

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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AGREEMENT BETWEEN THE EUROPEAN COMMUNITIES AND ISRAEL

Report of the Working Party

1. At the meeting of the Council on 2 June 1975 (C/M/106) the CONTRACTING PARTIES were informed that on 11 May 1975 the European Communities and Israel concluded a new Agreement, parallel with a similar Agreement to cover the coal and steel sector. Copies of these legal instruments were subsequently transmitted to the secretariat and circulated to contracting parties with document L/4194/Add.1:

- Agreement between the European Economic Community and the State of Israel, and
- Agreement between the member States of the European Coal and Steel Community, of the one part, and the State of Israel, of the other part.

2. At the meeting of the Council on 11 July 1975 (C/M/107) 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 agreements between, on the one hand, the European Economic Community and the member States of the European Coal and Steel Community and, on the other hand, the State of Israel, signed on 11 May 1975, and to report to the Council." (L/4203/Rev.1)

3. The Working Party met on 10 and 18 June 1976 under the chairmanship of Mr. A. Bier (Brazil). It had available the text of the instruments¹ cited above, as well as the replies by the parties to questions which had been asked by contracting parties (L/4307).

4. In his opening statement the representative of the European Communities (EC) noted that the earlier 1970 Agreement between the European Economic Community (EEC) and Israel had already embodied in its preamble the undertaking to negotiate a new agreement on broader bases; the new EEC/Israel Agreement concluded on 11 May 1975 for an unlimited duration was designed to replace the 1970 Agreement

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

and was in the context of the global approach for Mediterranean policy that had been decided by the EEC in 1972. The Agreement, which had entered into force on 1 July 1975, was designed to carry forward the progressive achievement of a free-trade area between the parties, as already initiated under the 1970 agreement, and likewise the establishment of economic co-operation as a factor complementary to trade. With respect to the industrial sector, the Agreement provided for the complete abolition of tariff and quota barriers in respect of all industrial products, to be achieved by 1 July 1977 in respect of imports by the EEC from Israel. Refined petroleum products, certain textile products and a few chemical products were the subject of some precautionary measures, provided in order to prevent any sudden increase in imports of a few products; but those measures, which were in the nature of simple surveillance, were to be eliminated at the end of 1979. As regards imports by Israel from the EEC, customs duties would be abolished on 1 January 1980 in respect of a list comprising 60 per cent of Israel's imports from the Community (on the basis of 1973 statistics) and on 1 January 1985 for the remaining 40 per cent (list in Annex A to Protocol No. 2). The two parties could agree, nevertheless, to postpone the target date for Israel's tariff dismantlement in respect of industrial products though in any case the programme had to be entirely completed by 1 January 1989, in order to take account of the present level and the needs of Israel's economic development. In connexion with the agricultural sector (products in Annex II to the Rome Treaty establishing the EEC), upon the entry into force of the Agreement the Community had made substantial tariff reductions covering approximately 80 per cent of its agricultural imports from Israel, and in particular products traditionally exported by that country to the Community market such as citrus fruit and certain fruit juices; furthermore two reviews had been scheduled for 1978 and 1983 in order to examine what progress could be made in the tariff dismantling programme for the products concerned. The Agreement covered "substantially all the trade" in that it covered a total of 92 per cent of imports by the Community from Israel and 96.5 per cent of imports by Israel from the Community (on the basis of 1974 statistics). It likewise contained a number of other provisions such as an industrialization clause, rules on competition, safeguard clauses, designed to ensure proper functioning of the free-trade area and in addition there was a clause allowing the Agreement to be extended, where appropriate, to fields not yet covered thereby. In parallel with the Agreement and in order to take account of the Paris Treaty establishing the European Coal and Steel Community, an agreement had been concluded with Israel covering the products in the coal and steel sector and establishing the same modalities as were provided for EEC products. Lastly, in the preamble to the Agreement the European Economic Community and the State of Israel had declared themselves "resolved ... to continue the progressive elimination of the obstacles to substantially all their trade, in accordance with the provisions of the General Agreement on Tariffs and Trade concerning the establishment of free-trade areas" and that the provisions of the Agreement in regard to trade were consistent with that objective. In that connexion, the replies furnished to questions by

contracting parties evidenced and largely confirmed the consistency of the trade provisions of the Agreement with the relevant provisions of GATT, and the Agreement contained all necessary provisions in regard to a plan and schedule for the formation of a free-trade area within a reasonable length of time.

5. In an introductory statement the representative of Israel associated his delegation fully with the contents of the opening statement of the representative of the European Communities. He stressed, in particular, that his authorities were likewise of the opinion that the terms of the Agreement were fully compatible with the relevant provisions of the General Agreement, and that the Agreement under examination included all the necessary provisions, including a plan and schedule for the establishment, within a reasonable length of time, of a free-trade area covering substantially all the trade between the parties. For Israel the Agreement represented a significant achievement in relation to its foreign trade, and had far-reaching implications for the economic future of the country. Referring to the statement made by the representative of his country when the earlier agreement was being examined by a similar working party, he pointed out that, then as now, Israel was a small country, almost entirely devoid of basic raw materials and with a limited home market, whose economic future would depend almost completely on the development of more sophisticated industries based on specialized skills and know-how, which would have to provide the bulk of the country's export earnings. Therefore, guaranteed open access to large foreign markets was an indispensable prerequisite for economic development. He recalled that the EEC was Israel's largest single export market, and that Western Europe as a whole absorbed more than 50 per cent of his country's total exports. Therefore, in order to ensure the necessary conditions for its development, Israel needed free access to its main market with the minimum of hindrances other than those imposed by nature and geography. There could be no development without investment, but investment capital would only come forth when secure markets could be promised. This was the economic justification for seeking a long-term agreement which could provide the requisite market security. He said that the foreign trade statistics, which he cited, provided the most convincing argument for concluding the Agreement. He recalled that when the earlier agreement had been under examination the parties had engaged themselves resolutely and consciously on the path towards the establishment of a free-trade area. He drew the attention of the Working Party to certain elements of the Agreement. First, he noted that the preamble specifically stated that none of the provisions of the Agreement might be interpreted as exempting the parties from the obligations incumbent upon them under other international agreements making it clear that the General Agreement remained paramount and its provisions fully binding. Next, nothing in the Agreement could in any way hamper Israel's full and active participation in the Multilateral Trade Negotiations. Finally, he stressed the evolutive character of the Agreement, which provided for reviews in 1978 and 1983 during which the parties would consider any possible improvements, based on the

experience gained and the objectives defined in the Agreement. In concluding his remarks, the representative of Israel referred to the transition period for tariff dismantlement by his country. He pointed out that in general the transition period would come to an end in 1980 or 1985, but might be extended to 1 January 1989 (under the provisions of Article 22), a reasonable period in the light of the early stage of the country's industrialization process. He further noted that the provisions of Article 3 of Protocol 2 could only be invoked in order to reintroduce or maintain tariffs needed to protect and favour the development of new processing industries in Israel; and then only within strictly set limits. His authorities earnestly believed that the provision was both reasonable and in full conformity, not only with the letter of Article XXIV, but also with the spirit in which GATT was applied today with respect to the industrial development problems of developing contracting parties.

6. Another member of the Working Party acknowledged that the Agreement covered the parties' trade in industrial products, but stressed that Article XXIV:8(b) called for the elimination of duties and other restrictive regulations of commerce on substantially all the parties' trade. In this connexion he called attention to the fact that on the basis of 1973 statistics 41.8 per cent of the EC imports from Israel had remained wholly or partially subject to customs duties. Accordingly, his authorities had doubts as to the compatibility of the Agreement with Article XXIV, even as an interim arrangement leading to a free trade area, and viewed it as a preferential and discriminatory industrial trade agreement. He also noted the very restrictive character of the rules of origin, which were similar to those of the 1970 Agreement and which his authorities continued to consider as a violation of the Article XXIV:5(b) requirement that they not be more restrictive towards third countries than before. Consequently his Government reserved its rights under the General Agreement, notably those provided for in Article I, with respect to its trade interests, including exports of citrus fruits. He concluded by stating that whereas Article XXIV permitted certain types of arrangements under prescribed conditions, the requirements of that Article were not met in the case of the present Agreement.

7. Sharing many of the viewpoints expressed by the previous speaker, another member of the Working Party expressed concern about the proliferation of arrangements tending to undermine the m.f.n. concept, central to the continued functioning of the General Agreement. The growing network of discriminatory arrangements, many of which were not consistent with Article XXIV, weakened the m.f.n. trading system on which GATT was based. In the opinion of his Government, it was important that the interests of third countries and the legal integrity of the GATT be preserved in connexion with the examination of such arrangements. He stated that, although in some ways the Agreement under examination appeared to conform more closely to the intent of Article XXIV than the previous Agreement of 1970, there were still a number of elements in the new Agreement which raised

serious questions with regard to conformity with Article XXIV. He pointed out that there appeared to be certain gaps in trade coverage, and expressed the view that one party to the Agreement would enjoy a more favourable and wider market access than would the other. In the view of his authorities, Israel's industrial exports to the EC would gain access at a more rapid pace because the elimination of customs duties on industrial products by Israel would be slower than would be the case in the Community. In the agricultural sector, on the other hand, in the case of Israel's exports to the EC, it appeared that there were some products which would not enjoy free entry for a considerable period of time if at all. In the view of his authorities the above points raised questions as to the conformity of the Agreement with Article XXIV.

8. Another member of the Working Party said that his views coincided with what the two preceding speakers had stated. He hoped that the means resorted to in order to attain industrial output targets that were vital for Israel would not adversely affect the interests of third countries. With reference to the opinion expressed by the representative of Israel to the effect that absence of exports implied absence of investment and consequently absence of development and that since the EEC was the biggest export market of Israel it was essential to have market security in the EEC, he wondered whether the expression "market security in the EEC" involved some commitments on the part of the EEC other than the reduction or elimination of tariffs and other regulations of commerce. The representative of Israel replied that in the context of his country's markets the expression "market security" meant that outlets must be sought while taking into consideration tariffs as well as quantitative restrictions.

9. Another member of the Working Party observed that the Agreement was designed to establish a free-trade area through the progressive elimination of obstacles to trade, it covered substantially all the trade and, in his view, therefore, was consistent with the rules of the General Agreement.

10. The parties to the Agreement recalled that Article XXIV constituted a statutory derogation from the provisions of Article I and that the CONTRACTING PARTIES had recognized customs unions and free-trade areas as having a trade-creating effect not only as between the parties concerned but likewise in respect of third countries. The volume of trade affected by the tariff and quota dismantlement represented more than 90 per cent of total imports on each side; "substantially all the trade" was therefore covered. With respect to the rules of origin, the parties to the Agreement had underlined that they derived from the provisions of Article XXIV:8 which reserved the benefit of free trade to products originating in the area; the provisions of Article XXIV:5(b) were not relevant in that respect because the tariff and trade regulations vis-à-vis third countries were not modified under the Agreement.

11. 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/4307. The main points made during the discussion are summarized below.

PROTOCOL 1 (Products originating in Israel imported into the EC) AND PROTOCOL 2 (Products originating in the EC imported into Israel)

12. One member of the Working Party said that despite their somewhat different phrasing, questions Nos. 7 and 12 had been addressed at the same issue. Although the underlying principle was the same, he pointed out that the replies were quite different and requested clarification on this point. The representative of the EC replied that the abolition of quantitative restrictions between the parties was covered by the provisions of Article XXIV. The representative of Israel agreed with this view from a legal standpoint, and added that the reply to question No. 12 should rather be seen from a factual point of view, because Israel had been, and intended to continue, eliminating quantitative restrictions on an m.f.n. basis. The member of the Working Party who had raised the point, together with some other members, reiterated their view that quantitative restrictions must be eliminated on an m.f.n. basis. They welcomed the statement by the representative of Israel that quantitative restrictions were being eliminated in this manner, and encouraged the parties to continue to eliminate quantitative restrictions on an m.f.n. basis.

13. One member of the Working Party enquired as to the criterion referred to in sub-paragraph (a) to the reply to question No. 10. The representative of Israel replied that in Annex A the term "sensitive" referred to infant industries only recently established in Israel and needing an additional grace period before being exposed to full competition from EC countries.

14. With respect to question and reply No. 11, the representative of Israel gave as an example the case of cigarettes manufactured locally. These were subject to excise duty, which would be equivalent to the fiscal element in customs duties applied to imported cigarettes.

15. A member of the Working Party referred to the nascent industries provisions in Article 3 of Protocol 2, where it appeared to his authorities that customs duties could be introduced by Israel as late as 1983 and remain in force until 1989. In response, the representative of Israel pointed out that the possible measures envisaged in Article 3 could not be applied to more than 10 per cent of the total value of Israel's imports from its partner in 1973. Furthermore, this percentage would be subject to erosion by increases both of volume and value of future trade. In the view of his government this conformed to both the letter and the spirit of Article XXIV. The representative of the EC stressed that the provisions of Article 3 of Protocol 2 could be applied solely to the case of a new

processing industry not already existing in Israel at the entry into force of the Agreement. Moreover, any customs duties introduced thereunder could not exceed 20 per cent, and these were then subject to mandatory 5 per cent annual reductions and to total elimination by 1989.

16. One member of the Working Party, while expressing understanding for the sympathy of the EC towards the development needs of Israel and other developing countries, nevertheless expressed the view that there were better methods for accomplishing this, such as the improvement of the Generalized System of Preferences. Another member of the Working Party shared this view and considered that there might be other approaches as well.

PROTOCOL 3 (Rules of origin)

17. One member of the Working Party recalled his introductory statement concerning the very restrictive rules of origin set out in Protocol 3.

18. A member of the Working Party, referring to the parties' reply to question No. 19, asked whether they would undertake to consult with third countries whose trade interests might be prejudiced by the operation of the rules of origin. The representative of the EC confirmed that the parties were ready to examine any instances of possible concrete damage to third countries' trade, and recalled that consultations were provided for under Article XXII of the General Agreement.

TRADE COVERAGE

19. A member of the Working Party recalled his introductory statement in which he had reiterated the view that Article XXIV:8(b) called for the elimination, rather than the reduction, of duties and other restrictive regulations of commerce on substantially all the trade between the parties to a free-trade area. In response, the representative of the EC pointed out that on the basis of statistics for 1974 the Agreement covered 92 per cent of the EC's total imports from Israel and 96.5 per cent of that country's total imports from the EC. He recalled that for agricultural products customs duty reductions up to 80 per cent were provided for, representing a substantial reduction. He also noted the steady upward trend (from 48 per cent in 1971 to 61 per cent in 1974) in the industrial imports from Israel as that country's industrialization progressed, and was confident that this trend would continue in the future. Taking into account those figures, the Agreement compared very favourably with other agreements concluded by third countries and one could not possibly contend that it did not cover "substantially all the trade". Another member agreed that the Agreement compared very favourably with other agreements of its genre, but reiterated that "covering" substantially all the trade was not the Article XXIV requirement.

ADDITIONAL QUESTIONS

20. A member of the Working Party enquired whether Annex F of Protocol 2 was identical to Annex II of the Treaty of Rome, and enquired as to why Israel would refer to that Treaty in relation to its own economic policy. He asked when the rates of duty would be reduced for those items, and whether the agricultural products considered sensitive in the context of the Treaty of Rome were also considered sensitive in Israel. The representative of the EC replied that in the case of this Agreement the agricultural sector referred to the items listed in Annex II of the Treaty of Rome. With respect to the Agreement under examination, the parties had set two dates for future examination of how customs duties might be further reduced or eliminated. The representative of Israel pointed out that the Treaty of Rome, which created a customs union between some of its most important trading partners, had, of course, direct economic effects as far as his country was concerned. Still his authorities had referred to the list of products set out in Annex II of the Treaty of Rome as a matter of convenience when negotiating the free-trade arrangement, and that the list did not necessarily reflect any product definition applied in Israel.

21. A member of the Working Party, having been informed by the representative of the EC that the products referred to in Articles 8-10 of Protocol 1 comprised part of those listed in Annex II of the Treaty of Rome, called attention to the statistics furnished by the parties in reply to question No. 3 in Annex 1 of document L/4307. He said that with respect to the EC imports of these products from Israel, a calculation based on the figures for 1971 indicated that 14.5 per cent were not covered by the Agreement, that duties were reduced but not eliminated on 38.2 per cent, and that duties were eliminated on 47.3 per cent. Since Article XXIV:8(b) called for the elimination of duties and other restrictive regulations of commerce on substantially all the trade between the parties, his authorities had doubts as to the compatibility of the Agreement with the provisions of Article XXIV.

22. In response, the representative of the EC, referring to the figures given in the answer to question No. 24, pointed out that on the basis of import statistics for 1974, customs duties were eliminated for 62 per cent of EC imports from Israel, substantially reduced for 30 per cent of this trade, and that only 8 per cent of the imports were not covered by the Agreement. Those figures concerned the present structure of trade with Israel, which had changed very substantially in recent years; indeed, whereas agricultural products had comprised 52.7 per cent of the EC imports from Israel in 1971, they had dropped progressively to 38.6 per cent in 1974, indicating the trend towards a continually greater share of industrial products in that trade, and accordingly the decreasing importance of the trade in agricultural products. Another member of the Working Party said that his authorities could not agree that an apparent upward trend in industrial trade should be viewed positively because this might, in fact, mean that agricultural trade was dropping precisely because of severe restrictions placed on it. The representative of the EC referred members of the Working Party to trade figures from 1971 onwards which showed the structure of the parties' trade and reflected the increasing development of industry in Israel.

23. With respect to question No. 5 in Annex II, a member of the Working Party noted the parties' viewpoint that there was nothing in Article XXIV to prevent the time-table for the fulfilment of the reciprocal obligations being phased differently if the parties so agreed. His authorities considered that such a different phasing could be legitimate matter of concern, especially if the difference were substantial. The representative of Israel did not share this view, especially in the light of the Tokyo Declaration and the need for differential measures providing special and more favourable treatment for developing countries. He said that in the present instance the parties' different stages of economic development made the phasing appropriate and compatible both with the letter and the spirit of the General Agreement.

GENERAL CONSIDERATIONS

24. The parties to the Agreement, supported by some members of the Working Party held the view that the Agreement conformed fully with Article XXIV of the General Agreement, since it covered "substantially all the trade" and included a plan and schedule for the progressive attainment of free trade within a reasonable length of time. Some other members held the view that it was doubtful that the Agreement was compatible with the requirements of GATT.