would be fully in force. His delegation was satisfied with that information, but understood that progress still needed to be made so that the transitional period would not be applied too restrictively.

9. The representative of Japan said that written responses from the EC delegation and summary records from the July meeting would have been helpful in preparing for the day's meeting. Regarding the trade-creation effects, his delegation was of the view that regional trade agreements (RTAs) might in fact divert trade and investment. The recently published paper by Carla Hills, John Jackson, Jaime Serra and others, entitled "Reflections on Regionalism," suggested that regionalism would continue to pose a serious challenge to the WTO's ability to protect and advance the interests of the participants in world trade. The Committee should continue to discuss these considerations with parties to RTAs.

10. The representative of Korea said that last year's informal meeting had been helpful in dealing with the matter of general incidence. His delegation hoped that the Secretariat would offer a concrete proposal for overcoming the technical problems in the calculations. He reported that his delegation had completed Article XXIV:6 negotiations. He had a systemic question, however, concerning the response to question 23. There, the EC representative had stated that Article XXIV:6 and the relevant Understanding provided that compensatory negotiations needed to *commence* before tariff concessions were modified or withdrawn, but did not provide that the negotiations needed to be *completed* before changes were made. His delegation read Article XXIV:5 to say that, if satisfactory negotiations were not reached within a reasonable period from the initiation of the negotiations, the customs union could nevertheless modify or withdraw concessions. It seemed that the spirit of the clause indicated that

there should be some substantive negotiations before tariff concessions were made. The conditions of paragraph 4 were necessary – but not sufficient – for the modification of tariff concessions. His delegation was concerned over the systemic implications of what had taken place in the EC modifications of tariff concessions.

11. The representative of the European Communities said that the concern put forth by the representative of Uruguay was a bilateral matter. He agreed with the point made by the Swiss representative regarding outstanding technical questions on the Schedule. His delegation, too, was eager to resolve those matters and welcomed the indications of cooperation from a number of delegations. The concerns expressed by the representative of the United States as to summary records and the timely provision of information seemed fair and valid, but the Committee needed to be careful not to increase the workload. It should not raise obstacles to further progress. The point raised by the Korean representative seemed important, but the suggested linkage between Article XXIV paragraphs 4 and 5 was not necessarily a systemic issue or problem. According to his reading, members of a customs union were allowed to proceed without being held hostage by others who would prolong negotiations. When he had mentioned the new findings on trade creation and diversion, he had not intended to detract from the focus of the examination. The focus should be on whether EC Enlargement was in conformity with WTO rules.

12. The representative of Korea clarified his earlier intervention, pointing out that there seemed to be a discrepancy between the provisions of Article XXIV:4 and 5 and what had happened with the negotiations surrounding EC Enlargement. The second part of paragraph 5 called for a reasonable time before modification. He did not take this to mean that negotiations had to be completed, but rather that a substantive negotiation should take place before modifications were made. The systemic conflict lay not in the language of the two paragraphs, but rather in the fact that, in practice, there had not been enough time. His delegation was not suggesting that its negotiating position had been weakened, but was instead calling attention to the fact that there had been inadequate time afforded.

13. The representative of the United States said it clearly would be best if negotiations were concluded before tariff concessions were modified. Regarding the need for timely summary records, the Secretariat should be able to handle the matter, simply presenting the points made at a meeting as a basis for subsequent, deeper discussion. The Committee could not operate smoothly without that substantive information.

14. The representative of Japan said he supported the points made by the representatives of Korea and the United States. Referring to a remark by the EC representative, he said it was his delegation's view that a delegation had the right to raise systemic points at any stage of an examination.

C. Examination of the Services Aspects of EC Enlargement

15. The Chairman called the Committee's attention to a document dated 31 January 1997, entitled "Job 510," which the EC delegation had circulated. The document consisted of two parts: the Consolidated Schedule of Specific Commitments of the European Communities (EC-15 Schedule) incorporating the Schedules of Specific Commitments of Austria, Finland and Sweden into the Schedule of Specific Commitments of the European Communities' twelve former Member States (EC-12 Schedule); and a Consolidated List of MFN Exemptions incorporating the Lists of MFN Exemptions of Austria, Finland and Sweden into the EC-12 List of MFN Exemptions. The document stated that these two items were submitted as proposals and that they would not replace the respective Schedules and Lists until after the completion of the examination process.

16. The representative of the European Communities said that her delegation had submitted what it considered to be the relevant information. For the EC-15 Schedule, it had used information on the original EC-12 as the basic working document and had then incorporated the Schedule of Specific Commitments that each of the three acceding countries had taken individually on 15 December 1993; that was also the case for the List of MFN Exemptions. The level of liberalization needed to be judged in light of both the number of specific commitments and the number of MFN exemptions that a Member State took. Her delegation had tried to provide the information in a way that would be accurate and "technically neutral," adding the interests of the three acceding Member States into the EC-12 Schedule. Nevertheless, that sometimes resulted in a change of terminology, or in a bit more precision needing to be added to the classification or nomenclature of some sectors or subsectors, so the EC-15 Schedule appeared heavier in terms of scheduling.

17. The representative of the European Communities continued, reporting that not a single barrier to access to Members outside the economic integration agreement had been added in the commitments; the overall level of liberalization for Members outside the agreement had increased. The rationale used for trade in goods was even more pronounced for trade in services: by having three additional Member States as part of the EC's internal market and internal liberalization, the effect was trade creative for third parties. An outside service supplier established in one of the Member States would now benefit from treatment as an EC supplier in the enlarged area. A service supplier established on the basis of the individual commitment taken by those three acceding countries would now also benefit from the EC's internal market and the accompanying liberalization. At the same time, the documents were proposed texts. That was a legal precaution the EC delegation wished to take vis-à-vis other Members, because Article V:7 foresaw an examination. Pending the examination, her delegation wished to reserve its right to have the level of liberalization and the Schedule and all legal rights be on the basis of the individual Schedules. It also provided security for the other Members, as the documents could be scrutinized. It seemed appropriate for the Chairman to allow time for a period of questions and answers, as it was the first time the Committee was dealing with the enlargement of a schedule of services. This was different from the enlarging or merging of tariff concessions, since the Committee needed to measure the degree of liberalization through regulations rather than through a tangible measure.

18. The representative of the European Communities continued, indicating that her delegation would provide replies to remaining questions. Many of the questions which delegations had posed were answered in the documents submitted. For example, the answer to the Canadian question as to what the Austrian Government intended to do concerning maritime transport services was evident from the Schedule and even from a communication of June 1996, found in document S/L/26, made at the end of the maritime transport negotiations. In examining the documents, it was important to use 15 December 1993 as the reference point. What needed to be measured was the level of liberalization achieved at the end of the Uruguay Round from the EC-12 and from the new Member States individually. This would not take into account the improved Schedules and Commitments that the European Communities had made in the meantime with respect to financial services, movement of persons and basic telecommunications. The changes with respect to the level of liberalization as of 15 December 1993 were fully compatible with the conditions and requirements of Article V, and in particular, with those of Article V:4. The overall level of barriers to trade in services had not been increased; to the contrary, trade had been facilitated for outsiders coming into the enlarged EC.

19. The representative of the United States said he agreed that the membership of the EC had positive rights under the GATS. That was something the Committee would consider in examining the proposed documents put forward to it. However, the revised Schedules and MFN Exemptions had been expanded, and in at least three cases exemptions from the MFN rule had been added. These had potential detrimental effects on the sectors involved. What plans did the EC authorities have to address those specific concerns as provided under the WTO Agreement? While one could point to the overall level of liberalization that had taken place, GATS Article V addressed not only the overall level, but also

individual sectors. That language had been included at the express request of the EC authorities, and it seemed a positive contribution at the time the Agreement was being drafted. It happened that in this case the exemptions being taken in one sector were of interest to his delegation. The three delegations which had become Member States of the Communities had had dynamic services schedules in their own rights, so the MFN exemptions they had taken had strategic consequences in terms of opportunities for third-country providers in their market. How would those additional MFN exemptions be addressed under the terms of the WTO Agreement?

20. The representative of Korea sought clarification as to whether this Committee had the final say on the verification of the Schedule or as to whether that competence belonged to the Committee on Specific Commitments.

21. The representative of Japan noted that GATS Article V:4 provided that any agreement "shall not in respect of any Member outside the agreement raise the overall level of barriers to trade in services within the respective sectors or subsectors compared to the level applicable prior to such an agreement." His delegation had doubts concerning this matter and requested confirmation that the EC had not raised barriers against third parties in certain sectors.

22. The representative of Switzerland said that his comments were of a preliminary nature. His delegation had examined the Uruguay Round Schedule of Austria and the present EC-15 Schedule in parallel. Three points were worth mentioning. First, the specific limitations under Mode 4 (presence of natural persons) were not mentioned in the EC-15 Schedule for the following services sectors: services incidental to manufacturing, investigation services, collection agencies services, and noise abatement services. What were the specific limitations in those sectors? Second, as data processing in the telecommunications sector had been included in Austria's Uruguay Round Schedule, it should thus be listed in the EC-15 Schedule. Third, space transport, CPC 733, had been included in the previous Austrian Schedule and should therefore be included in the EC-15 Schedule. He then said that his delegation had also compared the Uruguay Round Schedule of Finland with the present EC-15 Schedule, where only CPC 87305 was listed with regard to security services. In the Finnish Uruguay Round Schedule, that service had been listed as security services with reference to CPC 873. Thus, at least CPC 87302, security consultation services, and CPC 87309, other security services, should be bound in the EC-15 Schedule. His delegation had no comment on the Schedule for Sweden at present.

23. The representative of Canada referred to a question his delegation had posed in September, and said that he understood the EC delegation to have said that the new EC-15 Schedule answered all questions submitted. The questions had identified some issues relevant for a GATS Article V examination. The new EC-15 Schedule could serve as a basis for answers, but it needed to be complemented by other information necessary for an examination. The Canadian delegation had asked whether there had been any specific commitments in the horizontal or sector-specific sections of the Schedules for the three acceding countries that had not been included in the EC-15 Schedule. A question on MFN derogations had also been asked, and apparently additional MFN derogations had subsequently been introduced. Specific answers to these questions would help move the examination process forward.

24. The representative of India reserved his delegation's right to come back with questions at a later stage. However, he wished to flag a special interest in Mode 4.

25. The Chairman said that it was obvious there were numerous issues pertaining to services that were under the purview of other WTO bodies. He did not wish to give a definitive answer as to how those bodies treated various provisions of the GATS.

26. The representative of Switzerland proposed that the matter of the competence of the Committee be considered by the Secretariat, especially the Legal Affairs Division, and that the Secretariat indicate

its views. His delegation approached the exercise in the context of this Committee as a review of the compatibility of the services aspects of the agreements notified under GATS Article V. Certain provisions of the draft Schedule of the EC-15 might be considered incompatible. It was likely that the Council for Trade in Services had something to say regarding the technical and legal aspects of the Schedule.

27. The representative of the United States shared the view expressed from the Chair regarding the competencies of the Committee. Examining agreements with respect to both goods and services aspects was efficiently done in this one Committee. He did not question the legal status of any decision taken by the Committee with respect to compatibility with GATS Article V. Assistance could always be asked from other WTO bodies, but taking the final decisions with respect to regional integration agreements was a responsibility lying with this Committee.

28. The Chairman asked the Secretariat to reflect on the matters raised before the next meeting. The Committee should focus on its own work and not on that of other Committees. It should then submit its findings to the respective parent bodies: the Council for Trade in Goods or the Council for Trade in Services.

29. The representative of the European Communities said that, while she could provide oral information at the meeting, her delegation saw merit in a structured exercise of written questions and answers. The delegation of Canada could find the answers to several of its previously submitted questions in the various documents the EC had provided. For example, the answer to the question regarding maritime transport services commitments could be found in a document from the latter part of June 1996. The EC authorities did not intend to maintain that commitment, as they were entitled to withdraw it as part of the terms of the Ministerial Decision on the continuation of negotiations on maritime transport. The EC authorities did intend to replace the Schedules of Commitments of each of the three new Member States with a new single Schedule. The representative of Switzerland had mentioned that telecommunications had been taken out of the Austrian Schedule; this change was due to the results of the recently concluded negotiations on basic telecommunications services, which, in fact, substantially maintained the Austrian commitment. No other services sector had been excluded from the Accession Treaty. As a preliminary answer to the question posed by the representative of the United States regarding GATS Article V:4, she said that her delegation was not of the opinion that the Accession Treaty had raised the overall level of barriers. This was the ultimate test, and it was clear that the competent body to carry it out was the Committee. That was the implicit answer to the Korean question. The mandate of the Committee on Specific Commitments was to carry out a technical exercise. It was thus logical that the review of the documents submitted by the EC delegation be carried out in this Committee, in the process of examining whether the Accession Treaty was compatible with GATS Article V. Once a final Schedule was put forward, if the Committee deemed it to need verification from a technical point of view, the verification should be done in the Committee on Specific Commitments. Whatever conclusions were to be drawn in that Committee should then be reflected in the report by the Committee on Regional Trade Agreements to the Council on Trade in Services.

30. The Chairman said that the scheduled meeting for April 28 had originally been reserved for the examination of the services aspects of the Treaty establishing the European Communities. However, as the examination of the services aspects of EC Enlargement had already been started, it would be natural first to finish that examination. He therefore suggested that the Committee continue to treat it at that April meeting. Written questions should be received by the Secretariat no later than 12 March, and answers should be submitted no later than April 14. That would allow delegations two weeks of preparation before the meeting. He asked the Secretariat to prepare summary records of the discussions on the goods aspects of EC Enlargement.

31. The Committee took note of the statements made.