GENERAL AGREEMENT ON
TARIFFS AND TRADE

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AGREEMENTS BETWEEN THE EUROPEAN COMMUNITIES AND NORWAY

Report of the Working Party

1. At the meeting of the Council on 30 April 1973, the contracting parties were informed that negotiations for a free-Trade Agreement between the European Communities and Norway had been concluded (C/M/86). The negotiations resulted in the following Agreements[1]:

- Agreement between the European Economic Community and the Kingdom of Norway, with the annexes and protocols forming an integral part thereof;
- Agreement between the member States of the European Coal and Steel Community and the European Coal and Steel Community, on the one hand, and the Kingdom of Norway, on the other hand, with the annex and protocol forming an integral part thereof;
- text of the exchange of letters concerning aluminium;
- text of the exchange of letters concerning magnesium;
- text of the exchange of letters concerning Protocol No. 2 to the Agreement between Norway and the European Economic Community;
- text of the exchange of letters concerning decisions on the application of Article 60 of the Paris Treaty;
- text of the exchange of letters concerning supplies of steel to shipyards;
- text of the exchange of letters concerning the conclusion of the negotiations on the Agreements between Norway and the European Communities;
- text of the letter concerning certain agricultural products from the head of the Norwegian delegation to the head of the delegation of the Community;

[1] For reasons of convenience, the term "Agreement" is used in this document as designating both agreements mentioned in this paragraph.

- text of the letter concerning wines from the head of the Norwegian delegation to the head of the delegation of the Community;

- text of the letter concerning certain fishery products from the head of the delegation of the Community to the head of the Norwegian delegation.

2. At the meeting of the Council on 29 May 1973, a Working Party was set up with the following terms of reference:

"To examine, in the light of the relevant provisions of the General Agreement on Tariffs and Trade, the provisions of the agreements between, on the one hand, the European Economic Community, the member States of the European Coal and Steel Community and the European Coal and Steel Community, and, on the other hand, the Government of Norway, signed on 14 May 1973, and to report to the Council."

3. The Working Party met on 4 December 1973 and on 5 February 1974 under the chairmanship of Mr. P. Tomić (Yugoslavia). It had available the texts of the Agreements and of certain exchanges of letters (L/3872 and Add.1) and the replies by the parties to the questions asked by contracting parties (L/3949 and Add.1).

4. In an introductory statement, the representative of the European Communities said that the Agreements, like those concluded between the Communities and other EFTA countries, must be viewed in the light of the enlargement of the European Communities, as an effort to retain the free-trade advantages of EFTA and a movement toward increased economic integration in Europe. The Agreement provided for free trade in industrial products virtually without exceptions, and for the continuing absence of quantitative restrictions. Although agricultural products were not formally covered, Article 15 of the Agreement offered the possibility of increasing liberalization and trade in such products. The parties were of the firm view that the Agreement was fully consistent with the relevant provisions of the General Agreement, particularly in meeting the requirement that "substantially all the trade" be covered. This view was confirmed by the overall objectives set out in the Preamble to the Agreement.

5. The representative of Norway noted the similarity of the present Agreement to those concluded between the Communities and other EFTA countries, and fully shared the views of the representative of the Communities on the conformity of the Agreement with the provisions of the GATT in general, and Article XXIV in particular. Referring to the replies to the questions submitted, the parties to the Agreement were ready to provide further clarifications where necessary.

6. One member of the Working Party said that his government took a different view of the Agreement than did the parties to it, the same objections applying that he had voiced in the working parties on the Agreements between the Communities and other EFTA countries. More specifically, the Agreement was a preferential arrangement, not a free-trade area, and as such contrary to both the letter and spirit of Article XXIV. The Agreement violated the General Agreement because the rules of origin frustrated the purpose of a free-trade area as stated in Article XXIV:4 in that they would frustrate intra-area trade in products that could not meet the origin criteria and would raise barriers to third-country trade in intermediate products. The requirement of Article XXIV:8(b) that duties and restrictions on "substantially all the trade" be eliminated had not been met because of the exclusion of most agricultural products and because of the effects of the rules of origin. The requirement of Article XXIV:5(b) that regulations of commerce should not be more restrictive than the ones existing prior to the formation of the free-trade area in the constituent territories was not met since the restrictive effects of the rules of origin were greater than before. Furthermore, the rules of origin imposed an increased and more complex burden of documentation on importers in contravention of Article VIII; these rules of origin, apart from being very restrictive, were so complex that they constituted a trade barrier in themselves.

7. Other members of the Working Party shared the view that the Agreement was incompatible with the various provisions of Article XXIV of the General Agreement. The proliferation of regional agreements of a preferential character would adversely affect the expansion and liberalization of world trade, as defined in the Tokyo Declaration opening the multilateral trade negotiations. The Agreement constituted an additional erosion of the most-favoured-nation principle and would have trade-diverting effects on exports of other contracting parties. One of these delegations therefore hoped that the parties to the Agreement, in the forthcoming multilateral trade negotiations, would endeavour to eliminate all tariff barriers so as to meet the intent of Article XXIV.

8. One member of the Working Party, sharing the misgivings of other members as to the compatibility of the Agreement with the relevant provisions of the General Agreement, regretted that new elements of discrimination were being introduced into international trade as a matter of policy, distorting the intended balance of advantages of contracting parties. This and similar derogations from the most-favoured-nation treatment, involving such an important share of world trade, posed the question whether a set of parallel rules to the GATT was being created, contrary to both its letter and spirit in that it was highly questionable whether the trade creating effects of the Agreement outweighed its trade-diverting effects. In addition, he was particularly concerned that the Agreement would impair if not nullify the benefits of the Generalized System of Preferences (GSP) to developing countries. He welcomed the earlier assurances of the parties to this and similar Agreements that any detrimental effects of the Agreements in this respect would be alleviated through improvements to the GSP.

9. The parties to the Agreement reiterated their view that the Agreement, covering substantially all the trade between the parties, was fully compatible with the General Agreement. They were determined effectively to establish free-trade relations in accordance with Article XXIV. Since the Agreement had been drawn up to fulfil the conditions for the establishment of a free-trade area, it could not be classified as a preferential arrangement. They were confident that intra-area trade would be facilitated and that trade interests of third countries would not be impaired but on the contrary, as could be seen from the experiences of both the original EEC and the EFTA, that the economic integration resulting from the Agreement would be beneficial also to the expansion of world trade generally. Furthermore, since the parties to the Agreement operated within the provisions of Article XXIV, there was no risk of establishing rules parallel to GATT. In fact, Article XXIV had been drafted in recognition of the desirability of increasing trade by closer integration of the economies of parties to such agreements; the strictness of the provisions were designed to prevent impairment of third-country trade.

10. The representative of Norway said that his Government, representing a small country, was committed to free trade. Post-war experiences indicated that the formation of free-trade areas and customs unions had resulted in desirable structural changes and improved division of labour, which had made it possible to reduce trade restrictions also on a world-wide level. The member of the Working Party whose views are reflected in paragraph 6 above said that he questioned whether long-term benefits to third countries from a free-trade agreement could be demonstrated; trade had been growing all over the world at sometimes even faster rates than under various free-trade arrangements, so that it was impossible to assume a casual relationship between the formation of free-trade areas and growth of world trade.

11. The parties to the Agreement did not subscribe to the view that the operation of the rules of origin would restrict trade between the parties to the Agreement. They were constructed on an objective basis in order to determine whether the products in question had been produced or sufficiently transformed in the territories of the parties to the Agreement, as such products were the ones intended to benefit from the free trade. Consequently, no industrial products were, per definition, excluded. There was no evidence that the operation of the rules of origin would raise barriers to third-country trade in intermediate products, or that regulations of commerce resulting from the Agreement would be more restrictive than they were prior to the formation of the free-trade area. Provision had been made, however, for a revision or adaptation of the rules if practical difficulties were to arise; the parties were also willing to discuss them with interested third countries.

12. One member of the Working Party said that Article XXIV:7(b) provided that the formation of a free-trade area be completed within a reasonable period of time based on a plan and schedule. Since the plan and schedule for the reduction of internal tariffs varied from four to eleven years, he wondered in which cases the transitional period could be said to meet the requirements of Article XXIV. Under the circumstances he was more inclined to see the Agreement as an interim agreement leading to the formation of a free-trade area rather than the free-trade arrangement itself. The parties to the Agreement explained that as regards the plan and schedule for the progressive reduction on tariffs between the parties, the transitional period of four years for the main part of the products, namely 80 per cent, was much shorter than had been the case with the formation of the original EEC and EFTA. Although no definition existed as to what constituted a transitional period, the present arrangement must be regarded as both an appropriate and a reasonable one, so that there was no reason to consider the Agreement as an interim agreement.

13. After the general discussion set out above, the Working Party proceeded to an examination of the Agreement based on the questions submitted and replies provided on more specific matters. The main points made during the discussion are summarized below.

Trade coverage

14. Some members of the Working Party recalled their earlier statements to the effect that their governments interpreted Article XXIV:8(b) clearly to mean free trade in all products and not merely industrial products. That provision of the General Agreement certainly did not permit the exclusion of an entire sector such as unprocessed agricultural products, which served to limit the degree of free trade involved.

15. The representative of Norway said that the Agreement, when fully implemented, would cover 95 per cent of Norwegian imports from the European Communities, the trade coverage after four years being approximately 80 per cent. Such high trade coverage, in the opinion of the parties to the Agreement, made the Agreement fully compatible with the requirements of Article XXIV:8(b). The meaning of "substantially all the trade" had never been defined in GATT but the percentage of trade covered must be considered satisfactory; what was relevant was that substantially all the trade was covered, not all products.

16. One member of the Working Party pointed out that, in his view, since the agricultural sector was virtually excluded from the Agreement, a possible change in the economic and trade structures of the parties could affect the percentage of trade coverage calculated in accordance with present trade data, and accordingly the possibility might arise in the future that the Agreement would no longer meet the requirements of "substantially all the trade". The parties to the Agreement explained that the calculation of the trade coverage must of necessity be based on the existing situation, and maintained furthermore that a

change in trade structure, as mentioned, seemed highly improbable. The same member of the Working Party also said that the exclusion of the agricultural sector might furthermore have the effect of rendering agricultural products "untouchable" in world trade; in his view this could not be justified under GATT for any product sector. In any event he could not see how the parties to the Agreement could argue, as had been done under the examination of similar agreements, that anything from 60 or 70 to 95 per cent trade coverage constituted "substantially all the trade".

Import and export duties

17. The parties to the Agreement recalled that they had subscribed to the Tokyo Declaration, and they considered that the provisions of the Agreement would not in any way prejudice the extent of tariff reductions in the multilateral trade negotiations. They pointed out that it was extremely unlikely that a reduction of tariffs on an m.f.n. basis would be impeded by safeguard actions under Article 24 or 27 of the Agreement, because these were fall-back provisions that would not be readily used. In any event, the time-table for the achievement of free trade was so short that for the majority of products covered free trade would be achieved before the implementation of possible concessions resulting from forthcoming multilateral trade negotiations. The Working Party welcomed these assurances by the parties to the Agreement.

Quantitative restrictions

18. One member of the Working Party stated that his government did not agree with the interpretation of the General Agreement implicit in the parties' answers under this section that Article XXIV justified the discriminatory application of quantitative restrictions. The parties to the Agreement said that as no quantitative restrictions existed on trade between the parties in products covered by the Agreement, this was only a theoretical problem.

Agriculture

19. One member of the Working Party noted that the parties had stated in their reply to one question that the Agreement did not cover agriculture, whereas the exchange of letters did inter alia relate to concessions on agricultural products. The parties had stated that the measures pertaining to agriculture taken pursuant to this exchange of letters were part of the free-trade arrangements. He would like an explanation for this apparent discrepancy. He also said that he did not consider that Article XXIV justified preferential treatment for items not subject to free trade.

20. The parties to the Agreement explained that the Agreement applied to products originating in Chapters 25-99 of the BTN. The European Communities, however, considered four products in these chapters to be agricultural products, and they were therefore excluded from the Agreement. The Agreement also covered the processed agricultural products listed in Protocol No. 2, on some of which a variable element of protection would remain, being part of their general agricultural policy. Thus there was no inconsistency in the statement that free trade did not extend to agricultural products; the parties had done what they could to liberalize trade between themselves in agricultural products, consistent with the articles of the Agreement which provided for harmonious development of trade between the parties, and with the objectives of Article XXIV.

Relations with developing countries

21. The representative of a developing country member of the Working Party was of the view that the movement towards further economic integration in Western Europe would lead to a further compartmentalization of trade inconsistent with the intended balance of advantages of contracting parties resulting from expanded world trade, to the particular detriment of the export interests of developing countries, who were trying to join in the main world trade flows. In particular, he considered that the Agreement would impair, if not nullify the benefits enjoyed by developing countries under the Generalized System of Preferences, thus prejudicing the trade positions that these countries were trying to establish or improve. Although public assurances had been given that the erosive effects of tariff reductions on the GSP would be alleviated through improvements in the respective schemes, facts did not seem to warrant optimism in this respect; at this point in time he could only voice his concern and hope that his Government's fears would not materialize.

22. The parties to the Agreement could not accept that the question of any reduction in benefits of a unilateral scheme like the GSP was relevant to the examination of an Agreement concluded in accordance with Article XXIV. They reiterated the assurance given when similar agreements had been examined that they would try to alleviate the negative effects of the Agreement, if any, through improvements to their schemes. The representative of the European Communities stated that the possibility of negative effects arising from tariff reductions depended on the extent to which trade between the parties to the Agreement was in products of export interest to developing countries.

23. The representative of Norway recalled that the parties to the Agreement had been among the first to introduce the GSP, and said that his Government had always had possible improvements to it in mind. It was regrettable that so far only a few developing countries had been able to benefit substantially from the System; however, a committee had been set up in Norway with a view to creating a special institution with the task of assisting developing countries in their marketing efforts in Norway. Recently the Norwegian scheme had been extended to some new countries, and additional products had been added to its coverage.

Rules of origin

24. One member of the Working Party said that his government was concerned with the legality as well as the practical effects of the rules of origin under the Agreement. In the view of his delegation these rules would result in trade diversion by raising barriers to third countries' exports of intermediate manufactured products and raw materials. This resulted from unnecessarily high requirements for value originating within the area. In certain cases (e.g. radio transmitters) the rules disqualified goods with value originating within the area as high as 96 per cent. The rules limited non-origin components to just 5 per cent of the value of a finished product of the same tariff heading in nearly one fifth of the total industrial tariff headings, and in approximately the same number of other cases a 20 per cent rule applied. The value-added requirements would tend to encourage manufacturers in the member States to switch away from third countries' products to ensure origin-sourcing. Another disturbing element lay in the unduly complicated nature of the rules, which imposed upon importers and other users of imported products in the free-trade area a greatly increased and complicated documentation burden, contrary to the intent of Article VIII of the General Agreement. Moreover, the rules were more restrictive than the EFTA rules of origin, which had allowed origin status for processing or, except in the case of textiles, for value added. He asked what were the elements of the "essentially different economic and geographical context" which, in the view of the parties (in their reply to question 47), prevented comparison with the rules formerly applicable in EFTA.

25. With specific reference to chemical products in BTN Chapters 28-37, he asked how the parties had selected 20 per cent as the maximum amount of materials falling within the same heading in order to qualify for origin, and inquired as to how many tariff headings in those chapters included both materials and the finished product commonly incorporating them. In the case of textile products, he noted the parties' reply (to question 45) that only multiple phases of the production process constituted a sufficient working or processing for acquiring origin, and asked how the parties determined "sufficient working or processing" in this context. He also enquired specifically as to the "objective criteria" which the parties had cited (in reply to question 41) as the basis for the working or processing described in the fourth column of List A of Protocol No. 3. He called attention to the treatment of imports under BTN heading 19.05, where the sole exemption applied to products made from zea indurata maize corn. Other types could be used for this purpose, and in the United States, which constituted the largest producer of cornflakes, another type of maize corn was in fact employed. The exemption would discourage producers of cornflakes, e.g. in Norway and the United Kingdom, from importing United States maize corn suited for this purpose. His authorities had learned that the corresponding requirement in the rules of origin under a similar agreement had already resulted in a switching away from United States source maize corn.

26. Another member of the Working Party enquired as to why a flat value-added requirement was not adopted as opposed to the more complicated rules in Protocol No. 3. Another member noted that the rules of origin concerning textile products were more restrictive than those under the EFTA, and said that the new value-added criterion had already caused difficulties to textile exporters in his country. His authorities had drawn the parties' attention bilaterally to certain problems arising from the provisions concerning motor vehicle parts for original equipment, copper products and cotton fabrics. He added that from a legal viewpoint Article XXIV:5(b) should be interpreted as more restrictive than 5(a) because it does not include the phrase "on the whole" when stating that the resulting duties and other regulations of commerce shall not be higher or more restrictive than those existing in the same constituent territories prior to the formation of a free-trade area.

27. In reply to the questions raised in paragraphs 24-26 the representative of the European Communities recalled that the rules of origin were based on an objective criterion, namely, that a product must undergo substantial transformation in order to acquire origin status. Normally the passage of an article from one BTN heading to another would imply such substantial transformation; but in certain instances such movement alone was not sufficient, and in these cases a value-added criterion was also imposed. For the majority of products, however, a change of BTN heading alone would suffice. As for an attempt to compare the rules of origin with those formerly applying to the EFTA, the overall situation had changed in the sense that some suppliers which formerly were third parties were now inside the free-trade area.

28. The parties to the Agreement pointed out that it was misleading to talk of a requirement in the rules of origin of value in the area as high as 96 per cent, as claimed by one delegation. In fact, e.g. in the case of radio transmitters, the rules of origin permitted the use of non-originating components of the same tariff heading up to 5 per cent of the value of the finished product, and allowed a total of 40 per cent of non-originating products of other headings than that of the finished product to be used. Only the use of non-originating transistors was limited to 3 per cent. It was added in this context by the representative of the European Communities that the additional value-added criterion was aimed at filling the lacunae in the Brussels Tariff Nomenclature where, for example in the case of textiles, certain types of processing could not be considered to constitute substantial transformation. In other instances, as in the case of chemicals, one could not exclude a transformation by the addition of other products. Here the 20 per cent minimum requirement was aimed at providing an objective criterion for the conferring of origin status. The rule governing imports of processed corn products under BTN heading 19.05 was designed to have the effect of maintaining existing trade flows, since those products were not presently made except in a form based on zea indurata maize corn. That is, trade in these products made from other types of maize corn did not exist. As for List A of Protocol No. 3, this might appear long because it included textile items. A similar problem had been encountered in the EFTA.

29. The representative of Norway said that it was difficult to compare the rules of origin with those formerly applying to the EFTA. Some concern had initially been expressed by Norwegian traders when the changeover was impending, but this concern did not seem to have been justified. Although it was sufficient for a trader to know the origin criteria for his own particular products, one should not make an item-by-item comparison with the EFTA rules, but rather should view the overall aspect of the new rules. He said that monetary instability cast some doubt as to the utility of a straight value-added criterion. He noted that there had been insufficient time to evaluate adequately the results of the present rules. Moreover, the Protocol provided for the possibility of a revision of the rules if the parties found this necessary. In any event they stood ready to discuss bilaterally any problem that might arise in connexion with third countries' exports to the free-trade area.

Other questions concerning the Agreement

30. Some members of the Working Party expressed their concern at the possibility of discriminatory application of safeguard measures under the Agreement. One of these members wished to know whether, if a new multilateral safeguard system was agreed during the forthcoming Multilateral Trade Negotiations, the parties to the Agreement would adjust the safeguard provisions of the Agreement accordingly.

31. The representative of the European Communities said that the safeguard provisions were justified to correct certain distortions of competition that might occur under the free-trade régime created by the Agreement. The use of safeguard measures would not affect the determination of the parties to apply the Agreement in conformity with Article XXIV and with their obligations under the General Agreement. No measure taken under Article 27 of the Agreement could apply to third countries unless the provisions of Article XIX of the General Agreement were observed.

General considerations

32. Some members of the Working Party were of the opinion that the Agreement constituted a preferential arrangement rather than a free-trade area. Such derogation from the most-favoured-nation principle was contrary to the spirit as well as the letter of the General Agreement. Whereas a free-trade area would be required by Article XXIV:8(b) to cover substantially all the trade between the constituent territories in products originating in such territories, the arrangement under consideration virtually excluded trade in unprocessed agricultural products. Moreover, the complex and restrictive rules of origin not only hindered inter-area trade but also raised new barriers to imports from third parties and thus conflicted with the requirement of Article XXIV:5(b) that regulations of commerce applicable to the trade of third parties not be more restrictive than the corresponding regulations of commerce existing in the constituent territories prior to the formation of a free-trade area.

33. Some members held the view that to the extent the rules of origin increased restrictions against third parties on products subject to tariff concessions, these concessions would be nullified or impaired. One member considered that the plan and schedule for the progressive reduction of internal tariffs seemed to indicate that this was intended as an interim agreement leading to the formation of a free-trade area rather than the free-trade arrangement itself.

34. Other members of the Working Party were of the opinion that the movement towards further economic integration in Western Europe would lead to new distortions in international trade to the particular detriment of the export interests of developing countries. In particular, they foresaw the danger of erosion of the benefits which developing countries had obtained under the GSP.

35. The parties to the Agreement, together with some other members of the Working Party, expressed their conviction that the Agreement effectively created a free-trade area and was in full conformity with Article XXIV of the GATT. It could not, therefore, in any view be considered as a preferential arrangement. Furthermore, it was in no way an interim agreement and included all the elements necessary for the definitive establishment of the free-trade area. The Agreement covered substantially all the trade between the parties and the exclusion, as appropriate, of agricultural products was of relatively minor practical significance. Rules of origin were an indispensable element for the operation of a free-trade area and the Agreement necessarily contained such rules of origin to prevent undesirable deflection of trade, and thus ensure the correct functioning of the free-trade area. The rules of origin were introduced essentially to prevent such deflection and had been designed as objectively and simply as possible. They in no way increased restrictions on trade with third countries. The parties to the Agreement declared that they would consider any revisions of the rules of origin in the light of evidence of difficulties encountered.

36. The parties to the Agreement said they would ensure that the benefits expected by the developing countries in the framework of the GSP would be effectively attained in their trade relations with the developing countries.

37. The Working Party could not reach any unanimous conclusions as to the compatibility of the Agreeement with the provisions of the General Agreement. Thus, it felt that it should limit itself to report the opinions expressed to the competent bodies of the CONTRACTING PARTIES.