

# 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 TURKEY

### Additional Protocol

1. In September 1971, the Council of the European Communities and the Government of Turkey notified to the CONTRACTING PARTIES that an Additional Protocol and an Interim Agreement<sup>1</sup> had been concluded between the European Economic Community and Turkey on 23 November 1970 and 27 July 1971 respectively, and that the Interim Agreement had entered into force on 1 September 1971. The matter was discussed at a meeting of the Council on 6 October 1971 (see C/M/73). After having heard declarations from the representatives of the European Economic Community and Turkey to the effect that, in the view of the parties, the Additional Protocol defined the rhythm and modalities of the realization of the customs union provided for in the Ankara Agreement, it was 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 Additional Protocol between the European Economic Community and Turkey of 23 November 1970 and the annexed documents, as well as the Interim Agreement of 27 July 1971, and to report to the Council."

2. The Working Party met on 11 September 1972 under the chairmanship of Mr. A. Dunkel (Switzerland). The following was the composition of the Working Party:

Argentina	Greece	Spain
Australia	India	Sweden
Canada	Israel	Turkey
Chile	Japan	United Kingdom
European Communities and member States	Nigeria	United States
	Portugal	Yugoslavia

### Discussion in the Working Party

3. In his opening statement the representative of Turkey said that the Ankara Agreement provided for the progressive formation of a customs union between Turkey and the EEC during the transitional stage, now defined by the Additional Protocol,

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<sup>1</sup>The text of the Additional Protocol is contained in document L/3554. The texts of the Interim Agreement and its Final Act are contained in document L/3554/Add.1 and L/3554/Add.2. The questions addressed to the parties, as well as the replies thereto, are contained in documents L/3713 and L/3713/Add.1.

and had established the plan and schedule to that end. The achievement of the customs union would constitute the turning point for the full accession of Turkey to the EEC. Such accession would be the consequence of a long-standing political will that had merged the economic and social contents of Turkey's association with the EEC, with its geographical and strategic position and its democratic ideals. The Additional Protocol before the Working Party confirmed Turkey's choice to join with the Europe being created by the EEC. Article XXIV of the General Agreement permitted the creation of a customs union between developed and developing countries. The modalities and time period for the formation of a customs union, in this latter case, while remaining consistent with Article XXIV of the General Agreement, must take into consideration the special conditions of the developing countries concerned, for their development and well-being were essential objectives of the same General Agreement, and in particular Part IV thereof. Moreover, as acknowledged by prior working parties, these association agreements had to be considered on a case-by-case basis and in their own context. The terms for the establishment of the customs union between Turkey and the EEC were in accordance with the situation of the Turkish economy vis-à-vis the EEC and took into account the needs to increase the level of employment and to improve the standard of living of the Turkish people. The strengthening of the Turkish economy would allow the growth of its trade with those contracting parties not members of the EEC. He reiterated that, in the views of the parties to the Agreement, the Additional Protocol was in full conformity with Article XXIV of the General Agreement.

4. The representative of the EEC recalled that, as stated when the Association Agreement had been examined in GATT in 1964, the long-term objective of the Ankara Agreement was Turkey's accession to the EEC. The plan and schedule for achievement of the customs union had been fixed therein. After the preparatory stage, the details for the implementation of the transitional stage had now been formulated in the Additional Protocol.

5. Some members of the Working Party, after expressing their sympathy and their understanding for the objectives of the Association Agreement between Turkey and the EEC and the Additional Protocol thereto, stated that they shared the view that the Additional Protocol was in accordance with the provisions of paragraphs 5 to 8 of Article XXIV of the General Agreement. In their opinion the special situation of the developing country concerned should be taken into account when examining the content of agreements such as the one dealt with in the Additional Protocol under consideration. Its provisions appeared to be reasonable and justified when considering the different levels of development of the EEC and Turkey.

6. Other members of the Working Party expressed understanding and sympathy for the objectives underlying the Additional Protocol and for the desire of Turkey to participate in the process of European integration. These members regretted that the CONTRACTING PARTIES, as in other cases, had been presented with

a de facto situation as the Interim Agreement had entered into effect before any consideration by the GATT. However, these members considered that the agreement, as it stood, did not meet the criteria set up in Article XXIV of the General Agreement in certain respects. They did not consider that the extended time period for completing the customs union envisaged by the parties could be considered "reasonable" in the sense of Article XXIV:5(c). To the extent that such a period was dictated by considerations such as disparities between the economic structures of the parties to the Protocol, it left some doubt in the minds of these members as to its appropriateness in the light of Article XXIV of the General Agreement. Some members noted that the Additional Protocol was still open-ended as it seemed to permit Turkey to maintain duties at rates above the EEC tariff even after the twenty-two year period. The lack of sufficient commitment to incorporate Turkey's agricultural exports into the liberalization process was also noted. A number of members raised objections to the discriminatory establishment or removal of quantitative restrictions on the grounds that this was contrary to the GATT and that such discriminatory action could only be justified if the members of a customs union held their foreign exchange reserves in common which was not the case here. These members also objected to the discriminatory liberalization of other restrictions to trade, such as the stamp duty and import deposits. They requested that trade liberalization should proceed on a non-discriminatory basis. One member stated that his concerns went beyond the questions of principle involved as the action by the parties to the Agreement affected specific trade interests of his country.

7. Some members expressed concern with respect to the interests of third countries. It was requested that if resort was made to Articles 5 or 19 of the Additional Protocol or to other clauses providing for changes, such changes should be notified to GATT in accordance with Article XXIV:7(c) of the General Agreement. If other contracting parties to GATT believed their trade interests to be affected, such changes should be reviewed in GATT. These members of the Working Party asked for the assurance that the parties to the agreement would receive favourably, and give full and fair consideration to, any representations made by third countries regarding their legitimate commercial interests. The inclusion of the agreement between the EEC and Turkey in the regular biennial schedule for reporting of agreements submitted under Article XXIV, and the supply of information to enable third countries to determine its trade effects, was also requested.

8. The representative of Turkey said that there was nothing in the General Agreement requiring the parties to submit the Interim Agreement to the CONTRACTING PARTIES before its entry into force. That being said, in fact the texts had been communicated as soon as they had come into existence legally, in accordance with Turkey's constitutional provisions. The representative of Turkey referred to the answers given to questions Nos. 3 and 4 in document L/3712 and said that no determination of what constituted a reasonable length of time had been made by the CONTRACTING PARTIES. The parties to the Agreement had made a realistic assessment of their different levels of development when setting up the time-schedule contained in the Additional Protocol. In the view of the Turkish representative, since Article XXIV of the General Agreement did not exclude the possibility of progressive formation of a customs union between

developing and developed countries, to require a short length of time for the process would only have the effect of eliminating a possibility legally afforded to developing countries that were parties to the General Agreement. The parties to the agreement also pointed out that the Additional Protocol represented the implementation of provisions set forth in the Ankara Agreement which had been examined in GATT in 1964. In article 13:2 of the Protocol they declared their readiness to lower their customs duties towards each other at a faster rate than that laid down in articles 9 to 11. Article 19:4 of the Protocol contemplated the possibility of an accelerated alignment of the Turkish tariff with the common customs tariff of the EEC. In addition, article 28 permitted a faster rate for the removal of Turkish quantitative restrictions in respect of the EEC. As indicated in the answer to question 18 in document L/3713, article XXIV imposes the obligation to eliminate, to the extent possible, quantitative restrictions among the members of a customs union, but does not require that such action be extended to third countries. Turkey would apply the common customs tariff in its entirety as indicated in articles 17 and 18 of the Additional Protocol notwithstanding the exception contained in article 19:2. This exception remained in accordance with article XXIV:8(a)(ii) of the General Agreement which required that members of a customs union apply duties and other regulations of commerce, which should be the same only substantially, in the sense that the share of trade that might be concerned was already extremely limited and would necessarily represent an increasingly small proportion of total imports by Turkey in relation with the evolution and development of its trade. The representative of Turkey stated that the duties of the Turkish tariff currently in force were, on the whole, considerably higher than those of the common external tariff of the EEC; alignment of the Turkish duties on the common external tariff would therefore have the effect of lowering the overall incidence of Turkish duties vis-à-vis third countries.

9. Concerning the stamp duty referred to in questions 8 and 26 of document L/3713 and in document L/3735, the representative of Turkey indicated that the reduction, as of 1 September 1971, from 10 to 9 and 9.5 per cent on imports from the EEC had been done pursuant to article 7 of the Interim Agreement and was in accordance with Article XXIV:8(a)(i) of the General Agreement. His Government was studying the application of the same reduction to other contracting parties to the extent permitted by the conditions of the Turkish economy. The Government of Turkey would accord sympathetic consideration to the representations made by other contracting parties with respect to the operation of the association, under Article XXII:1 of the General Agreement. He did not believe that actions taken under articles 5, 19 and others of the Additional Protocol might constitute a substantial change in the plan and schedule as contemplated in Article XXIV:7(c) of the General Agreement and could jeopardize or unduly delay the formation of the customs union. However, under the framework of GATT proceedings, Turkey would inform the CONTRACTING PARTIES of measures adopted. Referring to the regular biennial examination Turkey would honour its commitments under the General Agreement, but he noted that the CONTRACTING PARTIES had not reached conclusions as to the manner for determining the effect of association agreements on the trade of third countries.

10. In the view of the representative of the EEC article 5 of the Additional Protocol referred to trade between the EEC and Turkey, not to trade with third countries and would be applicable only as long as full harmonization of customs duties and other trade regulations of the EEC and Turkey had not taken place in order to avoid the diversion of trade. The motivations underlying those provisions were the same as those underlying Article 115 of the Rome Treaty. Moreover, those were provisions required under the General Agreement (interpretatives notes) in order, for example, to prevent any undue extension of a preferential régime within the framework of a customs union. The provisions of article 19 of the Protocol concerned trade with third countries since they referred to alignment of the Turkish tariff on the common customs tariff; the possible incidence of those provisions was nevertheless very limited and in any case could not affect the interests of third countries in terms of Article XXIV:5(a) or adversely affect free movement within the customs union. Since the agricultural sector was included in the customs union process, during the transitional stage Turkey would take the necessary action to adapt its agricultural policy to the common agricultural policy with a view to achieving free movement of agricultural products as between the Community and Turkey. Articles 32 to 35, and Annex No. 6 of the Additional Protocol, and in particular articles 33:1 and 34:1, provided for such free movement. The régime to be applied to those products during the transitional stage varied: for certain agricultural products customs duties were eliminated, for others the elimination would take effect after three years, for others a reciprocal preferential régime was to be determined by the Association Council, and article 35:3 provided that any necessary improvements might be made in that régime in order to ensure the progressive achievement of free movement.

11. Some members of the Working Party reiterated their understanding that article 5:2 of the Protocol provided for unilateral change which could theoretically, if carried very far, eliminate the plan and schedule aspects of the whole agreement. Its terminology was wide open. Changes under articles 5 and 19 of the Protocol might or might not be substantial depending upon the facts of the changes. They asked that the parties to the agreement abide by their obligations under Article XXIV of the General Agreement without interpreting it too narrowly. The undertaking stated by the Turkish representative that the parties to the Agreement would inform contracting parties of any changes within the framework of GATT procedures should not conflict with the lack of agreement as to the exact way in which articles 5 and 19 of the Protocol related to the undertaking nor could the disagreement alter reporting responsibilities. These members still had doubts on the consistency of the agricultural provisions of the additional Protocol with article XXIV of the General Agreement, and insisted they were not satisfied with the length of time established by the parties to the Agreement for achieving the customs union.

12. In replying to the statement that the liberalization of restrictions imposed for balance-of-payments reasons, as well as the elimination of import deposits, should be done on a non-discriminatory basis, the representative of Turkey said import deposits were covered by the expression "other regulations of commerce" of

Article XXIV:8(a)(ii) of the General Agreement and would be eliminated only in respect of the import of goods from the Community. The representative of Turkey said that the prime objective of his country in that respect was to afford to its economy the means that would enable it to pursue a trade policy as liberal as possible.

### Conclusions

13. The members of the Working Party expressed sympathy with regard to the need for the economic development of Turkey; stated that they favour closer economic ties between Turkey and the European Economic Community and recognized that the main objective of the Association, which is to establish a full customs union, is in conformity with the fundamental objectives of the General Agreement.

14. Concerning the consistency of some provisions of the Additional Protocol with Article XXIV of the General Agreement there were differences of views. Some members of the Working Party questioned whether the period for the formation of the customs union could be considered a "reasonable length of time", expressed doubts on the appropriateness of the requirements applicable to agricultural products, and criticized the discriminatory removal of quantitative restrictions and import deposits. They asked that changes under articles 5, 19 and other provisions of the Additional Protocol be communicated to the CONTRACTING PARTIES, and urged that representations by third countries regarding their commercial interests be favourably received and given full and fair consideration.

15. The parties to the Agreement, supported by other members of the Working Party, were of the view that the difference in the stage of development between Turkey and the EEC should be given adequate consideration and asserted that the Additional Protocol fully met the requirements of Article XXIV of the General Agreement. They recognized that there were differences of opinion in the interpretation of Article XXIV but believed that they had acted realistically and that the customs union would be achieved as envisaged in the plan and schedule contained in the Ankara Agreement and the time-schedule set forth in the Additional Protocol. They noted that the progressive formation of the customs union would strengthen the Turkish economy and thereby contribute also to increasing Turkey's trade with contracting parties that were not members of the European Economic Community. The decision to honour the commitments undertaken by the parties to the Agreement under the General Agreement and thus to communicate to the CONTRACTING PARTIES any substantial changes that might be introduced to the provisions of the Protocol, was noted. In accordance with Article XXII:1 of the General Agreement the parties would give sympathetic consideration to representations made by contracting parties.