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THE EUROPEAN FREE TRADE ASSOCIATION

Replies from the Member States to the Questions submitted by Contracting Parties

(Addendum)

The Intersessional Committee met on 9, 10 and 11 May 1960, so as to afford contracting parties the opportunity to put to the Member States any additional questions they wished to ask about the provisions of the Stockholm Convention and its implementation. The questions asked and the Member States' replies are attached. The numbering of the attached questions follows on from that of the questions contained in document L/1167.

THE EUROPEAN FREE TRADE ASSOCIATIONI. THE ESTABLISHMENT OF THE FREE TRADE ASSOCIATION
AND OBJECTIVESQuestion 107

The Member States' reply to question 6¹ states that they consider that the Stockholm Convention constitutes a free-trade area in the sense of Article XXIV:8(b). In the light of the definition in Article XXIV:5, which refers to the formation of a free-trade area "as between the territories of the contracting parties", the Member States' reply to question 6 raises the question of interpretation and is open to argument. Whatever the situation might be in the future the fact is that, at present, not all Member States are contracting parties to the GATT. Portugal is not a contracting party; nor is Switzerland, whose position vis-à-vis those countries which have not signed the Declaration on Provisional Accession must also be taken into account. A point of real principle is involved, since the extension of benefits to a non-contracting party in any event creates a new preferential area. At the Havana Conference, the Committee which drafted Article XXIV envisaged that a free-trade area in which non-contracting parties participated would require approval under Article XXIV:10. Would the Member States comment on these considerations?

Reply

The Member States do not deny that the letter of Article XXIV:5 brings Article XXIV:10 into play in the case of a free-trade area which includes countries which are not contracting parties to the GATT. They understand, however, that in drafting the provisions in question the CONTRACTING PARTIES had in mind the desirability of exercising some control over the policies of countries which were members of a free-trade area and of which the policies would not otherwise have been under their control. If this broad view is taken, it is reasonable to say that Switzerland is already, to all intents and purposes, a contracting party to the GATT. Moreover, when the answer to question 6 was drafted, it was the understanding that Portugal would shortly apply for GATT membership.

Question 108

In the introduction to the Member States' replies (first sentence, page 3) it is stated that "the provisions in the Convention regarding agricultural products and the agreements between Member States regarding these products are an integral part of the free-trade association arrangements". Whether these agreements are to be considered an integral part of the free-trade association arrangements is a matter for the Member States themselves, but this does not necessarily mean that the agreements form

¹ The references to questions and replies in this document relate to those contained in document L/1167.

part of a plan and schedule as required by Article XXIV:5(c) or that they satisfy the criteria of Article XXIV generally. Some of the agreements may involve non-tariff measures and may concern only two Member States; how can they be considered as forming part of the free-trade arrangements as a whole? Even where trade barriers are to be reduced similar action will not be taken by all the Member States on the same products. This approach is different from the way industrial products are dealt with under the Convention. It is also different from the normal concept of a free-trade area. Can the action on a few agricultural products by some of the Member States be considered "marginal cases" permitted by the phrase "substantially all the trade" in Article XXIV when the entire agricultural sector is in principle excluded from the operation of the Convention?

In the light of the above considerations, do the Member States think that the agricultural agreements can be considered as part of the free-trade association arrangements within the terms of Article XXIV?

Reply

In the paragraph of the introduction referred to in the question the Member States set out their policy with regard to freeing trade in agricultural products and explained that the measures in this sector are limited to what was considered practicable in the circumstances prevailing and that the arrangements would lead to the removal of barriers from a considerable trade in foodstuffs. Moreover, the Member States, in accordance with precedent, present their arrangements as a whole to the CONTRACTING PARTIES, so that they can see how far barriers are removed from the trade between the Member States.

Insofar as the question implies that the Member States should not take credit for the removal of barriers to trade on a product unless such barriers are removed by all the Member States, the EFTA countries do not accept the implication. Article XXIV was drafted against the background of the possibility of a free-trade area being established in Europe in which the United Kingdom, in particular, might wish to retain some barriers against certain imports from their partners. It was always envisaged, therefore, that an individual member of a free-trade area should have a certain latitude in respect of some products; this latitude would be permitted by the phrase "substantially all the trade". Some members might wish to avail themselves of this latitude in respect of different products. The Member States do not claim that free trade will be achieved in the case of all agricultural products, but they do consider themselves entitled to take into account the trade affected by the removal of barriers under the agricultural agreements on certain products when assessing the total trade among the Member States which will be freed from barriers.

Question 109

There are various methods which might be applied to an assessment of "substantially all the trade" as referred to in Article XXIV. Could the Member States indicate the broad lines on which the calculation in the reply to question 4 is based?

Reply

The definition of a free-trade area in Article XXIV refers to the elimination of customs duties and other restrictive regulations of commerce on "substantially all the trade between the constituent territories in products originating in such territories". The Member States consider that the Association complies with this definition. It provides for the removal of barriers on trade between Member States in industrial products and in agricultural products which fall outside Annexes D and E. Further, account has to be taken of the additional trade freed as a result of agricultural agreements between certain Member States; these are considered by the Member States to be an integral part of the free-trade area arrangements.

The assessment of the amount of trade to be freed from barriers has been made on the basis of imports into each Member State from all other Member States. On this basis, 85 per cent of the total trade between Member States will be freed from barriers as a result of the provisions governing all products except those listed in Annexes D and E. A further 5 per cent should be added to take account of the United Kingdom's undertaking to remove barriers on imports of certain agricultural products from all Member States. In addition, Switzerland has undertaken to remove barriers to certain imports from all Member States. The figures used for these calculations are those for 1957.

Question 110

- (a) Would it be correct to say that, in the marginal 10 per cent of trade not covered by the free-trade area arrangements, the Member States would have complete freedom of action?
- (b) What is the significance of column 3 of the table in annex A to the Member States' replies?

Reply

- (a) As regards the trade in products in respect of which the elimination of barriers is not provided for, Article 37 of the Convention under which the Member States reaffirm their obligations under the GATT is relevant.
- (b) Column 3 of the Annex concerns agricultural and fisheries products on which a particular Member State does not have any tariffs or quotas.

Question 111

In connexion with the interpretation of the phrase "substantially all the trade", do the Member States consider:

- (a) That 90 per cent of intra-Area trade satisfies the requirements of the phrase "substantially all the trade"?

- (b) That the assessment of the percentage of trade freed from barriers should be based on the total trade within the area and that the total percentage arrived at could be made up of varying percentages in respect of each Member State?
- (c) That the assessment by the CONTRACTING PARTIES as to whether the criterion of "substantially all the trade" has been satisfied has to be made at the time the Convention is submitted to the CONTRACTING PARTIES? In this connexion a factor to be considered is the possibility of changes in the figure of 90 per cent at some time in the future.

Reply

- (a) The Member States consider that the consistency of arrangements with Article XXIV should be judged on wider considerations than the percentage of trade from which barriers are removed. Other factors have to be taken into account also. Moreover, there is nothing precise laid down in Article XXIV as to the percentage which should be reached in order to satisfy the criterion of "substantially all the trade". The Member States consider that, in the case of the EFTA arrangements involving the removal of barriers from 90 per cent of the trade, the requirements of the phrase "substantially all the trade" are met but that it would not necessarily follow that any arrangement, involving the removal of barriers from 90 per cent of the trade, would constitute a free-trade area in accordance with Article XXIV.
- (b) Yes.
- (c) It would be normal to make this assessment on the basis of the situation at the time of submission of the free-trade area arrangements to the CONTRACTING PARTIES and to consider, in the light of the most recent trade figures, what proportion of the total trade within the Area will in fact be freed when the arrangements enter into full force. In the case of some arrangements, however, it may be relevant to consider whether this proportion will change in the future. While the Member States do not think this consideration relevant to the EFTA Convention, it seems reasonable to assume that the trade from which barriers are being removed under the arrangements, will expand more rapidly in future years than the marginal trade in respect of which the arrangements do not provide for the removal of barriers and that, in consequence, the proportion of trade freed from barriers will rise.

Question 112

- (a) What kind of obligations are the Member States prepared to accept under Article XXIV:5(b) of GATT? Further, how will obligations under this paragraph be discharged in the case of Member States which are not contracting parties to GATT?

- (b) With reference to Article XXIV:5(b), has any Member State other than Portugal increased the level of its customs duties in anticipation of the entry into force of the Convention?

Reply

- (a) The Member States interpret Article XXIV:5(b) as meaning that participants in a free-trade area should not increase duties at the moment of forming the free-trade area. The Member States do not regard this paragraph as limiting their freedom subject to Article XXVIII, to increase duties subsequent to the formation of the free-trade area; but it is certainly not their intention to pursue high tariff policies. Member States retain their autonomy insofar as their external tariffs are concerned and this, in fact, would tend to make it easier for them to reduce these tariffs. As for the position of a Member State which is not a contracting party, the reply to question 98(e) is relevant.
- (b) Member States have not increased the level of their duties "in anticipation" of the entry into force of the Convention. Some tariffs have been recently revised in accordance with the procedures of the GATT.

II. IMPORT DUTIES

Question 113

In replying to question 12 did the Member States take account of import levies?

Reply

Yes. No products covered by Article 3 of the Convention are affected by import levies.

III. AREA TARIFF TREATMENT

Question 114

Is it correct that there is no provision in the Convention which would prevent Member States applying the Association's origin rules to third countries?

Reply

Yes.

IV. REVENUE DUTIES AND INTERNAL TAXATION

Question 115

Could the Member States expand on the reply to question 36(b)? What are the Member States' international obligations in this context?

Reply

As regards internal taxes, Article III of the GATT will apply and there will be no discrimination as between imports from Member States and imports from other contracting parties to the GATT. As for revenue duties, the Member States recognize no obligation to remove the protective element in such duties except in the case of imports from Member States.

V. QUANTITATIVE IMPORT RESTRICTIONS

Question 116

Does the use of the word "hope" in the eighth line of the reply to question 45 imply, in the view of the Member States, that there may be circumstances in which balance-of-payments restrictions in respect of Member States might be dismantled more quickly than in respect of third countries?

Reply

Although it is appreciated that there are differences of opinion regarding interpretation, it is the view of the Member States that Article XXIV would permit them to remove import restrictions among themselves at a faster rate than in the case of similar restrictions against third countries. They would certainly hope, however, that there will be no occasion for them to make use of this interpretation in order to justify maintaining restrictions against imports from third countries for longer than such restrictions are maintained between the Member States themselves.

Question 117

If restrictions are maintained for other than balance-of-payments reasons, do the Member States consider they can be maintained in respect of third countries and not in respect of other Member States?

Reply

In their reply to question 46 the Member States have tried to take a practical view. It is not suggested in the reply that there are grounds under Article XXIV for removing restrictions, maintained for other than balance-of-payments reasons, on imports from Member States faster than in the case of imports from third countries. It is the aim of Member States to keep their action as regards such restrictions to which Article 10 applies in relation to imports from other countries to which they have GATT obligations in step with their action as regards the restrictions in relation to imports from Member States.

Question 118

Some contracting parties do not agree that Article XXIV of the GATT enables members of a free-trade area to deviate from their obligations under the relevant Articles of the GATT relating to the use of quantitative import restrictions. The reply to question 47(c), however, clearly implies that the

door is open for Member States to discriminate in favour of one another. Is this not inconsistent with the statement in the reply to question 45 that "it is not the intention of Member States to use quantitative import restrictions to create a preferential system between themselves"?

Reply

When the Convention was negotiated, care was taken not to impinge on the independence of the individual Member States in their commercial policy towards third countries. The Convention does not, therefore, impose any obligations on Member States as regards quotas for imports from third countries. In some cases Member States will institute for imports from third countries quotas which are separate from the quotas for imports from Member States. The aim would be to maintain non-discrimination as between these two quotas but, in view of the Member States' interpretation of their rights under Article XXIV of the GATT, they do not accept any positive commitment to do this.

Question 119

What is the significance of the reference to Switzerland in the reply to question 46. Will Switzerland be obliged, under Article 10 of the Convention, to remove its restrictions insofar as other Member States are concerned without doing likewise in respect of third countries?

Reply

With one exception there are no restrictions on imports of industrial goods. As regards these restrictions and certain quantitative restrictions on imports of agricultural products, Switzerland has reserved the right to maintain these restrictions in the Declaration on its provisional accession to the GATT for the period of its provisional membership. It keeps, however, in mind its obligations under paragraph 1(c) of the Declaration.

VI. BALANCE-OF-PAYMENTS DIFFICULTIES

Question 120

The replies to questions 61(a) and (b) could be taken to imply that the Member States would not consider discrimination as being inconsistent with their international obligations. Would this be a correct inference?

Reply

It is difficult to say, until the sort of situation envisaged in Article 19 arises, precisely how the situation would be dealt with. It is certainly not the aim of the Member States to apply restrictions on a discriminatory basis but they are not prepared to forego whatever rights they may have under Article XXIV in this respect.

VII. DIFFICULTIES IN PARTICULAR SECTORS

Question 121

The reply to question 65 is imprecise. Does it not imply an element of uncertainty regarding the full establishment of the Association by 31 December 1969?

Reply

If any measures at all were permitted under Article 20(5), they would be temporary. It is the intention of the Member States to achieve a free-trade area and too much weight should not be given to particular Articles of the Convention considered in isolation.

VIII. OBLIGATIONS OF THE MEMBER STATES UNDER OTHER
INTERNATIONAL AGREEMENTS

Question 122

In the light of Article 37 of the Convention, obligations under GATT should apply between the Member States themselves as well as between Member States and third countries. Is there not an inconsistency between the requirements of Article 37 and the reply to question 89(a)? This reply implies that two or more Member States might impose quantitative import restrictions against each other even when this is not permitted by GATT. It should be remembered that contracting parties look at this problem against the background of the provisions of GATT and not those of the Convention because, in fact, it is difficult to envisage quantitative import restrictions being imposed by the Member States against each other without such restrictions being imposed at the same time against third countries.

Reply

It is true that the Member States could in certain circumstances impose against each other quantitative import restrictions which they cannot impose on third countries consistently with the GATT. It is, however, necessary to look at the matter against the background of the Convention as a whole. The Convention requires Member States to remove barriers on imports from other Member States to a much greater extent than the obligations of GATT require and the temporary imposition of quantitative import restrictions in the circumstances envisaged would only arise because of possible difficulties in fulfilling these more severe obligations. Insofar as there might be a conflict between the obligations of Member States under the Convention towards one another and those under GATT, it would have to be resolved between the Member States.

The provisions of Article 20 which would permit a Member State temporarily to impose quantitative restrictions on imports from other Member States do not affect the consistency of the Convention with Article XXIV:8(b) of the GATT since the Member States would ultimately comply with the requirement to remove barriers on substantially all the trade between them.

Article 20 would be invoked by Member States on account of their obligations under the Convention to remove duties and quantitative restrictions from imports from other Member States. The invocation of Article 20 would not, therefore, involve any need to impose quantitative restrictions on imports from other sources. In any event the EFTA countries have already said in reply to question 64(b) and (c) that they would act consistently with their obligations under GATT.

IX. ACCESSION, ASSOCIATION AND TERRITORIAL APPLICATION

Question 123

Does the reply to question 92 also cover the extension of the Convention to overseas territories of the Member States?

Reply

The Member States will inform the CONTRACTING PARTIES if the Convention is applied to territories to which Article 43 refers.

Question 124

There is some disappointment at the inadequacy of the replies to questions 92 to 95. It should surely have been possible at least to have indicated that such arrangements would conform with Article XXIV of the GATT? Certain specific questions, however, arise out of these provisions:

- (a) If other countries accede to the Convention or enter into some form of association with the Member States, is it recognized that this would have to be considered by the CONTRACTING PARTIES as an issue separate from the present examination of the Convention by the CONTRACTING PARTIES?
- (b) If a country accedes, it would be able to enter into agricultural agreements as provided for under Article 23 of the Convention. Is it agreed that such agreements should be submitted to the CONTRACTING PARTIES together with the terms and conditions relating to the accession of the country concerned?
- (c) With reference to the answer to question 96, the possibility of withdrawal by a Member State under Article 42 could, because of the volume of trade which would be affected, weaken the free-trade area, and the existence of such a provision in the Convention would appear to raise doubts regarding the actual establishment of the free-trade area. With what certainty can it be foreseen that the free-trade area will, in fact, be fully established in view of the withdrawal provisions in Article 42? As a broader issue, thought should be given to whether a free-trade area or customs union in the sense of Article XXIV is not intended to mean one which has at least some assurance of permanency.

Reply

It is difficult to be more specific in reply to questions 92 to 95 because the circumstances cannot now be foreseen and, moreover, would probably vary from case to case. But the Member States can assure contracting parties that, in considering any question of accession or association, they would have very much in mind the provisions of GATT and particularly those of Article XXIV. The replies to the specific questions asked are:

- (a) Yes.
- (b) The arrangements for accession, including any agricultural agreements, would be communicated to the CONTRACTING PARTIES.
- (c) There is nothing unusual in having a provision for withdrawal in a multilateral treaty. As for the broader issue referred to, Article XXIV of GATT does not require a free-trade area or customs union to be permanent.

X. ANNEX G - PORTUGAL

Question 125

- (a) With reference to paragraphs 3 and 5 of this Annex, what considerations prompted the Member States to decide on a figure of 15 per cent?
- (b) Could a list be provided showing those industries whose exports amount to 15 per cent or more of Portuguese production and those whose exports amount to less than 15 per cent?
- (c) On the assumption that barriers will be eliminated on 90 per cent of the total trade between the Member States, is it not true to say that this figure will not be reached until 1980 because of the special provisions relating to Portugal?

Reply

- (a) The figure of 15 per cent was thought appropriate to the special circumstances of Portugal.
- (b) The notification to be made before 1 July of products covered by paragraph 3(a) of Annex G to the Convention will be communicated to the CONTRACTING PARTIES.
- (c) The statement is true, but as regards nearly all the trade between the Member States the barriers will be removed by 1970. The essential consideration is that reasonable time limits are fixed for the removal of the barriers.

XI. MISCELLANEOUS QUESTIONS

Question 126

With reference to the reply to question 102 and having regard to Article 30 of the Convention would it not be correct to say that, in practice, a Member State would be likely to consult with other Member States and that its course of action would be influenced by their views?

Reply

This is a reasonable assumption.

Question 127

With reference to the reply to question 101, is it not conceivable that the Council might make important amendments to the Convention? If there is this possibility, this is a point which might require to be looked at further.

Reply

It is difficult to expand the reply to question 101. In that reply Member States have drawn attention to their reply to question 8 in which they state that they will be ready, in accordance with Article XXIV:7, to keep the CONTRACTING PARTIES informed of progress in the establishment of the free-trade area. Any important amendments to the Convention which substantially altered the plan and schedule for the formation of the free-trade area would be notified to the CONTRACTING PARTIES.

Question 128

With reference to paragraph 4 of the Agreement contained in Annex E to document L/1167:

- (a) Would the Sw.Kr.10 million be provided from the Swedish State budget or from some special fund?
- (b) In Denmark, would the amount envisaged accrue to the State budget or would it accrue directly to exporters as compensation?

Reply

- (a) The Sw.Kr.10 million would be provided from the general budget resources of the Government.
- (b) [A reply will be submitted early in the sixteenth session.]