

GENERAL AGREEMENT ON TARIFFS AND TRADE

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REPORT OF THE WORKING PARTY ON THE AGREEMENT OF ASSOCIATION BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND MALTA

1. In March 1971, the Council of the European Communities and the Government of Malta notified to the CONTRACTING PARTIES an Agreement of Association¹ between the European Economic Community and Malta concluded on 5 December 1970. This Agreement entered into force on 1 April 1971. At a meeting of the Council on 21 April 1971 (see C/M/68) the representatives of the European Economic Community and Malta stated that, in the view of the parties, the Agreement was in accordance with Article XXIV:5-9 of the General Agreement. The Council decided to set up a Working Party with the following terms of reference:

"To examine, in the light of the relevant provisions of the General Agreement, the provisions of the Agreement Establishing an Association between the European Economic Community and Malta of 5 December 1970, and to report to the Council."

2. The Working Party met on 9 and 24 February 1972 under the chairmanship of Mr. Angel M. Oliveri Lopez (Argentina). The following was the composition of the Working Party:

Argentina	Ghana	Portugal
Australia	Greece	Spain
Brazil	Ivory Coast	Switzerland
Canada	Jamaica	Tunisia
Ceylon	Japan	Turkey
European Communities and member States	Malta	United Kingdom
	Norway	United States

¹The text of the Agreement of Association is contained in document L/3512. The questions addressed to the parties, as well as the replies thereto, are contained in document L/3639.

3. The parties to the Agreement referred to the statements they had made when the Agreement was introduced in the Council on 21 April 1971 to the effect that in respect of both its immediate objective - the progressive elimination of obstacles to trade - and its ultimate objective, the establishment of a customs union in two stages, it was an interim agreement leading to the formation of a customs union, within the meaning of Article XXIV, paragraph 5. The commitments undertaken and the provisions contained in the Agreement were in keeping with the obligations arising out of paragraphs 5-9 of Article XXIV of the General Agreement. The parties to the Agreement also stressed the strength and importance of the historical, geographical and economic ties binding Malta to Europe and motivating its association with the Community. Malta was in the process of restructuring and diversifying its economy; its association with Europe was an integral part of that process and was clearly necessary if it was to expand its very limited domestic market and compensate for the lack of natural resources due to the smallness of the country. Malta's dependence on the European market as an outlet for its exports was steadily increasing, and the development of its trade relations with Europe found its natural place in the framework of co-operation between Europe and the Mediterranean basin. It was therefore of fundamental importance for Malta to be associated in the process of European economic integration. With regard to trade exchanges between Malta and the enlarged EEC, they indicated that Malta's exports to the enlarged Community represented 66 per cent of its total exports in 1968, 72 per cent in 1969, and 75 per cent in 1970. The corresponding percentages in Malta's imports were 74 per cent, 73 per cent and 73 per cent for those same years.

4. Many members of the Working Party supported these views. The political will of the parties to form a customs union, the precise undertakings in the Agreement and the necessity for Malta to develop its trade through participation in arrangements for regional integration were factors to which full weight should be attributed. All members of the Working Party expressed understanding for the political and economic considerations that led Malta to seek closer links with the European Economic Community.

5. In examining the questions and replies it was established that the terms "the major part of trade exchanges" and "provisional agreement" in the English version should be interpreted to mean respectively "substantially all the trade" and "interim agreement", these being the terms used in the General Agreement. With regard to the customs tariff of Malta, it was explained by the representative of Malta that revenue derived from customs duties formed an important part of the ordinary Government revenue. Describing the structure of the Maltese tariff he said that in many cases, imports were free of duty; the average duty for industrial products would probably be around 30 per cent and only in exceptional cases were the rates above 50 per cent.

6. With respect to quantitative restrictions maintained by Malta, the representative of Malta said he could give no information on when these could be removed. In response to a question he confirmed the intention of his authorities that when such restrictions were removed this would be done on a non-discriminatory basis.

7. The Agreement was examined with reference to the relevant paragraphs of Article XXIV of the General Agreement.

Paragraph 5(c) of Article XXIV

8. With regard to the term "plan and schedule", there were differences of view. Certain members of the Working Party maintained that the Agreement lacked the necessary precision with regard to the elimination of duties and other regulations, in particular for the second stage of its implementation. By way of illustration, they drew attention to what they considered to be vague and ambiguous terms used in the Agreement and its annexes, such as the parties "envisage" and commitments undertaken "in principle". In particular, reference was made to the absence from the Agreement of clear provisions for elimination of restrictions on imports into the Community of agricultural and textile products from Malta; these product groups were of particular importance for Malta. These members considered that the requirements of paragraph 5(c) to the effect that the interim agreement "shall include a plan and schedule for the formation of such a customs union within a reasonable length of time" had not been met.

9. Some other members of the Working Party considered that although the Agreement of Association in certain respects was more in line with the general philosophy behind Article XXIV than many of the Association Agreements previously examined under the General Agreement, it did not fully meet the requirements of that Article. Reduction in tariffs and other trade barriers between the participants was specified only for the first of the two five-year stages of the transitional ten-year period. The mere intention of the parties to establish a customs union at the end of the ten-year period was not in itself sufficient to permit contracting parties to undertake usefully the study provided for in paragraph 7(b) of Article XXIV. Indeed, the provisions of the Agreement were too vague in several respects to enable conclusive findings to be reached. Furthermore, they noted that to a large extent agricultural products had not been included in the programme for liberalization of trade between the parties.

10. Most members of the Working Party stated that paragraphs 5-9 of Article XXIV had to be interpreted against the background of paragraph 4 which recognized the desirability of increasing freedom of trade by the development of closer integration between the economies of countries. From the point of view of the General Agreement an evolutionary time-table, such as the one presented in this Agreement, was preferable to a precise and detailed schedule in the case of countries with different levels of development. Such a time-table might be more likely to lead to the formation of a customs union within a shorter period. They noted the firm intention of the parties to the Agreement to form a customs union and saw no reason to cast doubt on their political will to achieve that goal. They agreed with the contention of the parties that the Agreement was in conformity with paragraph 5(c).

11. The parties to the Agreement emphasized that the undertakings concerning the establishment of a customs union and the declared intentions concerning those undertakings expressed in the Agreement and its annexes should be given full consideration. They stated - and several members of the Working Party supported them - that in view of the difference in stage of development of Malta and the Community, the provisions of the Agreement concerning the plan and schedule for the establishment of the customs union represented a realistic approach. In that connexion, adequate arrangements for the first five-year stage were clearly specified in Article 2 of the Agreement, which together with the Joint Declaration concerning the Article embodied the basic provisions for the achievement of the customs union at the end of the second stage. The concern shown for realism by leaving it for the proposed negotiations to define in detail the content of the second stage - entailing the continuation of the elimination of obstacles to trade and the adoption by Malta of the Common Customs Tariff - was in keeping with the nature of an "interim agreement". Paragraph 5(c) dealt expressly with the case of interim agreements. The very term "interim" as applied to the notions of "plan and schedule" and "reasonable length of time" made it clear that they did not necessarily have to be fixed at the outset in an absolutely specific and detailed manner. The Agreement of Association between the Community and Malta contained adequate undertakings and provisions to allow it to culminate within a reasonable length of time in a customs union - the objective fixed by the parties. Consequently, the parties to the Agreement reiterated their view that the Agreement was compatible with paragraph 5(c).

12. One member of the Working Party could not accept the foregoing interpretation of Article XXIV, pointing out that no agreed interpretative material existed to substantiate such a view. On the contrary, the text of paragraph 5(c) was very clear and unequivocal.

Paragraph 7(c) of Article XXIV

13. The parties to the Agreement reaffirmed their intention to notify changes in their plan and schedule in conformity with the provisions of this paragraph. This would also apply to the result of any renegotiations. The Working Party welcomed the assurance of the parties to submit reports on the implementation of the Agreement. The desirability of a report on the outcome of the negotiations provided for by the end of the first stage according to Article II, paragraph 3 of the Agreement was stressed.

Paragraph 8(a) of Article XXIV

14. A member of the Working Party, commenting on the importance to Malta of income originating from duties which, in 1971, amounted to 35 per cent of total revenue requested clarification of Maltese intentions with respect to differentiation between customs duties and taxes as referred to in the Declaration concerning Article 3 of Annex II of the Agreement. The representative of Malta said that Malta had already taken the necessary steps, as from 1 April 1971, to amend its customs duties in conformity with the provisions of this Agreement. It was to be

noted that the customs duties, which accounted for 35 per cent of the ordinary revenue for the fiscal year ending 31 March 1971 showed a significant drop from 47 per cent in the previous year, and no other levies had been made. However, Malta had no tariff bindings under the General Agreement and thus retained full freedom with regard to all its duties. The member who had raised this point expressed reservations as to the compatibility of such a change in the Maltese tariff with the intent of Article XXIV:8(a). If after entering a customs union Malta were to retain essentially the same level of charges on imports from all sources as presently existed in the Maltese tariff, but redefined as revenue duties, his delegation wondered how it could be said that trade was free of duties; in his view this would not be consistent with the intent of the General Agreement as regards the establishment of customs unions. This member also wondered whether the calculation of trade coverage would be affected by such a change in definition of the present Maltese tariff.

15. The parties to the Agreement denied the validity of this interpretation concerning revenue duties in relation to the application of Article XXIV. There was nothing in the General Agreement to prohibit the levying of revenue duties, which indeed represented an essential source of revenue for developing economies. The freedom of action of any contracting party in the application of its fiscal policy was not limited by the General Agreement except where its direct or indirect protective effects might be detrimental to a concession. In the face of the provisions of Article XXIV, the existence of revenue duties, which by definition ruled out discriminatory application, could not be regarded as jeopardizing the establishment of free trade. Such an interpretation would be tantamount to denying the benefit of the provisions of Article XXIV and the economic integration desired by those who framed it to practically all countries, developing countries, in particular. In the present instance, the objective of the parties to the agreement was to institute free trade among them and to establish a customs union involving the adoption by Malta of the Common Customs Tariff of the Community. Those were strictly the only points to be taken into consideration in the face of the provisions of Article XXIV.

16. One member of the Working Party, agreeing in general with the views of the parties to the Agreement in this matter, stressed that there was no obligation to eliminate non-protective revenue duties on goods traded between members of a customs union or a free-trade area.

17. The discussion brought to light the fact that the English and French versions of Article XXIV paragraph 8(a) differed inasmuch as the English text referred only to "duties" whereas the French text referred to "droits de douane" (customs duties). The Working Party did not reach any conclusion on the point.

18. Some members of the Working Party stated that trade barriers were maintained for a large proportion of EEC imports originating from Malta, in particular

agricultural, petroleum and textile products. These members of the Working Party therefore considered the Agreement not to be compatible with paragraph 8(a) of Article XXIV. In the view of the representative of the Community that was not in accordance with the facts. The Community did not apply quantitative restrictions on agricultural products exported by Malta; Malta did not export petroleum products to the Community - although in the absence of a common policy such products came under a reserved import régime - and by the terms of the Agreement most textile products were included in the tariff and quota dismantling process of the first stage in accordance with special transitional arrangements designed to prepare the way for free trade in the products concerned. He pointed out that 98.4 per cent of imports into the Community from Malta were exempt from quantitative restrictions on the entry into force of the Agreement, and that 87.6 per cent of all imports from Malta came under the tariff dismantling arrangements. Furthermore, the Agreement provided that arrangements for including agricultural products would be worked out during the negotiations for the change-over to the second stage. In any event, on the basis of the situation in respect of the first stage, the Community was justified in considering that the dismantling process was already being applied to substantially all trade.

19. Some members of the Working Party expressed the view that the Agreement does not conform fully to paragraph 8(a) of Article XXIV, others expressed serious doubts on the compatibility of the Agreement with that paragraph and, in any case, they found it difficult to pass judgment on this question in the absence of a binding commitment to establish a full customs union at the end of the ten-year period envisaged in the Agreement. The parties to the Agreement stressed its interim character and reaffirmed their intention to establish a customs union covering substantially all of their trade, both on industrial and agricultural products.

General considerations

20. All members of the Working Party expressed understanding for the political and economic considerations that led Malta to seek closer links with the European Economic Community.

21. Some members of the Working Party referring to positions expressed in paragraphs 8, 9, 14, 18 and 19 were of the opinion that neither with regard to the plan and schedule nor with respect to trade coverage did the Agreement comply fully with the provisions of Article XXIV.

22. Some members of the Working Party were of the view that the difference in the stage of development between Malta and the EEC should be given full consideration and that the firm intentions of the parties to establish a customs union supported their contention that the Agreement was compatible with Article XXIV.

23. The parties to the Agreement, supported by several members of the Working Party, considered that the Agreement, as an interim agreement, met with requirements of paragraphs 5-9 of Article XXIV. The term "interim agreement" in paragraph 5(c)

pointed to an evolutionary time-table for the achievement of a customs union whereby special circumstances in each individual case would be taken into consideration. In that connexion, the commitment of the parties in regard to their objective of establishing a customs union in two stages, and the precise provisions in the Agreement for achieving that objective constituted, with regard both to the degree and coverage of tariff and quota dismantling for the first stage and to the machinery for defining the ways and means of bringing it about in the second stage, a realistic plan and schedule on the basis of which the parties to the Agreement felt that, in accordance with their declared intention, the customs union would come about within a reasonable length of time compatible with the development of Malta's economy. They stressed the strong geographic and economic links which existed between Malta and its European partners and highlighted the necessity for Malta to diversify its economy through its closer integration with that of the European Economic Community.

24. Having regard to the differences of view expressed on the legal issues involved, the members of the Working Party reserved their rights under the General Agreement.