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GENERAL AGREEMENT ON TARIFFS AND TRADE

Working Party on the Free-Trade Area Agreement between Israel and the United States

MEETING OF 16 OCTOBER 1986

Note by the secretariat

1. The Working Party on the Free-Trade Area Agreement Between Israel and the United States held its first meeting on 16 October 1986 under the Chairmanship of Ambassador A. Oxley (Australia). The terms of reference and composition of the Working Party are set out in L/5862/Rev.1. The Working Party had before it the text of the Agreement on the Establishment of a Free-Trade Area between the Government of the United States of America and the Government of Israel (circulated with L/5862/Add.1), and replies given by the two parties to the Agreement to questions put by contracting parties (L/6019).

I. GENERAL STATEMENTS

2. The representative of the United States recalled that, after signing the Agreement on 22 April 1985, the two parties had informed the GATT Council on 1 May 1985 (C/M/187). The Agreement was formally notified to the GATT on 29 August 1985, upon conclusion of the ratification process (L/5862). The Free-Trade Area Agreement fulfilled the aims of both parties that it must fully meet the requirements of GATT Article XXIV in that: (i) it was to eliminate duties and other restrictive regulations of commerce on substantially all trade between the United States and Israel; (ii) the elimination of barriers and liberalization of other practices would be accomplished within a period of ten years, consistently with the "reasonable length of time" requirement of Article XXIV:5(c); (iii) duties and other regulations of commerce under the Agreement were not higher or more restrictive than those which existed prior to the formation of the free-trade area, and no new barriers would be created by it; (iv) the parties had responded to all GATT notification and consultation requirements and had answered in detail the questions posed by contracting parties. Outlining the provisions of the Agreement, she emphasized that the restrictive effects of non-tariff barriers in areas such as licensing, subsidies and government procurement had been either eliminated or significantly reduced on a reciprocal basis. The Agreement was modelled on the criteria outlined in Article XXIV and, from a legal drafting standpoint, it relied on the framework and the rights and obligations of the GATT. In certain areas it enhanced GATT obligations with additional disciplines, e.g. the infant-industry and balance-of-payments provisions and the provisions on specific duties. It addressed certain issues that were subject to GATT Agreements, e.g. licensing, government procurement and export subsidies. It also contained

provisions on transparency, consultation, dispute settlement and rules of origin, and it reaffirmed bilateral and multilateral trade commitments. Her authorities believed that the Agreement was fully consistent with the GATT and that it significantly liberalized trade.

3. The representative of Israel shared the view of the representative of the United States that the Agreement was fully consistent with the spirit and the letter of Article XXIV of the General Agreement. He recalled that his country had now entered into free-trade agreements with both the European Economic Community and the United States in the context of a policy of trade liberalization and of economic integration under the provisions of Article XXIV. He noted that in 1985 some 65 per cent of his country's trade had been with these two partners. Israel viewed this Agreement as part of its overall policy of ensuring market access on a reciprocal basis to its trading partners. On entry into force of the Agreement, duties on 43.2 per cent of 1984 bilateral trade between Israel and the United States were zero-rated and this would rise to 58 per cent by 1 January 1989. Thus the schedule for duty elimination conformed fully with the requirements of Article XXIV. His country's status as a less developed nation was recognized in the Agreement, specifically in its preamble and in its provisions on infant-industry protection and in Israel's commitment (annexed to the Agreement) to accede to the Subsidies Code. Israel's exports to the United States would also continue to enjoy GSP treatment. However, the Agreement offered a wider zero-rated product coverage than the existing GSP scheme. He also stressed that the free market access granted by the Agreement was of a contractual nature and could not be affected by any kind of competitive need limits or graduation provisions, except temporary safeguard action under the provisions of its Article 5. He trusted that in the usual pragmatic spirit of the GATT the conclusion would be reached that the Free-Trade Agreement conformed with the provisions of the General Agreement and that it contributed to the growth of the international trading system.

4. The representative of the European Economic Community thought the Agreement broke new ground in that it established a free-trade area between countries which were neither close geographically nor had historical trade links. He recalled that the European Economic Community had entered into a similar agreement with Israel, which had been notified to and examined in the GATT. His delegation appreciated the replies given to written questions and wished to seek further clarifications on certain points so as to be in a position to appreciate fully the compatibility of the Free-Trade Agreement with the provisions of the General Agreement.

5. The representative of Australia stated that one of the key questions to be addressed by the Working Party was whether the Agreement provided for the elimination of duties and other restrictive regulations of commerce on substantially all the trade between the two parties. While the Agreement was clear on the elimination of tariffs, it was not equally so for non-tariff measures. In accordance with the general principles of the GATT and of its Article XXIV:4, this question should be viewed from the point not only of increasing trade in traditional items but also of creating new areas of trade. Both these aims appeared capable of being thwarted by Article 6 of the Agreement, which allowed the maintenance of import restrictions based on agricultural policy considerations. Non-tariff measures, now one of the major problems of world trade, particularly in agricultural products, deserved special attention in the Working Party. He also suggested that, since elimination of trade barriers would take place over at least another eight years, the two parties should submit regular reports to the GATT on the operation of the Agreement.

6. The representative of Canada thought that the Agreement appeared to be one of the more comprehensive to be examined under Article XXIV and that, on the whole, it met the requirements of that Article. The duties and other restrictive regulations of commerce, taken together, did not appear to be higher or more restrictive as of 1 January 1995 and all major sectors appeared to be substantially covered by the Agreement. He also appreciated the full documentation and written replies provided. He would be addressing a number of points of particular concern to his delegation. He reserved Canada's rights in the context of the Agreement and would be raising these in appropriate fora.

II. QUESTIONS AND REPLIES

Questions 1-4: General matters

7. With reference to GATT Article XXIV:4, the representatives of Canada, the European Economic Community and New Zealand enquired about the possible detrimental effects of the Free-Trade Area Agreement on third parties and on competitive relationships generally, and asked for an elaboration of the answer to Question 3 regarding possible compensatory adjustments and the rights and obligations of contracting parties in this connection.

8. The representatives of Israel and the United States stated that they did not see the Agreement as anything but trade facilitating and not as detrimental to third parties. No assessment had been attempted of expected trade creation or diversion. In any case, contracting parties' GATT rights with respect to such possible detrimental effects were not affected by the Agreement. The representative of the United States added that it was her delegation's view that the crux of this question was the relationship between Article XXIV and other GATT Articles, and that this was not a question for this Working Party to examine.

9. In reply to the representative of Austria, the representative of the United States gave examples of the respects in which the Free-Trade Agreement went beyond the provisions of the General Agreement: the government procurement threshold had been significantly reduced on a bilateral basis; more stringent conditions were laid down for balance-of-payments and infant-industry exceptions; the procedures for duty adjustment were more detailed; a reaffirmation of existing obligations on intellectual property protection had been included.

Questions 5-7: Origin rules

10. The representatives of Israel and the United States, in reply to questions from the representatives of Canada and the European Economic Community, explained that the rules of origin were taken from two sources: the 35 per cent domestic content rule had already applied to those imports from Israel which entered the United States under the GSP; the element of 15 per cent content from either party was a liberalizing element. It had been taken over from the Caribbean Basin Initiative rules, as had the dilution and transformation requirements. The rules of origin were, thus essentially familiar and acceptable to the parties to the Agreement and not considered to be either restrictive or distorting.

Questions 13-19: Quantitative restrictions and other non-tariff measures

11. In reply to the representative of Australia, the representatives of Israel and the United States explained that, owing to the nature of non-tariff measures, which are difficult to quantify, a schedule for their liberalization or elimination had not been established. Instead, after reviewing existing barriers, procedures had been specified in the Agreement for their liberalization, in some cases going beyond what was provided for under the GATT, e.g. on licensing, government procurement, and balance-of-payments exceptions. Also included in the Agreement were provisions for consultation in the Joint Committee on barriers that might arise in the future. It would be difficult to make a list of measures that were to remain in existence. In any case, the procedures had been put in place in that Agreement for dealing with non-tariff measures. In any case Israel did not figure prominently in the documentation on other non-tariff measures of the Group on Quantitative Restrictions and Other Non-Tariff Measures. Its balance-of-payments restrictions were subject to examination in the GATT and were exceptions permitted under Article XXIV:8(b). As concerned the United States, the main restrictions to remain in place were those under Section 22 of the Agricultural Adjustment Act, justified under a GATT waiver, and which only affected Israel's exports of cheese.

12. The representative of Australia emphasized that the Working Party had to assess the conformity of the Free-Trade Agreement with the provisions of GATT Article XXIV and that, in the absence of a list of restrictions to remain in effect, his delegation would have to reserve its position in this respect.

13. In reply to the representative of Canada, the representative of the United States explained that one year after entry into force of the Agreement the threshold for government procurement had been lowered bilaterally for both countries' entity lists, which were those specified under the GATT Agreement, except for the United States Department of Defense. Consultations on coverage of procurement by Israel's Ministry of Defense would start shortly. One year after these had been completed the lower threshold would be implemented for both countries' defense entities. The interpretation of the government procurement provisions of the Free-Trade Agreement with respect to State governments was the same as in the context of the GATT Agreement on Government Procurement.

14. In reply to a question from the representative of Canada, the representative of Israel stated that the relaxation of offset requirements referred to in Article 15:5 of the Free-Trade Agreement only formalized existing practice. Under a policy of industrial cooperation it was suggested to potential suppliers of civilian purchases by Israel government entities that they make offset purchases of about 35 per cent of contract value. However, this was never allowed to override purely commercial considerations of obtaining the best product at the best price.

Questions 20-22: Agriculture

15. The representatives of Australia, Canada and the European Economic Community enquired about the scope and coverage of the measures that could be maintained, under the Free-Trade Agreement, for agricultural policy reasons. Did the word "maintain" in Article 6 of the Agreement refer only to existing measures or also to possible new measures? How, in answer to question 22, was the figure of 0.5 per cent of current agricultual trade affected by non-tariff measures arrived at?

16. The representatives of Israel and the United States recalled that, before entry into force of the Agreement, agricultural trade between their two countries had been a relatively small proportion of overall bilateral trade (see L/6019, Table 6) and was conducted in conformity with the General Agreement. By their nature Israel's exports, mainly perishables, would not find an important market in the United States. Most agricultural imports were already zero-rated for duty purposes in both countries and not subject to non-tariff barriers. The latter was expected to remain the case, while duties would all be eliminated. It was true that the Agreement provided for retaining certain existing measures, mainly under Section 22 of the United States Agricultural Adjustment Act, and for taking such additional measures as might seem necessary, e.g. in the context of a domestic price support system. However, neither party anticipated that such measures would ever affect a large proportion of their bilateral trade.

Questions 23-28: Other questions

17. In reply to questions from the representatives of Australia and the European Economic Community, the representative of the United States said that the first review of the Declaration on Trade in Services would not be held until the meeting of the Joint Committee planned for November 1986. The parties had started reviewing the applicability of the Declaration on a sectoral basis, beginning with tourism. No sectoral understanding had been reached, although there was some consensus on what the problems were and how they might be dealt with. Examination of other service sectors would begin very shortly.

18. In reply to a request from the representative of the European Economic Community for figures that would show the trade-creating effects of the Agreement in the first year of operation, the representatives of Israel and the United States expressed willingness to share with the Working Party figures being prepared for the November 1986 meeting of the Joint Committee. However, they cautioned against drawing conclusions from the raw data alone. For example there had been nomenclature changes simultaneously with the entry into force of the Agreement, also wide currency fluctuations. Moreover, more than 90 per cent of Israel's exports to the United States had faced zero duties, either bound or under the GSP before the establishment of the free-trade area. The representative of the European Economic Community appreciated the difficulties of analysing the figures and agreed that the various arguments would need to be taken into account when deciding whether the figures permitted any conclusions to be drawn at this stage.

DATE AND AGENDA OF NEXT MEETING

19. The Working Party agreed to meet again on 10 December 1986 at 10 a.m. to conclude the information-gathering stage of its work and to consider its conclusions. The Chairman said that the Working Party might then be in a position to address the question of its report to the CONTRACTING PARTIES.