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L/3379
7 April 1970
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GENERAL AGREEMENT ON TARIFFS AND TRADE

REPORT OF THE WORKING PARTY ON THE AGREEMENTS OF ASSOCIATION BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND TUNISIA AND MOROCCO

1. On 11 July 1969, the Council of the European Communities notified the CONTRACTING PARTIES that agreements[1] establishing associations between the European Economic Community and Tunisia and Morocco had been signed respectively on 28 March 1969 and 31 March 1969. The matter was discussed at a meeting of the Council on 23 July 1969, at which the representative of the European Economic Community, stated inter alia that the Community invoked the provisions of Article XXIV:5-9 as the legal basis for examination of the agreements by the CONTRACTING PARTIES. In the discussion which followed, several delegations stressed the need for a careful examination of the agreements in either one or two working parties. It was decided to set up one Working Party with the following terms of reference:

> "To examine the two Agreements of Association established between the European Economic Community and the Republic of Tunisia and the Kingdom of Morocco, and their annexed documents in the light of the relevant provisions of the General Agreement, and of the discussions in Council, and to submit a report to the Council."

2. The Working Party met on 3 and 4 February 1970 and on 16 and 17 March 1970 under the Chairmanship of Mr. B.F. Meere (Australia). The following was the composition of the Working Party:

Argentina	European Communities and their member States	Sweden
Australia	Greece	Tunisia
Brazil	Israel	Turkey
Canada	Japan	United Kingdom
Chile	Spain	United States
Cuba		

[1] The texts of the agreements, which entered into force on 1 September 1969 are contained in documents L/3226/Add.1 and Corr.1, and L/3227/Add.1 and Corr.1. The questions addressed to the parties to these agreements, together with the replies thereto, are reproduced in document L/3311.

3. While the Working Party had the task of examining two separate agreements, it found it convenient, in view of the similarity in their provisions and in the issues which they raised to treat them together and to submit a report which covers both agreements equally. Furthermore, whereas in the course of the meeting, the Working Party heard statements of fact and principle from spokesmen of Tunisia and Morocco as well as of the Communities, all such statements are attributed in the report to "the representative of the parties".

4. The representative of the parties recalled that in 1947, when the General Agreement came into force, Tunisia and Morocco had had free access for all their exports to France. At that time French exports were admitted duty free to Tunisia while Morocco applied to France the same treatment as to third countries. Those reciprocal trading systems had been confirmed by the provisions of Article I of the General Agreement.

5. When the Treaty of Rome was signed, it was found necessary to take account of the economic, financial and monetary links existing between France and Tunisia and Morocco, as well as other territories. A Declaration of Intention annexed to the Treaty provided for negotiations with a view to concluding agreements for economic association between these countries and the Community. The representative of the parties stated that the agreements of association represented a first step towards giving effect to this Declaration. In order to confirm the concept of continuity inherent in the Declaration it had been specifically stated that the agreements did not represent the full effect thereof.

6. The parties to the agreements had stressed their political will to realize the objective of creating full free-trade areas; this will was confirmed by the Preamble to the agreements and in the provisions for renewal of the agreements on an expanded basis. The parties considered that the agreements were "interim agreements" within the meaning of Article XXIV, paragraph 5(c). The agreements should be considered not only in their historical context but also in a perspective of economic reality because of the need to ensure, before the end of the transitional period for the Common Market on 31 December 1969, the free circulation of goods among the member States of the Community. The different levels of development of the parties to the agreements should be given full consideration when examining the agreements in relation to Article XXIV. He felt confident that the CONTRACTING PARTIES would deal with the agreements in their usual pragmatic manner, showing full understanding for the particular circumstances which had led to the establishment of closer links between the parties. He expected that their examination of the agreements would be based on the following considerations which characterized these agreements with respect to Article XXIV, namely: the continuity of historical links, the need for harmonizing those links with the achievement of free circulation of goods within the Community, the objective of a free-trade area in which this continuity and harmony could be achieved and the special situation resulting from the differences between the respective stages of development of the parties.

7. Discussion took place on whether paragraphs 4-9 of Article XXIV were the relevant provisions. Eight delegations maintained that the agreements fell outside the scope of Article XXIV:4-9. They pointed out that inter alia in the absence of a plan and schedule it was not possible to conclude whether the interim agreements were likely to result in the formation of free-trade areas within a reasonable time. Two delegations, which also regretted the absence of a plan and schedule, found it difficult on the basis of available information fully to ascertain whether the agreements were in line with the principles and objectives of Article XXIV and called for a pragmatic approach pointing out that no formal approval had been given for earlier analogous cases. Three delegations expressed themselves in favour of the views set out by the parties to the agreements in paragraph 6 above. One delegation took no position on this matter.

8. During the discussions the eight delegations mentioned above further stated that the provisions of Article XXIV:4-9 should not be interpreted in such a way as to justify a preferential arrangement purporting to aim at a free-trade area. A clear distinction should be drawn between such preferential arrangements and agreements setting up genuine free-trade areas. Attention was drawn to the fact that Article XXIV was an exception to the fundamental most-favoured-nation principle of Article I and it was claimed that the least which third countries could expect was strict adherence to the requirements of Article XXIV. According to these delegations, serious repercussions could be expected in the form of loss of trade of third parties, especially of developing countries which, as in this case, had to face serious competition in their most important market. Representatives from developing countries maintained that preferences in favour of some developing countries should be extended to all developing countries.

Paragraph 4 of Article XXIV

9. The agreements were first discussed in the light of paragraph 4 of Article XXIV, according to which a free-trade area should not raise barriers to the trade of other contracting parties. Several delegations expressed concern that the agreements might be trade-diverting instead of trade-creating. Their countries had accepted Article XXIV as an exception to Article I, but clearly on condition that Article XXIV was rigorously applied and that purely preferential agreements were not permitted. Representatives of developing countries felt that their most essential export interests would be jeopardized because Tunisia and Morocco exported similar products as these countries themselves did to the Community, which was their most important market. These developing countries as well as some developed countries could not look at the agreements in isolation, but had to take into consideration the serious consequences for the multilateral trade system and for the efficient growth of international trade, of agreements considered to be discriminatory preferential arrangements concluded by developed countries with certain developing countries only. Moreover, attention had to be drawn to the danger that the development of some developing countries might be achieved at the expense of others and to the fact that vital investments in developing countries could not be made against the background of uncertainty prevailing in those cases. These members wondered how the Community proposed to reconcile its policy of preferences with its intention to contribute to the solution of the problems facing the trade

of developing countries. It was considered by these members that preferences given by this type of agreement were advantageous only in so far as preferences were extended, on a non-discriminatory basis, to all developing countries. There was a need for an overall scheme, which would not weaken the GATT, the only body of rules which governed world trade; any weakening of the Agreement would have adverse effects on all countries. This aspect of the agreements, they felt, introduced a major point of principle which could not be ignored.

10. The representative of the parties to the agreements recalled that in paragraph 4 of Article XXIV the CONTRACTING PARTIES recognized the desirability of increasing freedom of trade by the development of closer integration between the economies of the countries wishing to enter into a customs union or a free-trade area. The purpose of the agreements of association was not to raise barriers to trade of other contracting parties but to facilitate trade between the parties. He stated that paragraph 4 on the one hand and paragraphs 5 to 9 on the other should be interpreted in conjunction. The word "accordingly" in paragraph 5 demonstrated that a free-trade area which met the conditions in paragraphs 5 to 9 would necessarily be in accordance with paragraph 4.

11. He pointed out that fears had been expressed with regard to previous schemes for economic integration, which had proved to be groundless and felt that no specific facts had been adduced to point to a finding that damage was threatened. On the contrary, parties to customs unions or to free-trade areas, as a result of being faced with increased competition among themselves and as a result of the strengthening of their economies, inevitably adopted a more liberal policy towards imports from third parties. Article XXIV had in practice been used by the majority of the contracting parties over the past twelve years during which there had been a considerable expansion of world trade.

12. In this connexion the question of quantitative restrictions was discussed in the light of the replies of the parties to the questions 31, 32, 33 of L/3311. Some delegations pointed out in particular that paragraph 5(b) of Article XXIV stipulated that regulations of commerce should not be more restrictive than those which existed prior to the formation of an interim agreement leading to a free-trade area, and, consequently, new quantitative restrictions should not be imposed towards third countries as a result of the formation of a free-trade area. They referred to the point of view expressed at the Working Party set up to examine the Treaty of Rome, and elsewhere, on the interpretation of Article XXIV in relation to quantitative restrictions vis-à-vis third countries. The question was asked as to what would be the effect on imports from third countries of products for which Tunisia and Morocco were under the obligation to increase continuously the quotas for imports from the Community by specific percentages in accordance with lists annexed to the agreements, especially when the quotas were expressed as a percentage of total imports. Where quotas took the form of percentages of the total import market for a particular commodity, the annual increase in the quotas allocated to the Community would positively limit the proportion of import market open to third countries.

13. The representative of the parties said that the commitments entered into by Tunisia and Morocco regarding the annual increase in quotas opened to the Community were in keeping with the obligation to reduce quotas imposed by Article XXIV:8. The representatives of Tunisia and Morocco stated that the quota system provided for in the agreements was in no way designed to raise obstacles to the development of imports from third countries. The current level of those quotas, which had been calculated on the basis of average imports over the past three years, already in itself established a basis conducive to expansion of the trade of third countries, since the percentages for quota increases in favour of the Community had been fixed taking into account increases in imports from the Community which were generally lower than the actual rate of real increase. Lastly, licences were often granted well in excess of the overall quota levels established. These quotas, furthermore, did not represent any obligation to purchase.

14. It was pointed out on the other hand that third countries would inevitably suffer losses of markets for any product when Tunisia's or Morocco's imports failed to grow in any particular year by the precise percentage increase reserved to the EEC. In this connexion, reference was made to the last sentence of paragraph 12. The representative of the parties reiterated the view contained in paragraph 13.

15. The representative of the parties said that the quota system provided under the agreements could not a priori be termed discriminatory or contrary to the provisions of Article XXIV:5(b) because the agreements were designed to lead to the formation of free-trade areas and, according to Article XXIV, such agreements only concern the relations between the parties. In addition, he drew attention to the fact that since the entry into force of the agreements Morocco had substantially relaxed its import restrictions.

Paragraph 5 of Article XXIV

16. With regard to the first sentence of paragraph 5, one delegation pointed out that the term "territories of contracting parties" did not cover the agreements with Tunisia and Morocco, the former having only provisionally acceded while the latter had as yet no relation with GATT. Attention was drawn by this delegation to the Havana Reports[1] on Article 44 of the Charter, and in particular to paragraph 6 which corresponds to paragraph 10 of Article XXIV. It was understood that this paragraph "will enable the Organization to approve the establishment of customs unions and free-trade areas which include non-members". This interpretation had been confirmed by a decision in 1956 on the participation of Nicaragua in the Central American Free-Trade Area. The representative of the parties to the agreements recalled that in other previous cases, notably in the cases of EFTA and LAFTA, some participants in those free-trade areas were not at that time contracting parties and some of them were still not. Accordingly, it had been shown in practice that the concept "territories of contracting parties" had not been interpreted as restricting the applicability of paragraph 5.

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[1]Reports of Committees and Principal Sub-Committees, Geneva 1948, Section 27, page 52.

17. As regards paragraph 5(c), most members of the Working Party based their discussion on the requirement contained in that paragraph for a plan and schedule as well as on the fact that according to paragraph 7(b), the study of such a plan and schedule was a prerequisite for a finding under Article XXIV. It was noted by several members that the only references to a plan and schedule were the resolution in the Preamble to eliminate obstacles to substantially all the trade, and Article 14 of the agreements which only stated that negotiations may be initiated with a view to the conclusion of new agreements on a broader basis within three years. Some members maintained that they could accept a relatively long transitional period in view of the considerable difference in the levels of development between the parties. They emphasized, however, that the requirements of a plan and schedule had been expressly inserted into Article XXIV in order to give a minimum guarantee that the regional integration would actually be accomplished, as well as to ensure that full information on the gradual development towards free-trade areas was available, so as to permit maximum certainty with regard to the effects on their trade. They claimed that this aspect of plan and schedule was of fundamental importance to ascertain whether the agreements constituted free-trade areas or mere preferential arrangements, and precisely for the absence of this requirement the agreements had to be considered as falling outside Article XXIV.

18. As regards reasonable length of time, most members of the Working Party having regard also to the expression "within the period contemplated" in paragraph 7(b) felt, in the absence of a plan and schedule, unable to pass any judgment on this question and consequently reserved their position.

19. The representative of the parties emphasized that the provisions of Article XXIV:5(c) should be considered as a whole. It concerned three concepts that could not be separated: "interim agreement", "plan and schedule" and "reasonable length of time". Those concepts therefore had to be considered with regard to the nature, the objectives and the content of the agreements. He pointed out that the interim agreements already assured the attainment of free trade in respect of an important part of the trade between the parties, and initiated the process of tariff and quota disarmament according to a plan and schedule. Thus the extent to which obstacles to trade were eliminated in pursuance of interim agreements not only confirmed the "free-trade area" objective, but also gave sufficient assurance that that objective would be attained within a "reasonable length of time", within the meaning of Article XXIV:5(c), taking into account the difference in the level of economic development as between the parties. It was reasonable to believe that the period necessary for attaining the two free-trade areas would be shorter than in similar cases presented to GATT. He added that Article XXIV:5(c) could not be interpreted as requiring, as soon as interim agreements had been concluded, the establishment of a detailed and comprehensive plan and schedule. Experience showed, moreover, that such plans and schedules might not constitute a guarantee in themselves or reduce the uncertainty which, by definition, was inherent in any agreement of an interim nature. The parties to the agreements considered that these agreements corresponded fundamentally to the concept of a "plan and schedule" in Article XXIV:5(c), to the same extent as other regional agreements already examined by the CONTRACTING PARTIES.

Paragraph 7 of Article XXIV

20. With regard to paragraph 7(b), most members of the Working Party felt that without a precise and complete plan and schedule, it would be impossible for the CONTRACTING PARTIES to make findings and recommendations.

21. The Working Party noted the assurance of the parties to the agreements that they would furnish the information for annual reports on the implementation of the agreements, as provided for in Article XXIV:7, in particular with regard to development of trade in products subject to quantitative restrictions.

Paragraph 8(b) of Article XXIV

22. The parties had been asked in document L/3311 (questions 4 to 6) to give figures for the elimination and reduction of duties. The reply, embodying figures supplied by the parties is reproduced in the Annex. This reply reveals that customs duties would be eliminated or reduced by the Community on 79 per cent of imports from Tunisia and on 73 per cent of imports from Morocco. As regards imports into Tunisia, 52 per cent would be subject to tariff reductions, while in the case of Morocco the proportion was 14 per cent.

23. Some members presented calculations according to which elimination of duties applied only to 45 per cent of trade with Morocco, in both directions, and to 41 per cent of trade with Tunisia. They pointed out that such a percentage of elimination of duties was much lower than in any previous case. They maintained that the term "substantially all" implied that practically all restrictions should be removed.

24. Some members of the Working Party considered that the percentages of trade on which restrictions were being eliminated were not consistent with paragraph 8(b). They also complained that relatively small progress was being achieved with regard to the reduction and elimination of duties on agricultural products. As to quantitative restrictions, some delegations expressed the view that quotas should be removed between the parties on a most-favoured-nation basis.

25. The representative of the parties stated that the agreements had already assured the free exchange of a significant part of trade between the parties and that they initiated the phasing out of duties and quotas; a commitment had also been made to continue this process of liberalization. Furthermore, the expression "substantially all the trade" had never been defined by the CONTRACTING PARTIES, either in figures or as regards the composition of the trade to be covered, and the elimination of obstacles to substantially all the trade was to be realized only at the end of a "reasonable length of time". The representative of Tunisia stated that his country imposed quantitative restrictions for balance-of-payments reasons and held regular consultations with the CONTRACTING PARTIES under Article XVIII.

Paragraph 10 of Article XXIV

26. The question of dealing with the agreements under paragraph 10 was discussed. Several delegations considered this paragraph appropriate particularly since Tunisia and Morocco were not contracting parties. Another delegation also considered it appropriate to invoke paragraph 10 of Article XXIV taking due account of the concern expressed within the Working Party with respect to the compatibility of the agreements under examination with the provisions of paragraphs 4 to 9 of Article XXIV, and likewise concerning the intention and will expressed by the parties to the agreements to form a free-trade area. One delegation, however, expressed the view that in the absence of a plan and schedule it would not be possible to meet the conditions in paragraph 10 that proposals falling short of the provisions of paragraphs 5 to 9 lead to the formation of a free-trade area "in the sense of this Article".

General considerations

27. As stated in paragraph 7, a number of members of the Working Party were of the opinion that no plan and schedule, as provided for in paragraph 5 of Article XXIV, existed. Without a precise and complete plan and schedule, it would be impossible for the CONTRACTING PARTIES to make findings with regard to whether the agreements were likely to result in free-trade areas within a reasonable period and, if necessary, to make recommendations. Furthermore, the percentages of trade did not cover substantially all the trade between the parties as required by paragraph 8(b). The agreements, therefore, in their view did not comply with paragraphs 5-9 of Article XXIV.

28. The view was expressed by some members of the Working Party that it would be appropriate to deal with the agreements under paragraph 10 of Article XXIV and that the question of seeking approval under paragraph 10 might be considered by the parties to the agreements. In a decision under this paragraph, the CONTRACTING PARTIES would undoubtedly take into account the historical links between the parties, which the Working Party felt justified sympathetic consideration of the agreements.

29. It was recommended by some members of the Working Party that the parties should take the necessary early steps to comply with the requirements of a detailed plan and schedule embodying a more satisfactory trade liberalization.

30. The parties to the agreements maintained the contentions set forth in the previous sections of the report on the basis of which they found that the provisions of Article XXIV:5 to 9 were fulfilled. The parties to the agreements reaffirmed their conviction that the historical background to the agreements, the political will for continuity from which they are derived, the declared objective

of the parties to achieve free-trade areas, the provisions of the agreements confirming that objective and the actual content of the agreements regarding that objective, were so many elements substantiating a finding that the agreements were in conformity with the letter and spirit of Article XXIV:5 to 9. On the basis of known precedents, they pointed out that the elimination of obstacles to substantially all the trade as from the initial stage of an interim agreement was not an essential condition under the provisions of Article XXIV. They recalled that most of the contracting parties had had recourse to the provisions of Article XXIV which constituted an integral part of the General Agreement. Experience showed that trade flows had not been disrupted; on the contrary, in general they had developed. Consequently the parties to the agreements considered that they were justified, under Article XXIV:5 to depart from the provisions of the General Agreement to the extent necessary to permit the formation of these two free-trade areas. Three members of the Working Party expressed their support for this view. Two members expressed doubts as to the validity of that legal argument but considered that the CONTRACTING PARTIES should take into consideration the particular historical background to the agreements.

31. The Working Party considered that it should report the various views expressed on the question of the compatibility of the agreements with the General Agreement in order to permit a fruitful discussion by the competent bodies of the CONTRACTING PARTIES.

ANNEX

(a) As regards imports by the Community of goods originating in Tunisia and Morocco, the abolition of customs tariffs and other restrictive regulations is as follows (average figures for 1966/67):

	TUNISIA		MOROCCO	
	$ million	%	$ million	%
Tctal imports	112.0	100	321.0	100
Headings with no duty	63.1	56.4	157.7	49.1
Headings subject to tariff disarmament	25.8	23.1	76.8	23.9
Headings with duties and not subject to tariff disarmament	23.0	20.5	86.5	27.0

The percentage of each category of products is as follows:

	TUNISIA	MOROCCO
Industrial products	90%	89%
Agricultural products (Annex II)	54%	54%

(b) As regards imports to Tunisia as a percentage of total imports from the Community the position is as follows (average 1965/67):

Total imports $130.9 million

(i) As regards duty:

	$ million	%
Headings with no duty	10.3	7.9
Headings subject to tariff reductions	58.8	44.8
Total	69.1	52.7

(ii) As regards quotas:

	$ million	%
Headings free from quotas	81.4	62.2
Headings subject to quotas in virtue of the Agreement	17.9	13.7

(c) As regards imports to Morocco as a percentage of total imports from the Community, the position is as follows (average 1965/67):

Total imports $254.7 million

(i) As regards duty:

	$ million	%
Headings with no duty	23.4	9.2
Headings subject to tariff reductions	12.9	5.1
Total	36.3	14.3

(ii) As regards quotas:

Headings free from quotas	109.2	42.9
Headings subject to quotas in virtue of the Agreement	74.6	29.3

(d) The Agreements do not in any way exclude agricultural products.