

GENERAL AGREEMENT ON
TARIFFS AND TRADE

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ASSOCIATION BETWEEN THE EUROPEAN ECONOMIC
COMMUNITY AND THE ASSOCIATED AFRICAN AND
MALGASY STATES

(Replies to questions)

Under the procedures agreed upon by the CONTRACTING PARTIES at their twenty-first session (SR.21/8), contracting parties were invited to send to the Executive Secretary the questions they wished to put to the signatories of the Convention of Association between the European Economic Community and the Associated African and Malgasy States concerning the provisions of the Convention (L/2160/Add.1) and its implementation. From the communications received a consolidated list of questions was prepared and transmitted to the parties to the Convention.

The present document contains the questions asked and the replies transmitted on behalf of the EEC and the Association of African and Malgasy States.

GENERAL

- Question 1

Is the Convention intended to be an interim arrangement leading to the establishment of a free-trade area in the sense of Article XXIV of GATT? If so, within which period of time is the free-trade area to be created?

Answer

The Convention and the provisions of the Treaty to which it refers fix a plan and schedule for the establishment of free-trade areas between the EEC and each of the Associated African and Malagasy States (AAMS), in the sense of Article XXIV of GATT. This plan and schedule take account, on the one hand, of the progressive implementation of the Treaty of Rome and on the other hand, of the economic development requirements and in particular the industrialization needs of the AAMS.

After substantial progress during the first stage of association, barriers to trade between the signatories are to be progressively eliminated in the manner specified in Chapter I of the Yaoundé Convention; the process will end with the creation of free-trade areas, taking account of the time-limits imposed by the considerations mentioned in the preceding paragraph.

- Question 2

Do the member States and the Associated States consider that the Convention establishes a single free-trade area embracing all signatories? If so, what are the provisions for elimination of barriers to trade between the Associated States? Do the Associated States contemplate harmonizing tariff and quota treatment on imports from third countries; and, if not, are controls envisaged to prevent transshipment?

Answer

As indicated in the answer to question 1, the Convention does not establish a single free-trade area embracing all signatories; the new association régime establishes free-trade areas between the Community and each of the Associated African and Malagasy States. Since this is a matter of free-trade areas, the Convention does not regulate relations between the partners to these areas and third countries.

- Question 3

What arrangements (if any) are envisaged between the Associated States and other countries associated with EEC, viz. Greece and Turkey?

Answer

The only provision existing at present is the one in the Athens Agreement which states that Greece and the Associated States are to regulate their mutual trade by joint agreement.

- Question 4

Do signatories continue to regard the preferential treatment accorded to primary products of the Associated States as temporary?

Answer

The preferential treatment accorded to certain primary products of the Associated States, like that accorded to other products, is the result of the achievement of the free-trade areas and the establishment of the common customs tariff. Within the framework of the Convention, no time-limit is set for this treatment.

- Question 5

The Convention does not appear to require the Associated States to apply protective or revenue duties and quantitative restrictions in a manner discriminating against third countries. Is this interpretation correct? Do the Associated States contemplate non-discriminatory application of such measures, and if not, why?

Answer

The Convention does not require the Associated States to apply protective or revenue duties and quantitative restrictions in a manner discriminating against third countries. The Associated States intend to conduct their commercial policies and, in particular, to apply the measures referred to above in their best respective national interests, while respecting their international obligations.

- Question 6

Can the contracting parties to GATT assume that signatories will promptly publish, in accordance with GATT Article X, all present tariff and quota provisions and other regulations of trade, and future modifications thereof, affecting commerce among signatories and between signatories and third countries?

Answer

The signatories are complying with the provisions of that Agreement, including those of Article X relating to the publication of trade regulations.

TITLE I: TRADE

Chapter 1: Customs duties and quantitative restrictions

ARTICLE 2

- Question 7

The duties on goods from the Associated States imported into the EEC are to be reduced or eliminated entirely while duties on goods from third countries are to be maintained at a comparatively high level. Does this not imply that these arrangements would be detrimental to the exports of third countries to the EEC?

Answer

The General Agreement recognizes the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements.

As stated in Article 1 of the Convention, its object is to promote trade between the Associated States and the member States, to strengthen their economic relations and the economic independence of the Associated States, and thereby to contribute to the development of international trade. It was because of their conviction that customs unions and free-trade areas can contribute towards achievement of the objectives of the General Agreement that the CONTRACTING PARTIES inserted in that Agreement the provisions of Article XXIV, and the same conviction has moreover incited numerous member States to make use of those provisions.

- Question 8

Can the conclusion be drawn from the nature of these arrangements that markets in the European Economic Community would be dominated by the Associated African and Malagasy States? Is it the intention of the EEC that its demand for raw materials will be supplied solely by these Associated States?

Answer

It is not the intention of the EEC that its demand for raw materials will be supplied solely by the Associated States. It does not believe that the provisions of the Yaoundé Convention could lead to such a result.

- Question 9

Does the final sentence in paragraph 2 of this Article commit the EEC not to reduce the common external tariff on these products?

Answer

Paragraph 2 of Article 2 does not relate to the modalities for determining or revising the common customs tariff, but merely to the conditions for application of that tariff by the member States.

- Question 10

Does paragraph 4 mean that agricultural products are excluded from the regulations concerning the gradual abolition of tariffs and other import restrictions?

Answer

Article 2 concerns only customs duties. As regards the agricultural products referred to in Article 11, paragraph 4 of Article 2 means that the treatment to be applied in the Community to products imported from the AAMS must be determined according to the conditions set forth in Article 11.

ARTICLE 4

- Question 11

Can examples be given illustrating what is meant by "serious disturbances in the conditions of competition" and what measures might be taken?

Answer

This is a safeguard clause. Any evaluation of disturbances to be taken into consideration will be made by the Association Council, which will also determine any measures to be taken in each individual case.

ARTICLE 6

- Question 12

Are the exceptions to the general abolition of trade restrictions permitted in this Article the same as those stipulated in GATT Article XXIV:8(b)?

Answer

Article 6 of the Convention provides that in certain conditions exceptions may be made which do not exactly correspond to the exceptions stipulated in Article XXIV:8(b) of the General Agreement. It does not, however, imply any restriction of the principle that customs duties and other restrictive regulations of commerce must be eliminated with respect to substantially all the trade in products originating in the area.

- Question 13

Are the provisions of paragraph 4 intended to create rights and obligations, as among those signatories which are GATT contracting parties, going beyond those contained in GATT provisions relating to non-discrimination in State trading?

Answer

The provisions of paragraph 4 are not intended solely to ensure non-discrimination in State trading; consequently, they create rights and obligations, as between the signatories, going beyond those contained in this regard in the General Agreement.¹

- Question 14

If an Associated States and a non-Associated States enter into an agreement for regional co-operation, what treatment will be accorded to imports from the latter under the provisions of paragraph 4?

Answer

The provisions of paragraph 4 concern only relations between the Associated States and the member States; they impose no obligations on the Associated States in respect of the treatment to be accorded to non-Associated States under agreements for regional co-operation.

ARTICLE 7

- Question 15

Assuming an Associated States or States entered a customs union or free-trade area amongst themselves or with other African countries, would the Convention of Association, particularly Article 7, allow the Associated State to extend preferential tariff or quota protection to infant industries of African partner countries against imports from the EEC? If not, and in view of the wide disparity level of development between the African and European areas, would the Convention not constitute a serious barrier to regional economic arrangements in Africa?

¹Waiting reservation by the Associated States.

Answer

In the Preamble to the Convention the signatory parties have recognized the importance of developing inter-African trade and co-operation, and they have accordingly provided the possibility for the Associated States to maintain or establish customs unions or free-trade areas with one or more of their African partners. In the case of an arrangement between Associated States, Article 8 of the Convention leaves them free to establish customs unions or free-trade areas.

In the case of customs unions or free-trade areas established with third countries, Article 9 of the Convention provides that any such arrangements must be compatible with the principles and provisions of the Convention.

It will be the responsibility of the Association Council to decide as to their compatibility with the principles and provisions of the Convention.

ARTICLES 8 AND 9

- Question 16

Article 8 states that the Convention shall not preclude (inter alia) the establishment of customs unions between Associated States. What procedure is envisaged to ensure that the creation of such customs unions or those provided for in Article 9 does not lead to a rise in external trade barriers in Associated States applying to GATT contracting parties outside the customs union and association which would result in the association contravening Article XXIV:5 of the GATT?

Answer

Any rise in external trade barriers in Associated States applying to contracting parties, upon the establishment of a customs union as referred to in Article 8 and 9 of the Convention, would be the consequence not of the stipulations of the Association Convention, but of the provisions which would establish the customs union. Accordingly the creation of the Association, inasmuch as it would not be the cause of any increase in a national tariff, the latter being attributable solely to an eventual customs union, would remain compatible with Article XXIV:5(b).

- Question 17

In connexion with the foregoing a recent Convention of Association between African States associated with EEC submitted to GATT appeared to set a common external tariff considerably higher than existing tariffs. As this common tariff is not applicable to EEC members is not its likely effect rather to benefit the EEC States at the expense of outside suppliers than to promote industrial development in the Associated States?

Answer

That was not a Convention of Association, but an agreement establishing a customs union between certain African States, which was concluded in conformity with the GATT obligations. The fact that that tariff is not applied to EEC member States constitutes an advantage for EEC exporters, but on the other hand the fact that the EEC market is open to products originating in the customs union constitutes an advantage for the Union's exports. This advantage is likely to promote industrial development in the Union.

Chapter 2: Provisions concerning certain agricultural products

ARTICLE 11

- Question 18

Will the member States promptly advise the CONTRACTING PARTIES when any arrangements are made between the Associated States (or any of them) and the Community (or any member State) in regard to agricultural products similar to European products?

Answer

Article 11 of the Convention does not provide for arrangements to be made in regard to products similar to European products. Moreover, the signatory countries intend to comply with the obligations of Article XXIV:7(a).

- Question 19

Which products are envisaged in this Article? Could the EEC determine the treatment of imports of these products from the Associated States in a way that is contrary to the interest of these States, despite the fact that consultations have shown that such interest exists?

Answer

They are products similar to, and competitive with, European products exported by the AAMS and for which the Community establishes a common agricultural policy. The Article is designed precisely to enable the interests of the AAMS to be taken into consideration.

Chapter 3: Provisions concerning commercial policy

ARTICLE 12

- Question 20

Does this imply any restriction on the freedom of signatories to negotiate reductions of tariffs within the framework of the GATT?

Answer

No.

Chapter 4: Safeguard clauses

ARTICLE 13

- Question 21

What criteria are applicable in determining whether "serious disturbances" have arisen or whether the balance-of-payments position of a country is threatened?

Answer

It is not possible at present to foresee what criteria the parties to the Convention will adopt in determining whether "serious disturbances" have arisen in a sector of the economy. Each case will have to be evaluated on its own merits, taking into account, in particular, the level of economic development of the party concerned.

In determining whether or not external financial stability is threatened, the parties to the Convention will base themselves on the criteria provided for under Articles XII and XVIII of the General Agreement.

TITLE II: FINANCIAL AND TECHNICAL CO-OPERATION

ARTICLE 25

- Question 22

Does this mean that persons outside EEC and the Associated States are not allowed to participate or may be excluded from the participation in tenders?

Answer

Article 25 of the Convention does not govern the participation of third countries, but merely the principle of non-discrimination as between the member States and the AAMS.

TITLE III: RIGHT OF ESTABLISHMENT

ARTICLE 30

- Question 23

Can an Associated State and an outside country agree through "regional agreements" on more favourable treatment than that given by the Associated State to other signatories?

Answer

Yes.

TITLE IV: INSTITUTIONS

ARTICLE 43

- Question 24

Is it possible to foresee the procedures for making decisions within each group of countries?

Answer

The position which each party expresses in the Association Council is determined according to conditions laid down in an internal protocol for each group of countries. The internal protocol of the EEC in this regard was published in the "Journal Officiel des Communautés européennes" dated 11 June 1964.

As regards the AAMS, co-ordinating bodies composed of representatives of the eighteen States meet prior to the meetings of the Association institutions in order to establish joint positions.

ARTICLE 50

- Question 25

What will be the legal effect of resolutions adopted by the Parliamentary Conference?

Does the Association Council's obligation to submit reports mean that the Council may be held responsible in any way?

Answer

Each year, the Association Council is required to submit a report on its activities to the Parliamentary Conference, but this does not imply that the Council is responsible to the Conference. The report must be considered as enabling a necessary exchange of information to take place, just as the resolutions of the Parliamentary Conference must be considered as reflecting the opinion of the Parliaments represented; they constitute valuable indications for the signatories.

TITLE V: GENERAL AND FINAL PROVISIONS

ARTICLE 61

- Question 26

What "international obligations" may have the effect foreseen in this Article?

Answer

The international obligations referred to in Article 61 which might have the effect foreseen in this Article are obligations existing prior to the General Agreement and the independence of the Associated States, namely the Convention of St. Germain-en-Laye regarding the Treaty Basin of the Congo, and the individual trusteeship agreements concerning Rwanda, Burundi, Somalia, Togo and Cameroun.

- Question 27

What are the implications of this Article and what is meant by "re-examine the situation" in the context of the degree to which Associated States are expected to furnish reciprocity in the form of tariff preferences to member States?

Answer

Article 61 makes it possible for the Associated States listed in the reply to question 26 to delay temporarily the obligations arising for them out of Article 3, paragraph 2 of the Convention.

The situation is to be re-examined after a three-year period to enable the signatories to determine to what extent it has been possible to comply with the obligations arising out of Article 3, paragraph 2 of the Convention during this period of adjustment.

PROTOCOL NO. 1

Implementation of Article 3 of the Convention

- Question 28

Will communications required by Article 1 of this Protocol be available to GATT contracting parties?

Answer

The signatories intend to comply with the obligations arising out of Article XXIV:7(a).

PROTOCOL NO. 2

Implementation of Article 6 of the Convention

Article 2(a)

- Question 29

In cases where an Associated State maintains a quota for imports from outside countries, will this quota be reduced to the extent that quotas are established or increased for member States?

What is meant by "an appropriate quota" in the third paragraph?

Answer

The Convention does not make any determination in this respect. In accordance with Article XXIV of the General Agreement, the elimination of restrictions within the area is of the very essence of the area.

As regards third countries, the Associated States will respect the obligations arising from their international commitments.

The establishment of appropriate quotas relates only to the case of products which have never been imported and for which no quota exists. These are exceptional cases. The amount of such quotas is to be fixed by each Associated State concerned, subject to possible consultation with the Association Council.

Article 2(b)

- Question 30

What type of restrictions are implied by the words "other than by quantitative restrictions"?

Answer

This refers to restrictions in the granting of import licences, without the application of import quotas in the strict sense.

Article 3

- Question 31

Will the quotas for countries outside the Convention be made public simultaneously with the publication of quotas for the member States?

Answer

This question is not within the scope of the Convention.

PROTOCOL NO. 3

Concerning "Goods Originating in"

- Question 32

Have any further details been worked out as to the regulations concerning origin?

Answer

The regulations concerning origin will be established in accordance with the provisions of Protocol No. 3. A common definition of the concept of "Goods originating in..." is being drawn up.

