

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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## AGREEMENT BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND TUNISIA

### Report of the Working Party

1. At the meeting of the Council on 14 June 1976 (C/M/114) the CONTRACTING PARTIES were informed that on 25 April 1976 the European Communities and Tunisia had signed the following instruments, copies of which were transmitted to the secretariat and circulated to contracting parties with document L/4379:

- Co-operation Agreement between the European Economic Community and the Republic of Tunisia;
- Agreement between the member States of the European Coal and Steel Community and the Republic of Tunisia;
- Interim Agreement between the European Economic Community and the Republic of Tunisia.

2. At the meeting of the Council on 17 September 1976 (C/M/116) 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, the provisions of the agreements between, on the one hand, the European Economic Community and the member States of the European Coal and Steel Community and, on the other hand, the Government of Tunisia, signed on 25 April 1976 (L/4379), and to report to the Council." (L/4401/Rev.2)

3. The Working Party met on 3 and 17 October 1977 under the Chairmanship of Mr. K. Sandilya (India). It had available the text of the instruments cited above<sup>1</sup> as well as the replies by the parties to questions which had been asked by contracting parties (L/4513).

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<sup>1</sup>For convenience these instruments are referred to collectively in this document as "the Agreement."

GENERAL ISSUES

4. In his opening statement, the spokesman for the European Communities first recalled the main lines and general context of the three Co-operation Agreements concluded between the European Communities and, respectively, Tunisia, Algeria and Morocco. With the object of achieving broad co-operation that would contribute to the economic and social development of the three countries of the Maghreb and foster a strengthening of relations between those countries and the European Communities, the three agreements provided for the implementation of measures and actions in the field of economic, financial and technical co-operation and in the labour and trade fields. With regard to Tunisia, the spokesman for the European Communities recalled that the Association Agreement of 1969<sup>1</sup>, which had been examined by GATT in 1970, bore only on trade arrangements and contained a provision stipulating that that agreement would be followed by a "new agreement on a broader basis". The 1976 Agreement constituted that new agreement. For the European Communities, the Agreement constituted further implementation of the 1957 Declaration of Intent annexed to the Rome Treaty in respect of the independent countries of the franc area and fell within the very specific context of the historical and geographical background to relations between the parties. Furthermore, the Agreement constituted an essential pillar of co-operation between the European Communities and the developing countries in the same way as, for example, the Lomé Convention<sup>2</sup> or the agreements concluded in 1977 with the four countries of the Machrek.<sup>3</sup> The Agreement was of indeterminate duration with provision for general review, and the first such review would be made in 1978. Pending completion of the procedures for ratification of the Agreement, its trade provisions had been given advance implementation with effect from 1 July 1976 by the conclusion of an Interim Agreement, which had since then been extended, without amendment, pending the entry into force of the Agreement.

5. The spokesman for the European Communities outlined the principal trade provisions of the Agreement. Since 1 July 1976, the European Economic Community (EEC) had been respecting the obligation to eliminate duties and other restrictive regulations of commerce with respect to substantially all its trade with Tunisia, as provided in the General Agreement for the formation of a free-trade area. For products other than those covered by the common agricultural policy, i.e., raw materials and industrial products, including products of the European Coal and Steel Community, Tunisian exports enjoyed unrestricted access to the market of

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<sup>1</sup>L/3226/Add.1 and Corr.1

<sup>2</sup>Distributed to contracting parties with documents L/4193 and L/4198.

<sup>3</sup>Distributed to contracting parties with documents L/4521-4524.

the Communities. There were only two temporary departures from that general principle, in respect of exports of cork and of refined petroleum products. In 1975, non-agricultural products had accounted for approximately 77 per cent of EEC imports from Tunisia. On the agricultural side and taking into account the specific characteristics of agriculture, the régime applied by the EEC to exports from the Maghreb countries covered the major part, but not all, of those products with certain specific provisions such as quotas, an import calendar, observance of the rules laid down under the EEC common organization of markets, and a safeguard clause. Tariff concessions granted by the EEC on agricultural products, ranging between 20 and 100 per cent, covered approximately 80 per cent of the three countries' exports. Furthermore, taking into account the current level of development and the economic development needs of the country concerned, and likewise the need to ensure a better balance in trade with the European Communities, the Agreement did not at present comprise any reciprocal free-trade obligation. Tunisia undertook to maintain the régime existing at the date of entry into force of the Interim Agreement, while retaining the possibility of strengthening its customs protection to the extent necessary for its industrialization and development needs. The Agreement was therefore consonant with the principles set forth in Part IV of the General Agreement. Nevertheless, trade liberalization was the ultimate objective of the Agreement. The relevant measures would have to be re-examined when the gap between levels of development had narrowed.

6. In conclusion, the spokesman for the European Communities underlined that his authorities were convinced that the objectives of economic development and of more balanced trade relations, which the partners had set themselves in the Agreement of unlimited duration, were fully in line with the attainment of the objectives underlying the GATT and motivating action by the CONTRACTING PARTIES, and that the provisions established to that end were consistent with the provisions of the General Agreement. The European Communities were accordingly requesting the CONTRACTING PARTIES to examine the Agreement as such, on its own merits, having regard to the objectives as a whole of the General Agreement, and as a positive contribution to the solution of development problems. The Communities were ready to furnish all appropriate information on the implementation of the Agreement, in accordance with the GATT procedure for examination of biennial reports on regional agreements.

7. Associating himself with the remarks made by the spokesman for the European Communities, the representative of Tunisia said that in its growth and development effort, his country viewed the new Agreement as constituting an efficacious framework for broader co-operation covering the trade, economic, financial, technical and social fields that had been fostered and even made necessary by history, geography and the specific links existing between Tunisia and the European Communities. It was a model for relations between developed and developing States, responding to the constant concern expressed by the parties to the General Agreement to assist and facilitate the growth of the developing countries, and Part IV of the General Agreement was the principal illustration of that concern. The Agreement had followed on from an earlier agreement and constituted a positive evolution

toward the establishment of a more just and more balanced world economic order. Accordingly, it was only a complementary instrument necessary for the economic and social development of Tunisia. The EEC was observing the obligation to eliminate duties and other restrictive regulations of commerce with respect to substantially all its trade with Tunisia. Tunisia, for its part, was not entering into the same undertakings in respect of imports of products originating in the EEC; it had granted to the EEC treatment not less favourable than most-favoured-nation treatment. There was a specific context and a particular situation, given Tunisia's development needs and the respective levels achieved in that regard as between the two partners. That was why provision had been made for the two parties to review developments every five years, the first review to be made in 1978. Given that possibility, one could envisage a time when a better balance would have been achieved in trade and when a framework more consistent with the situation then existing could be established, going beyond Tunisia's existing status as a provisional member of GATT. In conclusion, the representative of Tunisia expressed the hope that the Agreement, which constituted a sound and equitable basis for building a firmer economy, would be examined in an open-minded and understanding spirit, and that the conclusions of the Working Party would be constructive so that such an approach might become a real factor for progress in international economic relations.

8. One member of the Working Party, noting that the Agreement was presented as a "new model" for economic relations between developed and developing countries, said that while some of its aspects coincided with the views of his government concerning these relations, other aspects gave rise to concern and would require close and continuous scrutiny in GATT. He welcomed the confirmation by the spokesman for the European Communities that the Agreement did not provide for reverse preferences and expressed his expectation that the Agreement would not contain such preferences in the future. He also expressed concern at the rules of origin, which might in several cases have the same effect as reverse preferences and deflect trade from lower cost suppliers, often at an increased cost to the developing country and thereby deflect scarce resources from other development needs. He and another member of the Working Party believed that the Working Party should recommend to the Council that reports on the Agreement be examined on a biennial basis in GATT in accordance with the Decision taken at the twenty-seventh session of the CONTRACTING PARTIES (SR.27/12), with the first examination to include the impact of the rules of origin on third countries' trade. He said that his government expected that the European Communities would be prepared to seek appropriate solutions whenever the preferences granted to Tunisia under the Agreement caused difficulties to his country's trade interests.

9. One member of the Working Party noted that the Agreement had some features which made it somewhat different from agreements which had been examined earlier in GATT in the framework of Article XXIV. He said that taking into account the changing patterns of world trade, it was only natural that all situations could not have been foreseen when the General Agreement was drafted, and that its deficiencies should not prevent contracting parties from concluding agreements which reflected present needs. His authorities considered that the Agreement was a reflection of such needs and represented a courageous and constructive effort to develop trade and economic relations between developed and developing countries. He said that the novelty of the Agreement should not constitute an obstacle to its being examined objectively and on its individual merits, and that the examination should be undertaken in a positive spirit, taking particular account of Part IV of the General Agreement and the objectives which governed and motivated GATT.

10. One member of the Working Party said that his government recognized the traditional trading and historical links between the member States of the European Communities and Tunisia, and noted that the Agreement was a comprehensive approach aimed at assisting the development of a Maghreb country. While stressing that his authorities were sympathetic to the general objectives of the Agreement, he said that several of its aspects nevertheless raised questions with regard to its conformity with the General Agreement. He noted, for example, that Tunisia was not required initially to assume import obligations with respect to products from the European Communities corresponding to the import commitments entered into by the European Communities, although such reciprocal obligations would appear to be required by Article XXIV. In this regard he noted the parties' argument that the fact of recognizing for Tunisia the possibility, in a first stage and taking into account its economic development, of not undertaking obligations in the trade field corresponding to the commitments undertaken by the EEC, which was consistent with Part IV of the General Agreement, in no way impaired the applicability of the provisions of Article XXIV, where the EEC was concerned. He said that the relationship between Part IV and Article XXIV was not clear, and that in any event, his authorities could not agree that Part IV or any Article thereof took precedence over the requirements of Article XXIV, the only exceptions to which appeared to be spelled out in Article XXIV:8(b). In this context he noted that Part IV itself did not provide for exceptions, which gave rise to the question whether Part IV could or should be applied selectively to certain developing countries but not to others.

11. One member of the Working Party recalled his government's belief that while the initiatives of the developed countries in granting concessions to a group of developing countries was a development which met the hopes and aspirations expressed by the developing countries, there should also be an extension of such concessions - if not on a global basis immediately, at least on a commodity-by-commodity basis - to other developing countries so that they would not be disadvantaged, especially where their vital trade interests were involved. His authorities regarded the Agreement as a precursor of similar efforts to look at the problems and requirements

of other developing countries, so that all developing countries could benefit from close economic co-operation with the European Communities. Such an approach, which should be adopted by all developed countries, would be fully consistent with the principles of the General Agreement, especially those expressed in Part IV, and should also constitute a direct step towards the establishment of a New International Economic Order. He assured the representative of Tunisia that his authorities did not begrudge that country the benefits likely to be derived from the Agreement, but he appealed that in the larger interests of co-operation among developing countries as a whole, the Tunisian authorities should not take a narrow view or bar equivalent provisions to other developing countries or withhold like treatment for like products. He added that the evolution of the European Communities' relationship with Tunisia must proceed in step with the evolution of their relationship with the rest of the developing world, and said that the two sets of relationships were not only complementary to each other but were also mutually reinforcing.

12. One member of the Working Party noted that most agricultural products were excluded from the elimination or reduction of customs duties or quantitative restrictions provided for in the Agreement and that Tunisia was not obliged to eliminate or reduce its customs duties or other regulations of commerce with respect to imports from the EEC. These factors led his government to doubt whether the Agreement was compatible with Article XXIV. He cited the parties' opinion that the Agreement was consistent with the spirit and letter of Part IV of the General Agreement, and that it fell within the specific context of the historical and geographical background to the parties' relations. Nevertheless, his authorities considered that the Agreement discriminated against other developing countries. He said that this was inappropriate in the light of Part IV, which should be applied both in letter and spirit to developing countries generally. In this sense, his government considered that it would have been better to include the preferential features of the Agreement in the EEC's scheme under the Generalized System of Preferences (GSP).

13. Several members of the Working Party expressed the view that the Agreement was in full conformity with the General Agreement.

14. After the general discussion set out above, the Working Party proceeded to an examination of the Agreement based on the questions and replies on more specific matters, as reproduced in document L/4513. The main points made during the discussion are set out below.

#### QUESTIONS AND REPLIES

15. One member of the Working Party, referring to the replies to questions 2 and 3, noted that Tunisia was not required initially - as regards imports of products originating in the EEC - to assume obligations corresponding to the undertakings given by the EEC. Since the Agreement was to be of unlimited duration, he asked when this relationship of non-reciprocity would cease, and whether there was any provision in the Agreement for full reciprocity once Tunisia had attained a certain level of development. He also enquired as to whether this aspect of the Agreement was tied to a formal status of Tunisia as a developing country.

16. In reply, the spokesman for the European Communities recalled that as provided by the terms of the Agreement, the parties would review every five years the results of the Agreement and any improvements which could be made by either side, the first such periodic examination to be held in 1978. Referring to Article 29, he said that future options were completely open in this respect: in those periodic examinations, the parties would seek possibilities for making progress toward the elimination of obstacles to free trade, while taking account of Tunisia's development needs.
17. One member of the Working Party referred to the reply to question 9 and asked whether any dispositions had been made for additional concessions for Tunisia in the event that the EEC entered into an agreement with a third country providing for larger concessions than those contained in the Agreement, especially in the light of Article 35 of the Interim Agreement.
18. The spokesman for the European Communities pointed out that the conclusion by the parties of any agreements implying changes in their tariff or trade arrangements that would directly and specifically affect the functioning of the Agreement, would be the subject of adequate consultations in the Joint Committee, in order to take into consideration the interests of the parties to the Agreement.
19. One member of the Working Party referred to the reply to question 10 in connexion with Tunisian exports to the EEC, and expressed the opinion, shared by another member of the Working Party, that the stringent rules of origin provided for in the Agreement would result in components being largely sourced in the EEC, even if this were more expensive for the Tunisian manufacturers. He did not dispute the need for rules of origin, but urged that they be reasonable with regard to the percentage of third-country content. Also, if substantial processing in Tunisia were the only guarantee of real development, he asked why an exception had been granted for components produced in the EEC member States.
20. One member of the Working Party referred to the reply to question 5 in Annex II to L/4513 and asked for an explanation as to the "objective criteria" on which the rules of origin were based. He asked whether the requirements in the rules of origin in agreements concluded with various countries differed so as to meet the different economic needs of those countries. He noted that the value requirements in the rules under examination appeared to range from 50 per cent to as high as 97 per cent in some instances. Moreover, in the light of the provision in Article 4 of Protocol No. 2, with regard to the valuation being set on the basis of the ex-works price of the goods obtained, the real percentages would in some instances be even higher than what would otherwise appear. He enquired whether the parties envisaged changes in the rules of origin over the course of time as conditions changed, and said that this element pointed up the need for a periodic GATT examination of the reports, especially with regard to the effects of the rules of origin.

21. The spokesman for the European Communities said that rules of origin were clearly needed in order to ensure that the parties had the benefit of the tariff and quota dismantlement accruing under the Agreement which had the effect of reducing protection within the EEC. His authorities did not regard the rules in question as particularly strict; those rules were the result of a choice between the concern to foster Tunisia's economic development and the need to avoid any evasion of the EEC customs tariff. He noted that while the General Agreement provided for rules of origin, it did not define any criteria in regard to them; like the needs of the parties, they could differ according to the case, consistently with the economic and commercial requirements of each context. The rules of origin in the Agreement under examination understandably provided that items already produced in the EEC member States would be treated favourably if they re-entered as components in products made by Tunisian manufacturers. Also, it was normal for individual percentages for local content to be higher for some products than for others. He added that it was by no means excluded that the rules of origin might be modified in the future. With regard to future examinations of those rules, he stated that his authorities were prepared to furnish appropriate information in the context of the biennial reports procedure.

22. Referring to the reply to question 2 in Annex II to document L/4513 - as to whether the reintroduction of duties was optional or automatic - the spokesman for the European Communities confirmed that the application of duties was not automatic but required a decision.

23. With respect to the statistical table in the reply to question 12 in Annex II to document L/4513, the spokesman for the European Communities presented an amendment correcting certain values and percentages in respect of total EEC imports of products originating in Tunisia, under the GSP.

24. Referring to the corrected figures, a member of the Working Party pointed out that the percentage of imports exempt from customs duties and levies under the GSP had been 77.7 per cent in 1975, that the percentage of imports exempt from customs duties and levies under the Agreement had been 80.7 per cent in that same year, and that consequently there had been a difference of 3 per cent as between products covered by the GSP and those covered by the Agreement. Considering the relationship between the Agreement and the GSP, he drew the Working Party's attention to the significance of preferences in the Agreement.

25. In reply, the spokesman for the European Communities observed that the two lines of figures were not entirely comparable, and that in the case of Tunisia there was the full benefit of tariff reductions, whereas under the GSP there were certain limitations (ceilings, quotas, etc.)

26. Referring to questions 25 and 26 in Annex II to document L/4513 concerning financial and technical co-operation under the Agreement, the spokesman for the European Communities said that while the loans from the European Investment Bank would not normally be available for purchases from third-country suppliers, there could be exceptions to this.

#### CONCLUSIONS

27. There was wide sympathy in the Working Party for the view that the purposes and objectives of the Agreement also reflected those embodied in the General Agreement, including Part IV, given the historical and geographical considerations germane to Tunisia's economic development and the need for better balanced economic relations, that had led to the conclusion of the Agreement. One member of the Working Party, however, expressed the view that the concessions under the Agreement should have been extended to developing countries generally.

28. The parties to the Agreement and several other members of the Working Party considered that the Agreement was entirely consistent with the objectives and the relevant provisions of the General Agreement taken as a whole, and that it constituted a positive contribution to solving the economic development problems of Tunisia.

29. Other members of the Working Party held the view that it was doubtful that the Agreement was entirely compatible with the requirements of the General Agreement. The Working Party noted that the parties to the Agreement were prepared, in accordance with the GATT procedure for examination of biennial reports on regional agreements, to supply all appropriate information on the implementation of the Agreement. Some of these members urged that the examination of those reports include an analysis of the impact of the rules of origin on third countries' trade.