

FREE TRADE AGREEMENT BETWEEN THE EFTA STATES AND TUNISIA

Questions and Replies

The following communication, dated 25 November 2008, is being circulated at the request of the delegations of the EFTA States and Tunisia.

This document reproduces the questions addressed to the Parties and the responses submitted.

Questions from the delegation of Chinese Taipei

General Provisions

1. According to paragraph 5 of the WTO Secretariat's Factual Presentation and the Preamble and Article 3 of this Agreement, we know that when ratifying the Agreement, Norway (one of the EFTA States) exempted the territory of Svalbard from the application of the Agreement with the exception of trade in goods in accordance with Article 3 and Annex 1.

- (i) Why does Norway want to exempt Svalbard from the application of the Agreement? In addition, what kind of special status does Svalbard have in Norway?**
- (ii) Is Svalbard also exempted from the application of the European Free Trade Agreement within the EFTA?**

The Svalbard archipelago (formerly Spitsbergen) is an integral part of the Kingdom of Norway. According to the provisions of the Treaty concerning the Archipelago of Spitsbergen of 9 February 1920, the nationals of Parties to the Treaty are entitled to equal treatment in the archipelago in a number of respects, e.g. in trade in goods. Norway has traditionally exempted the territory of Svalbard from the application of its free trade agreements, as otherwise it could be argued that the rights deriving from the agreement could be extended to the nationals of all the Parties to the 1920 Treaty. The same applies to the EFTA Convention in respect of Annex U thereof.

Safeguards

2. As regards bilateral safeguards, paragraph 44 of the Factual Presentation and Article 18.1 of this Agreement state that safeguard measures can be adopted when imports from another Party constitute a substantial cause of serious injury to the domestic industry of like products, or of serious disturbances in any sector of the economy, or difficulties which could bring about a serious deterioration in the economic situation of a region of the importing Party. We would appreciate some further clarification as follows:

- (i) **Why were these conditions chosen to be used in the bilateral safeguard?**
- (ii) **What is the definition of “substantial cause”, and the criteria used to justify this condition?**
- (iii) **How do you explain the situations of “serious disturbances in any sector of the economy” and “difficulties which could bring about a serious deterioration in the economic situation of a region of the importing Party”? What are their criteria for justification?**
- (iv) **What is the difference between these conditions and the requirement used in Article 2 of the Agreement on Safeguards, “... under such conditions as to cause...a serious injury to the domestic industry,” and what are the comparative benefits of using the former?**

Firstly, it must be emphasized that the text concerning the bilateral safeguard within the context of the Tunisia-EFTA Agreement is based on the text of Article XIX of the GATT 1994 and the WTO Agreement on Safeguards. Pursuant to Article 18 of the Tunisia-EFTA FTA, safeguard measures are indeed adopted on the basis of the relevant aforementioned GATT and WTO provisions.

The requirement that causality be essential reflects the preferential relationship created by the FTA and ensures that an adequate relationship of cause and effect exists between imports and injury, disturbances or difficulties.

The main criterion for imposing emergency measures on certain imports relates to the conditions that give rise to serious injury to the domestic industry of like products. Article 18.1 provides for other situations in which a bilateral safeguard measure may be applied, providing that all requirements are met. These situations concern "serious disturbances in any sector of the economy" and "difficulties which could bring about serious deterioration in the economic situation of a region of the importing Party". There are no lists of specific criteria to take into consideration when assessing these situations.

Questions from the delegation of Japan

Import duties and charges – General provisions

3. In Paragraph 14 of the Factual Presentation (WT/REG201/3), it is described that as agreed in Annex IV, Tunisia grants industrial goods originating in the EFTA States treatment no less favourable than that afforded to those originating in the European Community; and that should any change in the treatment of the EC occur, Tunisia would notify the EFTA States and provide them the opportunity to negotiate any improved treatment under the Agreement.

- (i) **Has any change in the treatment of the EC occurred and has any notification been made? If so, what are the changes?**

Since the entry into force of the association agreement establishing a free-trade area between Tunisia and the European Union, no changes have been made either to the provisions of the agreement or to the concessions exchanged between the two parties.

- (ii) **From the sentences cited above, we understand that EFTA States are entitled to receive treatments from Tunisia as favourable as those the EC receives regarding export of industrial goods to Tunisia. However, we also understand that negotiations are necessary. What are the purposes of these negotiations?**

Following communication with the WTO Secretariat, we wish to point out an error in paragraph 14 of the Factual Presentation. The Tunisia-EFTA FTA provides that Tunisia grants industrial products originating in EFTA States, covered by Annex IV, treatment no less favourable than that afforded to like products originating in the European Community. Tunisia has also undertaken to promptly notify the EFTA States of decisions relating to any change in the treatment afforded to the European Community for the products listed in paragraphs 1 to 4 of the Annex. The Joint Committee will adopt the necessary amendments to the said Annex without delay. No negotiations are necessary.

Import duties and charges – Agricultural Products (APs)

4. With reference to Paragraph 19 of the Factual Presentation, could the Parties provide us with updated information on periodic consultations?

Tunisia and the EFTA States have agreed to review the development of their trade in agricultural products within the framework of their respective agricultural policies and international obligations through periodic consultations aimed at finding appropriate solutions and possibly increasing concessions to improve bilateral trade relations. So far, no such consultations have been held.

Questions from the delegation of the United States

Goods liberalization

5. According to Annex 1 of the Factual Presentation, Table A.1:

- **Iceland eliminates duties on 93.6% of all tariff lines and 100% of imports from Tunisia under the agreement. However, though 100% of industrial goods tariffs are duty-free, only 70.2% of agricultural tariffs are duty-free under the agreement.**
- **Norway eliminates duties on 90.3% of all tariff lines covering 100% of imports from Tunisia under the agreement. However, though 99.7% of industrial tariffs are duty-free, only 55.2% of agricultural tariff lines are duty-free under the agreement.**
- **Switzerland eliminates tariffs on only 80.1% of all tariff lines covering 98.9% of imports from Tunisia under the agreement. However, though 99.7% of industrial goods are duty-free, only 21.9 % of agricultural lines are duty-free under the agreement.**

Similarly, according to Annex 1, Table A.2, Tunisia provides duty-free access to only 77% of its tariff lines. However, though 99.3% of industrial products are duty-free, only 1.7% of its agricultural tariffs are duty-free under the agreement. While there appears to be little trade between Tunisia and Iceland and Tunisia and Norway, only 71% of Tunisia's imports from Switzerland (based on value) become duty-free under the agreement (see page 7, chart D).

- (i) **How do the Parties explain the highly disproportionate liberalization between the industrial and agricultural sectors?**
- (ii) **Could the Parties please explain how their tariff elimination commitments achieve the “substantially all trade” standard set out in GATT Article XXIV?**

Response from Tunisia

Tunisia and the EFTA States undertook to establish a free trade area in accordance with Article XXIV of the GATT 1994. So far, this free trade area covers industrial products (HS Chapters 25 to 97) other than the products listed in Annex II, and "processed agricultural products" (such as are defined in Protocol A of the Agreement) and "fish and other marine products" (Annex III).

Under the Agreement, EFTA countries must abolish customs duties on the products in question upon the entry into force of the Agreement, and Tunisia will gradually eliminate them over a three-year transition period.

Three "bilateral agricultural protocols" have been concurrently concluded between Tunisia and Iceland, Norway, and Switzerland/Liechtenstein.

According to Article 4 of the Agreement, the agricultural protocols form part of the instruments establishing a free trade area between the EFTA States and Tunisia and they all provide for a strict parallelism with the Agreement with respect to entry into force and duration.

The "bilateral agricultural protocols" are based on a mutual exchange of concessions and cover a certain number of products classified in HS Chapters 01 to 24, within the framework of a positive list.

We would thus point out the absence of a definition, one generally accepted by the Members, of "substantially all trade".

On the basis of achievements in the 2002-2004 period prior to the signing of the Agreement, Tunisia and the EFTA States have proceeded as follows:

- Free trade arrangements in respect of industrial products (HS Chapters 25 to 97) other than the products listed in Annex II, and "processed agricultural products" (such as are defined in Protocol A of the Agreement) and "fish and other marine products" (Annex III) as indicated above; and
- special treatment for agricultural products, with the Parties to the Agreement periodically holding consultations to find appropriate solutions and, if need be, broaden concessions with a view to improving bilateral trade relations, within the framework of their respective agricultural policies and international obligations.

In any case, it should be noted that non-agricultural products represent 82.3 per cent and agricultural products 17.7 per cent of trade for the above-mentioned period.

EFTA's response

Liberalization of trade in the Agreement is the outcome of negotiations aimed at finding a balance between the specific interests and the sensitivities of the Parties concerned.

We would emphasize the absence of a definition, one generally accepted by the Members, of "substantially all trade". The "substantially all trade" standard concerns "trade", not imports and exports considered separately, and Article XXIV does not lay down any obligation to liberalize individual products or to liberalize an entire sector completely. For these reasons, the EFTA States believe that the FTA achieves the "substantially all trade" standard set out in GATT Article XXIV.

- (iii) **Please provide the average duty rate by HS chapter and HS section for the lines that remain dutiable.**

It is not possible to include the average customs duties by HS chapter and HS section as specific customs tariffs and in-quota duties used in several tariff lines are excluded from the calculations.

Government Procurement

6. According to paragraph 60 of the Factual Presentation, "[t]he Parties restate their objective to reciprocally and gradually liberalize their public procurement markets".

- (i) Do the EFTA countries cover the same government procurement under the FTA as they cover under the WTO Agreement on Government Procurement?**
- (ii) Please describe the government procurement that Tunisia is covering under the FTA?**

Government procurement under the FTA is that defined in Article 1 of Decree No. 3158 of 17 December 2002 regulating government procurement in Tunisia, according to which government procurement is in the form of written contracts, awarded by the public buyer with a view to the execution of public orders.

Contracts for the concession of public services, contracts of association, group contracts, subcontracting, or assistance contracts concluded between the public buyer and other partners with a view to the execution of a public or private order do not constitute government procurement within the meaning of Decree No. 3158.

Within the meaning of that Decree, a public buyer is considered to be the State, local communities, public establishments, non-administrative public establishments and public enterprises. Public orders are considered to be the execution of works, the supply of goods or services, and the conduct of studies pertaining to the order in question.

- (iii) Please describe how the FTA provides for the gradual liberalization of the public procurement markets of the Parties.**

The liberalization of the public procurement markets is provided for under Article 30 of the FTA between the EFTA States and the Tunisian Republic, which stipulates that "[t]he Parties shall set as their objective a reciprocal and gradual liberalisation of public procurement markets". The modalities for implementing this objective will be defined in common agreement between the two parties involved.
