RESTRICTED
L/3465
20 November 1970
Limited Distribution

GENERAL AGREEMENT ON
TARIFFS AND TRADE

REPORT OF THE WORKING PARTY ON CONVENTION OF ASSOCIATION BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE AFRICAN AND MALAGASY STATES

1. The text of the new Convention of Association signed on 29 July 1969 at Yaoundé between the EEC and the African and Malagasy States was communicated to GATT and circulated to contracting parties in L/3283.

2. A Working Party was appointed by the Council at its meeting in January 1970 and was instructed to examine the provisions of the Convention of Association in the light of the relevant provisions of the General Agreement and to report to the Council. The Working Party met on 20 October and 18 November 1970 under the chairmanship of Mr. E. von Sydow (Sweden).

3. The Working Party examined the provisions of the Convention with particular reference to certain questions which had been put by contracting parties and the replies provided by the parties to the Convention, and which were reproduced in L/3425.

4. The representative of the European Economic Community, in an introductory statement expressed the hope that the written information provided in response to the questions put by contracting parties would enable the Working Party to fulfil its duties in examing the Convention of Association in the light of Article XXIV of the General Agreement. Referring to the statistical data furnished in response to the questionnaire, he drew the Working Party's attention to the fact that the establishment of a free-trade system between the parties, as provided for by the Convention, could now be considered to have been achieved with respect to substantially all the trade, the Democratic Republic of the Congo and Rwanda being the only countries which had not carried out the tariff or quota dismantlement, having invoked legislation dating from before the existence of GATT. In this connexion he underlined that so far as the Community was concerned, only 0.8 per cent of total imports from the Associated States taken together was not fully covered by the free-trade system and that only in the case of one of the eighteen areas did the percentage correspond to an incidence in excess of 10 per cent of imports from the Associated State concerned. The new Convention confirmed that factual situation and fell entirely within the definition set forth in Article XXIV, paragraph 8(b). The representative of the Community also drew attention to the fact that the statistics furnished showed that the fears which had been expressed regarding the effects of this preferential régime on the trading interests of third countries had not been confirmed. As could be seen, the development of trade between the associated countries and the Community was in step with a corresponding development of trade with third countries. He also recalled that the

commercial aspect of the Convention, which was the subject of the examination under Article XXIV, was neither the sole element nor the sole instrument of the co-operation which was the reason for the existence of the Association; that consideration should be taken into account in the appreciations and positions of members of the Working Party on the occasion of examination of the Convention.

5. The spokesman for the Associated States said that they entirely shared the views expressed by the representative of the EEC and considered, in particular, that the examination of Yaoundé II should be carried out in relation of Article XXIV of the General Agreement. He underlined the importance of the Convention for the eighteen Associated States. Yaoundé II ensured the continuity of the Association which had been undertaken more than ten years earlier and which followed on the preferential régimes which most of the Associated States traditionally enjoyed in conformity with Article I, paragraph 2; it in fact represented the complex tissue of co-operation links of which the trade aspect, although important, was only one element. The Associated States attached paramount significance and importance to this concept of co-operation based on several instruments. With respect to the examination of the trade aspect of the Association which was within the terms of reference of the Working Party, the new Convention confirmed the achievement of free-trade areas in conformity with the GATT rules. It re-affirmed the resolve of the parties to the Convention to develop their co-operation in the trade field on the basis and in the context of a free-trade system. In that respect, it was clear from the information furnished that duties and other restrictive regulations had been eliminated with respect to substantially all the trade (between the EEC and the AAMS). Furthermore, the Associated States noted with satisfaction that the Association had proved beneficial to the trade of the parties to the Convention as well as to that of third countries whose interests had in no way been adversely affected by the Association. For all those reasons, the parties to the Association were of the opinion that the second Yaoundé Convention complied fully with the conditions governing the establishment of free-trade areas under the provisions of Article XXIV.

6. After hearing the introductory statements by the parties to the Convention the Working Party proceeded to an examination of the provisions of the Convention. During this examination the parties to the Convention provided various explanations on the statistical material submitted in L/3245 as well as further clarification of some of the replies communicated in that document. The main points made during the discussion are summarized below.

Elimination of duties and other restrictive regulations to trade between parties to the Convention

7. Some members of the Working Party felt that it was difficult to arrive at a judgment whether a free-trade area had been achieved in the absence of information on the extent to which the full range of restrictive regulations of commerce

referred to in Article XXIV:8(b) had been eliminated. They explained in this connexion that the regulations of commerce in question should be interpreted in relation to Articles I:1 and III of the General Agreement. The information provided by the parties neither referred to certain of these regulations of commerce, nor did it record the intentions of the parties to the Convention concerning the removal of these regulations. They recalled that this point had already been made during the examination of the first Yaoundé Convention (BISD, Fourteenth Supplement, page 110, paragraph 28). They pointed out that in some Associated States certain charges which had no counterpart in internal taxes of the Associated States were applied to imports from all sources including the European Economic Community. One member of the Working Party said it was the understanding of his authorities that this was the situation in ten of the Associated States, namely Mali, Gabon, Ivory Coast, Dahomey, Burundi, Chad, Malagasy Republic, Upper Volta and the Democratic Republic of the Congo. The level of these additional charges on imports appeared in most cases to be substantially higher than the charge on imports called the customs duty. Moreover, the same member of the Working Party said his authorities understood that in the case of five Associated States (Cameroon, the People's Republic of the Congo, Gabon, Central African Republic and Chad) the elimination of customs duties on imports from the Community was followed by an increase in other charges on imports from all sources, including the Community, by roughly a similar amount. This member did not consider it a reasonable interpretation of the meaning of "free trade" to look only at the elimination of a minor charge such as 5 or 10 per cent on imports from the Community while other charges of much higher levels (some over 100 per cent) having no counterpart in the internal taxes of the Associated States continued to be applied to imports from all sources including the Community. While it was true that in many cases the products involved were not produced locally, the effects of these charges were restrictive and should be eliminated if the intention of the parties was to establish free-trade areas in accordance with the provisions of Article XXIV:8(b). The same member stressed that his delegation had no desire that all these charges on imports should be removed since the Associated States at their present levels of economic development needed not only revenue but protection if their efforts to diversify and industrialize were to be able to face competition from imports from the EEC. The main point of contention was that free trade within the meaning of Article XXIV:8(b) did not exist in view of the inability of these countries to eliminate the larger part of charges on imports. An alternative approach should therefore be sought to accommodate the particular problems of the Associated States which would not require the granting by these countries of reciprocal concessions, namely the system of generalized preferences on which agreement had recently been reached in UNCTAD.

8. The representatives of the parties to the Convention replied that the extent of trade liberalization achieved by some of the associated countries could be seen clearly from the information furnished on tariff dismantlement, on the one hand, and on quota dismantlement on the other hand, which were the two elements on which the CONTRACTING PARTIES had always hitherto based their evaluation of the extent to which "duties and other restrictive regulations of commerce ... are eliminated with respect to substantially all the trade ..." within the meaning of Article XXIV:8.

They noted that, so far as they knew, the elimination of fiscal charges had never yet constituted an element necessary for recognition that a free-trade area was consistent with the GATT rules. This was an entirely new objection which had, moreover, not been the subject of any earlier question. In that respect the parties to the Convention considered that GATT rules and practice were perfectly clear. The General Agreement made a clear-cut distinction between measures which had a protective effect and other measures applied in like manner to domestic and imported poroducts. The rules and obligations in that respect were very clearly defined in Article III. It was evident that the provisions of Article XXIV concerning the concept of a free-trade area concerned only protective measures. The taxes referred to were of a fiscal character, not protective, and did not differ from similar taxes applied by other contracting parties. It was in any case unacceptable that developing countries should be denied the right to impose a general fiscal tax, and be deprived of one of the main sources of income when the imposition of such taxes was a normal and accepted practice in all other countries including contracting parties which were members of regional arrangements already examined in the GATT.

9. Some members of the Working Party observed that according to information supplied by the parties to the Convention the free-trade objective had not been achieved in the case of Rwanda and the Democratic Republic of the Congo (Kinshasa).

10. The representatives of the parties to the Convention recalled that an objection had been raised during the examination of the first Yaoundé Convention because five of the Associated States had not been able to move immediately to tariff dismantlement owing to certain international obligations. It had been pointed out by the parties at that time that this juridical aspect would be progressively resolved. It could be seen from the information provided that this assurance was being honoured as only one country - the Democratic Republic of the Congo - was still in the initial situation. Rwanda had already commenced the process of tariff dismantlement and intended to pursue it upon completion of the study already in hand for the revision of its tariff system.

11. A member of the Working Party pointed out that measures taken for safeguard reasons, budgetary or development needs, were important in judging whether the free-trade area arrangements covered substantially all the trade. It was to be hoped that the parties to the Convention would be amenable to some form of reporting so that any modifications or changes in the application of these measures could be brought to the notice of the GATT. Some members of the Working Party felt that Articles 3 and 6 of the Convention provided an easy way for the Associated States to resort to quantitative restrictions or to introduce tariff measures. Since it was likely that developing countries in the process of economic development were likely to increase protection as they develop, it could be expected that on one occasion or another they would be obliged to resort, to an increasing extent, to the provisions of Articles 3 and 6. This situation would not promote conformity with the provisions of Article XXIV.

12. The representative of the EEC said that all regional agreements contained safeguard clauses. Experience so far in the implementation of the Association showed that the risk that recourse to those safeguard clauses might again bring into question liberalization of substantially all the trade was more theoretical than real. What must be appreciated in the light of Article XXIV was the situation obtaining at any given moment. In any case, if contrary to expectations it were to appear that substantially all the trade could no longer be considered as being covered, the parties to the Convention would, without fail, in conformity with the spirit of the provisions of Article XXIV, inform the CONTRACTING PARTIES of the situation and of the conditions in which those safeguard measures would be eliminated. Furthermore, the parties intended to pursue the path of information freely given on a basis of reciprocity and mutual advantage. With respect to the objection that the very existence of safeguard clauses was a potential threat to the concept of liberalization of substantially all the trade, the parties to the Convention noted that it had not been accepted in regard to other regional agreements and that, furthermore, it was based on an out-of-date philosophy of economic development, in the sense that it was no longer protection as such which could be considered a factor for development, but rather the application of selective, temporary and evolutionary protection.

13. In reply to a question as to whether the restrictions applied in the Associated States for balance-of-payments reasons were notified to the GATT, the representatives of the parties to the Convention replied that this aspect was not included in the terms of reference of the Working Party.

14. Some members noted that in the replies to questions in L/3425, the parties to the Convention had stated that a discussion of the application of quantitative restrictions by the Associated States for balance-of-payments reasons was not relevant as regards the Convention and Article XXIV of the General Agreement. They reiterated the position they had taken in the past that they did not share this view.

15. One member of the Working Party felt that from the information provided by the parties to the Convention it was not clear whether the Yaoundé arrangements would be permanent or whether they would be phased out when the validity of Yaoundé II expired. While historical and other reasons for setting up the Association were understood, the Association should be temporary in nature and should be phased out as early as possible.

16. The parties to the Convention recalled that during the examination of the first Yaoundé Convention the argument had been advanced that the Convention was not permanent and could therefore not be covered by Article XXIV. It was therefore surprising to be confronted on the next occasion with an opposite version of this argument.

Other points raised by members of the Working Party

17. Certain members of the Working Party enquired whether Article 11 of the Convention meant that concessions extended by the Associated States to other developing countries would automatically be extended to the EEC. If this were the

case the EEC was in a particularly favoured position considering that it had not undertaken similar obligations and was engaged in concluding various preferential arrangements with other countries.

18. The parties to the Convention replied that the answer could be found in the preamble to Article 11 itself which provided that the substantive provisions were without prejudice to Articles 12 and 13 of the Convention. The question was in any case academic since for the time being situations of the kind implied by the question did not exist, nor did the EEC grant less favourable conditions to the Associated States than to third countries. Should there be any new developments in the future, the institutions of the Convention would automatically be seized with the matter.

19. One member of the Working Party commented that should the Associated States extend concessions in the framework of the trade negotiations among developing countries which were currently taking place in the GATT, the position of the EEC should be no different from that of other developed countries which, when the results of the negotiations were placed before the CONTRACTING PARTIES, would be required to renounce their rights under Article I.

20. Some members of the Working Party did not consider that a free-trade arrangement between developed countries and developing countries in the early stages of economic development was really feasible and desirable, because, if those developing countries are to achieve economic development, they need protection which is not consistent with the requirements of Article XXIV, while if they try to achieve such free trade, satisfactory economic development cannot be expected in the absence of protection.

21. The representatives of the parties to the Convention recalled that their position on the question of free-trade area arrangements between countries at different levels of economic development had been stated in the past. They reiterated their view that free-trade area arrangements between countries at different levels of economic development were not prohibited by Article XXIV; and that objections of the kind raised had not been formulated in connexion with other regional arrangements which included countries at different levels of development.

22. One member of the Working Party expressed the view that the rules of the General Agreement cannot be interpreted in isolation but had to be related to all the GATT provisions as a whole. Since the Associated African and Malagasy States were developing countries the Convention should be examined not only in the light of Article XXIV, but also with regard to Part IV. In Article XXXVII:4 developing countries have agreed to take appropriate action to implement the provisions of Part IV for the benefit of the trade of other developing countries. By this token Part IV did not permit discrimination between developing countries. He hoped that the parties to the Convention would bear this in mind and would always show themselves willing to discuss any problems arising for other developing countries with a view to solving them.

23. The parties to the Convention recalled that paragraph 5 of Article XXIV specified that the provisions of the Agreement should not prevent the formation of free-trade areas. As Part IV did not overrule Article XXIV it was clear that the provisions of paragraph 5 still applied.

24. One member of the Working Party noted that in reply to a question in L/3245 as to whether restrictions other than tariffs were applied to imports from third countries by the Associated States but not to the EEC, the parties had stated that the question was not relevant with respect to the provisions of the Convention. This member pointed out that the question had been directed towards ascertaining the extent of any trade diverting effects arising from the preferential treatment accorded to the EEC by the Associated States. He stressed that under Article X of the General Agreement, contracting parties had a right to be informed of all measures of trade regulation applied by others.

25. In reply to the question regarding a statement which had been made by the Associated States during the Working Party on Yaoundé I, the parties to the Convention confirmed that: "The Yaoundé Convention did not contain provisions regarding trad with third countries and left each party free to determine its own policy with respect to trade with third countries. The Associated States intended to conduct their commercial policies for the good of their respective national interest, while observing their international obligations." (paragraph 9, page 103, BISD, Fourteenth Supplement).

26. One member of the Working Party expressed the hope that consultations under Article 15 of the Convention concerning trade policy vis-à-vis third countries would not prevent the reduction of these barriers on a global basis.

Concluding remarks by members of the Working Party

27. Some members of the Working Party noted that in comparison with the situation which prevailed during the examination of Yaoundé I, some progress had been made and that no specific cases of adverse effects on the trade of third countries had been mentioned. In their view some of the questions such as that of a plan and schedule for the removal of tariffs and other restrictive measures, were resolved. Some of these members felt that as far as the question of trade coverage was concerned, while it appeared that substantially all the trade had been covered in the case of tariffs, as far as quantitative restrictions were concerned the Working Party was not in possession of all the facts in order to make a judgment on this aspect. They also agreed with the view that the possibilities for easy recourse to safeguard and other measures for development and budgetary needs could have implications for the trade coverage of the free-trade arrangements. Some members, considering that there was nothing new in Yaoundé II which should cause it to be regarded any less favourably than Yaoundé I, and taking into account the fact that the current Convention was an extension of the previous one already examined in the GATT, felt that it would be appropriate that the Working Party should recommend that a solution should be found along the lines of that applied to the first Yaoundé Convention.

28. Some members of the Working Party felt that as there was insufficient information on the application of certain regulations of commerce applied by the Associated States it was not possible to make a judgment as to whether a free-trade area had been achieved. Furthermore, according to indications it appeared that several restrictive measures were being applied under various guises in the Associated States in which event a free-trade area had not been achieved. To help clarify these uncertainties it was suggested by one member that the secretariat prepare a document indicating the nature, level and product coverage of the duties or charges (or whatever they may be called in individual States) and give a juridical opinion as to whether or not such duties or charges are relevant to paragraph 8(b) of Article XXIV. It was further suggested by the same member that final consideration of the Working Party's report should be deferred pending receipt and discussion of the secretariat document.

29. The representative of the Community, referring to earlier discussions to which the Association had given rise in GATT, said that he was struck by the fact that in order to justify their reservation regarding the Convention, some members of the Working Party had advanced new arguments never used hitherto. The criticisms and objections put forward concerning the first Yaoundé Convention had mainly concerned the validity of the plan and schedule, the legal identity of the eighteen free-trade areas, the inadequate duration of the Convention, and the inevitability of adverse effects by the preferential system on third countries. The situation on which the new Convention was based showed that those criticisms and objections were not justified. Thus, failing the traditional arguments regarding the provisions of Article XXIV, new arguments were being put forward which involved a question of substance, namely the interpretation of the concept "restrictive regulations of commerce" as recognized and applied by the CONTRACTING PARTIES until now. The parties to the Convention formally rejected the interpretation under which fiscal charges would be assimilated with restrictive measures; they remained of the view that no arguments had been adduced which could show the Convention to be inconsistent with Article XXIV, paragraph 8. In those circumstances, the parties to the Convention contended that they were entitled to benefit under the exception defined in Article XXIV, paragraph 8, which was fully applicable. They considered, furthermore, that the doubts expressed by certain members of the Working Party could not constitute disagreement, and that conclusions limited to recording the existence of disagreement would not be acceptable in terms of Article XXIV because such disagreement would concern not the Convention itself, but the interpretation given to the criterion.

30. The representative of the Associated States, in agreeing with the views put forward by the representative of the EEC, stated that some of the remarks made in the Working Party were based on considerations that needed revision. The Associated States had to the best of their ability fulfilled their GATT obligations within the context of the Yaoundé Convention. They were aware of the fact that their economic and social development depended on their own efforts and in particular on the financial resources they could derive from their own countries. The representatives of the Associated States appealed to all members of the Working Party to view the situation of the Associated States from an overall point of view.

They stressed the importance of the Convention in promoting their individual interests and did not consider as well founded the arguments claiming to refute the contention that the Convention was in conformity with the provisions of Article XXIV, nor did they consider that there had been a general opposition to this contention in the Working Party.

Conclusions

31. In its examination of the new Convention in the light of the relevant provisions of the General Agreement, the Working Party gave particular attention to the statement by the parties to the Convention reproduced in paragraph 4 above that the objective of the free-trade régime had been fully achieved. The Working Party agreed that during the period covered by the first Convention progress in this respect had been made, and also noted that no specific cases of adverse effects to the trade of third countries had been raised. It noted that while some members had expressed doubt about particular provisions of the Convention they had not expressed the view that the basic requirements of Article XXIV:8(b) had not been met; some members pointed, however, to the problems that still remained unresolved and were unable to subscribe to the view that the basic requirement as spelled out in Article XXIV:8(b) had been fulfilled and in any event they were unable to agree that free-trade areas had been established between the Community and two of the Associated States.