

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND THE ARAB REPUBLIC OF EGYPT

Report of the Working Party

1. At the meeting of the Council on 5 February 1973, the contracting parties were informed that on 18 and 19 December 1972 the European Communities had signed an agreement and an additional protocol with the Arab Republic of Egypt (C/M/84). The following legal instruments were transmitted to the secretariat and subsequently circulated in document L/3938/Add.1:

- the text of the Agreement between the European Economic Community and the Arab Republic of Egypt;
- the text of the Protocol laying down certain provisions relating to the Agreement between the European Economic Community and the Arab Republic of Egypt consequent on the Accession of new member States to the European Economic Community;
- the text of an exchange of letters between the heads of the two delegations on the occasion of the signing of the Agreement; and
- the text of the Agreement in the form of an exchange of letters concerning Article 6 of Annex I to the Agreement between the European Economic Community and the Arab Republic of Egypt.

2. At the meeting of the Council on 19 October 1973, a working party was set up with the following terms of reference:

"To examine, in the light of the relevant provisions of the General Agreement, the provisions of the Agreement between the European Economic Community and the Arab Republic of Egypt, signed on 18 December 1972; and to report to the Council." (C/M/90)

3. The Working Party met on 17 May and 1 July 1974, under the chairmanship of Mr. L.J. Mariadason (Sri Lanka). It had available the text of the Agreement, the

Protocol and the exchanges of letters referred to in paragraph 1 above¹, as well as the replies by the parties to questions asked by contracting parties (L/4015).

4. The representative of the European Communities recalled that the Agreement had entered into force on 1 November 1973, and stated that the legal instruments circulated in document L/3938/Add.1 constituted a whole, although the Declarations by the parties and the exchanges of letters were not integral parts of the Agreement. He said that, as in other previous cases, the European Economic Community attached importance to its relations with all the countries of the Mediterranean Basin in the light of the geographical, economic and political factors present. As expressed in the Preamble to the Agreement, the parties had set as their objective the elimination of obstacles to substantially all the trade between them, consistent with the provisions of the General Agreement. In the view of the parties to the Agreement, it was fully consistent with the spirit and letter of the General Agreement, in particular Article XXIV (5)-(9), and constituted an interim agreement leading to the formation of a free-trade area as provided in Article XXIV (5)(b). The Agreement set out precisely the steps to be taken during the first stage and provided for decisions to be taken in the second stage leading towards free trade between the parties.

5. The representative of the European Communities went on to say that in the first stage approximately 90 per cent of the industrial imports and approximately 50 per cent of the agricultural imports into the EEC from Egypt would either be duty free or subject to tariff dismantlement, and that approximately 50 per cent of the imports into Egypt from the EEC would benefit from duty-free or reduced tariff treatment. Taking account of the two parties' respective economic situations, the Agreement provided for reasonable steps towards the establishment of free trade between them. The first stage represented a realistic start in that direction in the light of the obligations that the parties had assumed in the Preamble.

6. The representative of Egypt endorsing the views expressed above, added that in the view of his Government the Agreement was an example of the type of co-operation that should be established between developed and developing countries, taking account of the goal of the harmonious expansion of their mutual trade and the progressive elimination of the obstacles thereto, consistent with the General Agreement. The Agreement was of particular importance to the economic development of Egypt, in the light of its commercial deficit, because the EEC constituted a vast and dynamic market with which Egyptian suppliers desired to establish closer ties. It would also promote the diversification of Egypt's exports. The Agreement took realistic account of the parties' respective economic situations and was in full conformity with the spirit and the letter of the General Agreement.

¹For convenience these legal instruments are referred to collectively in this document as "the Agreement".

7. Several other members supported the view that the arrangement constituted an interim agreement aimed at the formation of a free-trade area that would promote the economic development of Egypt. They considered that the Agreement was fully consistent with Article XXIV of the General Agreement. One member, speaking on behalf of several contracting parties, said that in their view regional free-trade arrangements had a natural place in promoting trade liberalization, and were a step towards trade liberalization on a larger scale.

8. One member of the Working Party said that his authorities were not convinced that the Agreement conformed to the Article XXIV criteria for the establishment of a free-trade area or for an interim agreement leading to the formation of a free-trade area. On the basis of an examination of the Agreement and the parties' replies to the questions, his delegation had some doubt that full GATT compatibility could be established at this time.

9. Other members shared this view. They said that similar concerns had been expressed by their delegations on a number of past occasions when participating in GATT working parties examining preferential trade arrangements between the EEC and certain of its trading partners. Their governments appreciated the reasons why Egypt would seek to strengthen its commercial ties with the EEC, but suggested that the Generalized System of Preferences would have permitted this. Moreover, in the absence of a plan and schedule, their authorities could not agree that the arrangement under examination constituted an interim agreement leading to the formation of a free-trade area as provided in Article XXIV.

10. The representative of the European Communities expressed appreciation for the support of the delegations mentioned in paragraph 7. He recalled that there were varying legal interpretations of the provisions of Article XXIV. The various free-trade agreements entered into by the EEC were only a part of a general trend towards regional economic arrangements, and these were by no means confined to the region under examination. Similar arrangements existed elsewhere with the participation of a large number of contracting parties.

11. One member noted that most of the members of the Working Party who had supported the parties' view represented countries which had themselves entered into similar arrangements with the EEC. He and another member doubted that there was a general trend toward regional arrangements. The other member acknowledged that many such arrangements existed but that virtually all of those recently formed involved the EEC. In reply, the representative of the European Communities referred to those in Latin America, Central America, the Caribbean, the Pacific and Eastern Europe, in none of which the EEC was a party. One member noted that most of those arrangements involved developing countries solely or countries with different economic systems. He expressed concern at the possible future involvement of the EEC in arrangements with countries in these areas, and added that countries that did not engage in preferential arrangements ran the risk of becoming "least-favoured-nations".

12. After the general discussion set out above, the Working Party proceeded to an examination of the Agreement based on the questions and replies on more specific matters, as reproduced in document L/4015. The main points made during the discussion are summarized below.

General questions

13. Some members of the Working Party said that in the view of their authorities the Agreement failed to mention specifically the objective of forming a free-trade area, and lacked a plan and schedule as required by Article XXIV:5(c) in the case of an interim agreement. There was no binding commitment in the Agreement or indication in the answers contained in L/4015 that a free-trade area would be established in five years or in any other specified time period. Their governments doubted that free-trade areas between countries of such widely differing stages of industrialization could lead to GATT-consistent agreements encompassing the elimination of substantially all trade barriers between the parties within a reasonable time period as required by Article XXIV. Some of these members considered that it would have been more appropriate for the European Communities to take account of Egypt's interests in the context of their Generalized System of Preferences.

14. The representative of the European Communities stated that in the view of the parties to the Agreement, its contents comprised a precise plan and schedule for the first stage and went a long way towards establishing a free-trade area. The parties' interpretation of Article XXIV:5(c) was that the plan and schedule to be included in an interim agreement were linked with the concept of establishing free trade within a reasonable length of time. With regard to a commitment to go beyond the present Agreement, the parties regarded themselves as committed to introducing a second stage and to proceeding further, in the sense that in the Preamble they had agreed that the ultimate objective was to eliminate the obstacles to substantially all the trade between them. The language in the Preamble had been taken from that in Article XXIV; and the parties expressly bound themselves to act in accordance with the General Agreement.

15. One member of the Working Party called attention to Article 17(2) of the Agreement, which provided that "eighteen months before the expiry of the Agreement, negotiations may be opened with a view to concluding a new Agreement on a wider basis". He doubted whether the word "may" expressed clearly the will of the parties to proceed with further negotiations. The representative of the European Communities replied that the parties had clearly set out their objectives in the Preamble, and that they considered themselves bound in good faith to eliminate the obstacles to substantially all their trade.

Trade coverage

16. One member raised a question with regard to an apparent discrepancy in the statistics provided in the answers to questions 5, 11 and 18. The representative of the European Communities explained that the figures given in reply to question 5 referred only to EC imports from Egypt and said that duty-free trade in both directions based on most-favoured-nation provisions would be about 45 per cent. He noted that this figure reflected the already high level of duty-free trade between the parties at the time when the Agreement was concluded.

Anti-dumping

17. One member requested clarification concerning Article 10 of the Agreement and specifically as to the intention of Egypt with regard to any anti-dumping measures that might be taken vis-à-vis third countries. The representative of Egypt replied that his Government did not discriminate against third countries, and recalled that Egypt had not yet agreed to the draft text that had been drawn up in GATT concerning the possible acceptance and implementation of the Anti-Dumping Code by developing contracting parties. The representative of the European Communities noted in this context that the procedures of Article 10 of the Agreement under examination related only to actions between the parties in the event of any difficulties connected with dumping.

Rules of origin

18. Some members expressed the view that the inclusion of restrictive rules of origin in the Agreement was not consistent with Article XXIV. Noting that this problem had been taken up in another forum, they found the rules of origin in the present Agreement, like those in similar agreements examined in earlier working parties, almost excruciatingly complex and difficult to explain. It was difficult to imagine why the parties would put themselves to so much trouble to draw up rules that hopefully would not represent increased barriers to third parties' trade. The representative of the European Communities said that although Article XXIV made reference to origin, there was no mention as to how contracting parties were to proceed in this respect. The parties to the Agreement could not accept that the rules applied were restrictive or too complex; they had been found acceptable in the industrial sectors of both parties to the Agreement. He also pointed out that the answer to question 23 referred to the contracting parties to the Agreement under examination and not to the General Agreement.

19. As stated in paragraph 9 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 complete plan and schedule, it would be impossible

for the CONTRACTING PARTIES to make a finding with regard to whether the Agreement was likely to result in a free-trade area within a reasonable period, and, if necessary, to make recommendations. Furthermore, since the percentages of trade did not cover substantially all the trade between the parties as required by paragraph 8(b) of Article XXIV, and in view of the widely differing stages of industrialization between the countries involved, these members did not consider that GATT compatibility could presently be established for the Agreement. Some of these members suggested that it would have been preferable for the EEC to take account of Egypt's interests through its GSP.

20. The parties to the Agreement maintained the arguments put forward in previous sections of the report on the basis of which they considered that the provisions of Article XXIV:5-9 were fulfilled. They reaffirmed their conviction that the developments towards economic integration in the region concerned, the political will of the parties to achieve the declared objectives of the Agreement to establish free trade, and the actual provisions of the Agreement in its first stage together with the intention to take further decisions in due course all constituted elements substantiating this view. Furthermore it was clear that it would not have been possible through action in the context of the GSP to achieve the objectives that the parties had set for themselves, and more particularly in the light of the general trend towards economic integration in the region to which attention had been drawn. The parties accordingly considered that they were justified under Article XXIV to depart from the provisions of the General Agreement to the extent necessary to permit the formation of the free-trade area.

21. The Working Party could not reach any unanimous conclusions as to the compatibility of the Agreement with the provisions of the General Agreement. It therefore considered that it should limit itself to reporting the opinions expressed to the competent bodies of the CONTRACTING PARTIES.