

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

Spec(87)8
5 March 1987

Working Party on the Free-Trade Area
Agreement between Israel and the United States

DRAFT REPORT

1. The Working Party was established by the Council on 10 October 1985 "to examine the Agreement on the Establishment of a Free-Trade Area between Israel and the United States signed on 22 April 1985, in the light of the relevant provisions of the General Agreement, and to report to the Council".

2. The Working Party met on 16 October and 10 December 1986, 5 February [and ----] 1987 under the chairmanship of Ambassador A. Oxley (Australia). It had available a communication from the delegations of Israel and the United States (L/5862), together with the text of the Agreement as well as the replies to questions which had been asked by contracting parties (L/6019).

I. General statements

3. The representative of the United States recalled that, after signing the Agreement on 22 April 1985, the two parties had informed the GATT Council on 1 May 1985 (C/M/187). The Agreement was formally notified to the GATT on 29 August 1985, upon conclusion of the ratification process (L/5862). The Free-Trade Area Agreement fulfilled the aims of both parties that it must fully meet the requirements of GATT Article XXIV in that: (i) it was to eliminate duties and other restrictive regulations of commerce on substantially all trade between the United States and Israel; (ii) the elimination of barriers and liberalization of other practices would be accomplished within a period of ten years, consistently with the "reasonable length of time" requirement of Article XXIV:5(c); (iii) duties and other regulations of commerce under the Agreement were not higher or more restrictive than those which existed prior to the formation of the free-trade area, and no new barriers would be created by it; (iv) the parties had responded to all GATT notification and consultation requirements and had answered in detail the questions posed by contracting parties. Outlining the provisions of the Agreement, she emphasized that the restrictive effects of non-tariff barriers in areas such as licensing, subsidies and government procurement had been either eliminated or significantly reduced on a reciprocal basis. The Agreement was modelled on the criteria outlined in Article XXIV and, from a legal drafting standpoint, it relied on the framework and the rights and obligations of the GATT. In certain areas it enhanced GATT obligations with additional disciplines, e.g. the infant-industry and balance-of-payments provisions and the provisions on specific duties. It addressed certain issues that were subject to GATT Agreements, e.g. licensing, government procurement and export subsidies. It also contained provisions on transparency, consultation, dispute settlement and rules of origin, and it reaffirmed bilateral and multilateral trade commitments.

Her authorities believed that the Agreement was fully consistent with the GATT and that it significantly liberalized trade.

4. The representative of Israel shared the view of the representative of the United States that the Agreement was fully consistent with the spirit and the letter of Article XXIV of the General Agreement. He recalled that his country had now entered into free-trade agreements with both the European Economic Community and the United States in the context of a policy of trade liberalization and of economic integration under the provisions of Article XXIV. He noted that in 1985 some 65 per cent of his country's trade had been with these two partners. Israel viewed this Agreement as part of its overall policy of ensuring market access on a reciprocal basis to its trading partners. On entry into force of the Agreement, duties on 43.2 per cent of 1984 bilateral trade between Israel and the United States were zero-rated and this would rise to 58 per cent by 1 January 1989. Thus the schedule for duty elimination conformed fully with the requirements of Article XXIV. His country's status as a less developed nation was recognized in the Agreement, specifically in its preamble and in its provisions on infant-industry protection and in Israel's commitment (annexed to the Agreement) to accede to the Subsidies Code. Israel's exports to the United States would also continue to enjoy GSP treatment. However, the Agreement offered a wider zero-rated product coverage than the existing GSP scheme. He also stressed that the free market access granted by the Agreement was of a contractual nature and could not be affected by any kind of competitive need limits or graduation provisions, except temporary safeguard action under the provisions of its Article 5. He trusted that in the usual pragmatic spirit of the GATT the conclusion would be reached that the Free-Trade Agreement conformed with the provisions of the General Agreement and that it contributed to the growth of the international trading system.

5. The representative of a group of countries thought the Agreement broke new ground in that it established a free-trade area between countries which were neither close geographically nor had historical trade links. He recalled that his authorities had entered into a similar agreement with Israel, which had been notified to and examined in the GATT.

6. Another member of the Working Party stated that one of the key questions to be addressed by the Working Party was whether the Agreement provided for the elimination of duties and other restrictive regulations of commerce on substantially all the trade between the two parties. While the Agreement was clear on the elimination of tariffs, it was not equally so for other restrictive regulations of commerce. In accordance with the general principles of the GATT and of its Article XXIV:4, this question should be viewed from the point not only of increasing trade in traditional items but also of creating new areas of trade. Both these aims appeared capable of being thwarted by Article 6 of the Agreement, which allowed the maintenance of import restrictions based on agricultural policy considerations. Non-tariff measures, now one of the major problems of world trade, particularly with respect to agricultural products, deserved special attention in the Working Party. He also suggested that, since elimination of trade barriers would take place over at least another eight years, the two parties should submit regular reports to the GATT on the operation of the Agreement.

7. Another member of the Working Party thought that the Agreement appeared to be one of the more comprehensive to be examined under Article XXIV and that, on the whole, it met the requirements of that

Article. The duties and other restrictive regulations of commerce, taken together, did not appear to be higher or more restrictive as of 1 January 1995 and all major sectors appeared to be substantially covered by the Agreement. He also appreciated the full documentation and written replies provided, but reserved his country's rights in the context of the Agreement.

II. Questions and replies

8. In reply to questions from members of the Working Party, the parties to the Agreement gave additional information on the ways in which the Free-Trade Agreement went beyond various GATT provisions, on the background to the rules of origin, on the relaxation of offset requirements, on the progress made under the Declaration on Trade in Services annexed to the Free-Trade Agreement, on bilateral agricultural trade between the parties, and on bilateral trade in the first year of operation of the Agreement (see Spec(86)57, paragraphs 9, 10, 13, 14, 17, and Spec(87)1, paragraph 2).

9. With reference to GATT Article XXIV:4, several members of the Working Party enquired about the possible detrimental effects of the Free-Trade Area Agreement on third parties and on competitive relationships generally, and asked for an elaboration of the answer to Question 3 regarding possible compensatory adjustments and the rights and obligations of contracting parties in this connection.

10. The parties to the Agreement stated that they did not see the Agreement as anything but trade facilitating and not as detrimental to third parties. No assessment had been attempted of expected trade creation or diversion. In any case, contracting parties' GATT rights with respect to such possible detrimental effects were not affected by the Agreement. The representative of the United States added that it was her delegation's view that the crux of this question was the relationship between Article XXIV and other GATT Articles, and that this was not a question for this Working Party to examine.

11. In reply to one member of the Working Party, the parties to the Agreement explained that, owing to the nature of non-tariff measures, which are difficult to quantify, a schedule for their liberalization or elimination had not been established. Instead, after reviewing existing barriers, procedures had been specified in the Agreement for their liberalization, in some cases going beyond what was provided for under the GATT, e.g. on licensing, government procurement, and balance-of-payments exceptions. Also included in the Agreement were provisions for consultation in the Joint Committee on barriers that might arise in the future. It would be difficult to make a list of measures that were to remain in existence. In any case, the procedures had been put in place in the Agreement for dealing with non-tariff measures. Furthermore, Israel did not figure prominently in the documentation on other non-tariff measures of the Group on Quantitative Restrictions and Other Non-Tariff Measures. Its balance-of-payments restrictions were subject to examination in the GATT, and its agricultural planning policy was in conformity with Article XI. Both types of restrictions were, therefore, exceptions permitted under Article XXIV:8(b). As concerned the United States, the main restrictions to remain in place were those under Section 22 of the Agricultural Adjustment Act, justified under a GATT waiver, and which only affected Israel's exports of cheese.

12. The same member emphasized that the Working Party had to assess the conformity of the Free-Trade Agreement with the provisions of GATT Article XXIV and that, in the absence of a list of restrictions to remain in effect, his delegation would have to reserve its position in this respect.

13. In reply to questions from several members of the Working Party, the parties to the Agreement recalled that, before entry into force of the Agreement, agricultural trade between their two countries had been a relatively small proportion of overall bilateral trade and was conducted in conformity with the General Agreement. By their nature Israel's exports, mainly perishables, would not find an important market in the United States. Most agricultural imports were already zero-rated for duty purposes in both countries and not subject to non-tariff barriers. The latter was expected to remain the case, while duties would all be eliminated. It was true that the Agreement provided for retaining certain existing measures, mainly under Section 22 of the United States Agricultural Adjustment Act, and for taking such additional measures as might seem necessary, e.g. in the context of a domestic price support system. However, neither party anticipated that such measures would ever affect a large proportion of their bilateral trade.

14. One member questioned the statement about the perishability of agricultural products having such a major impact on their tradability. This was not his country's experience. Furthermore, technological developments were continually extending the range and the storage life of perishable products traded worldwide.

III. Compatibility of the Agreement with the General Agreement

15. Opening the discussion under this heading, the representatives of Israel and the United States believed that it could be clearly stated that the Agreement created a free-trade area fully compatible with the General Agreement and, in particular, with Article XXIV. It eliminated duties and other restrictive regulations of commerce on substantially all trade between the parties. The elimination of barriers and liberalization of other practices would be accomplished within a period of ten years, that is "within a reasonable length of time". Duties and other regulations of commerce under the Agreement were not higher or more restrictive than those which existed previously. No new barriers would be created. The Agreement would ensure that trade between Israel and the United States took place under conditions of fair competition, without raising barriers to the trade of other contracting parties. Furthermore, it should not be presumed that the Agreement would be used to divert trade to the detriment of third countries. The Agreement was in no sense provisional or incomplete but a definitive establishment of a free trade area under Article XXIV, paragraph 7(a). There was, however, an intervening period between entry into force and the complete elimination of duties and other liberalization on substantially all the trade.

16. One member of the Working Party thought that the Agreement was one of the more comprehensive to be examined under the GATT and that, on the whole, it appeared to meet the requirements of Article XXIV.

17. Other members of the Working Party noted that the Free-Trade Agreement was an earnest attempt to meet, in many areas, the criteria outlined in Article XXIV. It was, for example, clear on the steps to be taken to eliminate the tariffs between the two parties. However, there were

questions as to the conformity with the requirements of Article XXIV, of the Free-Trade Agreement's provisions for eliminating non-tariff barriers and the timetable thereof.

18. One member of the Working Party expressed concern that the procedural provisions on notice and consultation in paragraphs 1(b) and (2) of Article 18 of the Free-Trade Agreement might make it difficult for one or other of the parties to reduce barriers to the trade of third parties. Another member, however, saw Article 18 of the Agreement as one of its positive features. Looked at realistically, it was the weakest formulation possible of the concept of preference embodied in a free-trade agreement and one which did not stand in the way of broader developments.

19. Some members of the Working Party expressed concern over what appeared to be a general and open-ended exception of agriculture provided for in Article 6 of the Free-Trade Agreement, allowing the maintenance of existing and implementation of additional restrictions, other than duties, based on agricultural policy considerations. This raised doubts as to the elimination of "other restrictive regulations of commerce" on "substantially all the trade" between the parties to the Agreement in both quantitative and qualitative terms.

20. One member stated that Article 6 of the Free-Trade Agreement did not appear to further the purpose of Article XXIV, which was to provide the political mechanism to make faster progress towards the goals of the General Agreement than might be possible in a truly multilateral framework.

21. One member considered that the existence of Article 6 of the Free-Trade Agreement made it difficult to reach a judgement on the conformity of the Agreement with the provisions of Article XXIV. That member said that the Free-Trade Agreement would have been more in keeping with the provisions of Article XXIV if Article 6 had not been included. Furthermore, this question should be viewed in the context of the Punta del Este Declaration which recognized the urgent need to achieve greater liberalization of trade in agriculture and bring all measures affecting import access under strengthened and more operationally effective GATT rules and disciplines.

22. Some members of the Working Party called upon the parties to the Free-Trade Agreement to give assurances on the one hand that the United States, in bringing such a provision before GATT contracting parties, was not seeking to extend the provisions of the waiver granted to it in 1955 in order to apply Section 22 of its Agricultural Adjustment Act, on the other that Israel was not endeavouring to attract such a waiver to itself. Some members stated that, notwithstanding the provisions of Article 6 and the possible conclusions of the Working Party, in their view the Free-Trade Agreement in no way affected the terms of the United States waiver.

23. Some members of the Working Party, in view both of the length of the transitional period and of the doubts that subsisted in their minds as to the conformity of the Free-Trade Agreement with Article XXIV, suggested that the parties to the Agreement be requested to report regularly until the end of the transitional period on the operation of the Agreement. Some members thought that reporting should continue beyond the transitional period, particularly in view of the provisions of Article 6 of the Free-Trade Agreement. Members reserved their rights under the General Agreement.

24. The representatives of Israel and the United States reiterated their belief that the Free-Trade Agreement was fully in conformity with the General Agreement and the provisions of its Article XXIV and noted that other delegations agreed that this was one of the most comprehensive agreements to be brought under Article XXIV. It was not the intention, in Article 6 of the Free-Trade Agreement, to exclude a whole sector from the scope of the Agreement, nor did it do so. The representative of the United States stated that the intention in the provisions of Article 6 was to preserve her country's rights under the Waiver Granted in Connection with Import Restrictions Imposed Under Section 22 of the United States Agricultural Adjustment Act (of 1933) as Amended, but not to extend them. The representative of Israel stated that it was his understanding that the provisions of Article 6 of the Free-Trade Agreement did not grant Israel such a waiver. The parties to the Free-Trade Agreement believed that the transitional period of ten years was not unduly long by the standards of other such agreements and, in any case, most of the elimination and liberalization of duties would have occurred after four years of operation of the Agreement. They said that they could accept standard reporting procedures during the transitional period. As to reporting beyond the transitional period, they believed that they should follow the same practices as other regional agreements.

25. [At the conclusion of its examination of the Agreement, the Working Party noted the views expressed by members and that they reserved their rights under the General Agreement. It therefore felt that it should limit itself to reporting the opinions expressed during its discussions. It agreed to forward this report to the Council and recommended that the CONTRACTING PARTIES invite the parties to the Agreement, consistent with normal GATT practice, to furnish reports on the operation of the Agreement biennially until such time as its provisions have been fully implemented.]