

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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ASSOCIATION BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND TURKEY

Draft Report of the Working Party

1. At the meeting of the Council on 28 January 1974 (C/M/93) the CONTRACTING PARTIES were informed that on 30 June 1973 the European Communities and Turkey had signed the following instruments, copies of which were transmitted to the secretariat and subsequently circulated in document L/3980:

- Supplementary Protocol to the Association Agreement between the European Economic Community and Turkey consequent on the Accession of new Member States to the Community;
- Interim Agreement between the European Economic Community and Turkey consequent on the Accession of new Member States to the Community; and
- Supplementary Protocol on Products within the province of the European Coal and Steel Community.

2. At the meeting of the Council on 28 March 1974 (C/M/94) 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 supplementary to the Association Agreement between the European Economic Community and Turkey, signed on 30 June 1973, and to report to the Council." (L/4012/Rev.1).

3. The Working Party met on 25 and 27 September 1974 under the chairmanship of Mr. K.J. Tan (Singapore). It had available the text of the instruments cited above, referred to collectively herein as the "Agreement", as well as the replies by the parties to questions which had been asked by contracting parties (L/4068).

General issues

4. The representative of Turkey said that the Agreement was designed to extend the Association Agreement between the EEC and Turkey, signed in 1963, and the Additional Protocol thereto, signed in 1970, to the new Member States of the EEC, viz Denmark, Ireland and the United Kingdom, and contained the adaptation and transition measures which had become necessary upon the enlargement of the EEC. The Agreement followed the objectives of the earlier instruments, and was in full conformity with Article XXIV of the General Agreement as a further step towards the ultimate aim of Turkey to adhere to the European Union which was currently in the process of creation through the progressive establishment of a customs union with the EEC.

5. The representative of the European Communities stated that the Agreement consisted of adaptation and transition measures designed to make the earlier instruments applicable as between Turkey and the enlarged EEC. The Agreement, which conformed fully to Article XXIV of the General Agreement, in no way changed the substance of those instruments, both of which had earlier been submitted to the GATT procedures.

6. Some members of the Working Party, after expressing their sympathy with the objectives of the association between the EEC and Turkey, shared the view of the parties to the Agreement that it was in full conformity with Article XXIV of the General Agreement. One of these members said that the path the parties had chosen was the only one possible for the formation of a customs union between a developing country and a group of developed countries.

7. One member of the Working Party expressed doubts as to whether the Agreement was compatible with the General Agreement. While a twelve year transition period was provided for in principle, Article 11 of the Additional Protocol allowed for a period of twenty-two years for the elimination of basic duties on Turkish imports from the EEC for a substantial number of products described in Annex 3. Also, Article 19 of the Additional Protocol permitted Turkey, even after the twenty-two year period, to maintain customs duties vis-à-vis third countries higher than shown under the common customs tariff with respect to a certain number of products. Under these circumstances, although there did not exist in the GATT a clear definition of what constituted a reasonable length of time as required by Article XXIV:5(c) of the General Agreement for the formation of a customs union, it was difficult to agree that the present arrangement met that requirement. Moreover, no plan and schedule was specified for the elimination of duties on agricultural products, despite the requirements of Article XXIV:8(a)(i) that duties and other restrictive regulations of commerce be eliminated with respect to substantially all the trade between the parties. He observed further that the Agreement allowed Turkey to introduce quotas instead of re-introducing, increasing or imposing customs duties. (Supplementary Protocol, Article 3.) In the view of his delegation this amendment to Article 12 of the Additional Protocol would run counter to the purpose of the General Agreement by providing the opportunity for the adoption of measures more restrictive than customs tariffs. For these reasons his delegation tended to consider the Agreement as a preferential arrangement rather than as a step leading towards a customs union.

8. Another member of the Working Party said that his government favoured closer ties between Turkey and the EEC, and recognized their stated objective to reach a full customs union. His authorities continued, however, to have some reservations as to the GATT compatibility of the arrangement under the agreements between the parties as they now stood, because of the possibility of a discriminatory application or removal of quantitative restrictions and because of the length of the transition period.

9. Another member shared the specific views reflected in the preceding paragraph and added that his government was greatly concerned about the erosion of the most-favoured-nation multilateral trading system under GATT. The absence of a plan and schedule, the inadequate trade coverage and the undue length of time provided under the arrangement gave rise to doubts as to whether it was compatible with the General Agreement. His authorities appreciated the economic and planning problem faced by Turkey and that country's desire to work towards a satisfactory trading arrangement with the EEC, but hoped that the arrangement would be modified and brought into conformity with the General Agreement, not only from a legal view point but also because his country's exports were adversely affected by it.

10. In reply to doubts raised by two members of the Working Party, the representative of Turkey said that the terms of reference did not call for a re-examination of the earlier instruments, which had already been discussed in earlier working parties. Therefore, he did not wish to reiterate the answers previously given by his delegation to certain questions and doubts mainly concerning the Additional Protocol raised once more by some members of the Working Party. However, he wanted to stress again that since Article XXIV of

the General Agreement allowed the progressive formation of a customs union between developing and developed countries, the modalities and the time period foreseen in the Association Agreement and in particular in the Additional Protocol, were based on a realistic assessment of the difference between the levels of development of Turkey and the EEC. To require a shorter length of time for the process would only deprive Turkey of a possibility that was legally afforded to developing contracting parties.

11. After the general discussion set out above, the Working Party proceeded to an examination of the Agreement based on the questions and replies, as reproduced in document L/4068. The main points made during the discussion are summarized below.

Questions and replies

12. Some members of the Working Party noted that the removal of quantitative restrictions on a discriminatory basis was not permitted under the General Agreement. Their governments had always regarded this provision as a particularly important one, and therefore welcomed the last part of the reply to question 2 that Turkey would continue to fulfil its obligations towards third countries under GATT.

13. The representative of Turkey said that it was necessary to distinguish between the mutual obligations under a customs union and the obligations of the parties to the customs union towards other GATT contracting parties.

Article XXIV required the elimination of duties and other restrictive regulations of commerce with respect to substantially all the trade between the parties, whereas the obligations of Turkey towards third countries would continue to be fulfilled within the general framework of the GATT. In any case, Turkey did not

presently discriminate substantially between the European Communities and other countries in the field of quantitative restrictions, but the rules for setting up a customs union must nevertheless be considered in their proper framework.

14. Referring to the reply to question 4, one member of the Working Party sought an explanation as to why Turkey was entitled to introduce quotas instead of duties, if this provision was not a new safeguard measure in favour of Turkey.

15. The representative of Turkey explained that the right accorded to Turkey in Article 3 of the Supplementary Protocol, and which was also justified by the difference between the levels of development of Turkey and the EEC, constituted merely an alternative to a possibility foreseen in the Additional Protocol and was exceptional in nature. The right to introduce quotas could not be utilized as supplementary to the possibility of re-introducing, increasing or imposing customs duties, since the volume of importations which might become the object of these possibilities would remain constant. This volume, which represented only 10 per cent of imports from the EEC in 1967, concerned in any case quite a small amount, especially if the actual volume of trade and the trend of imports of Turkey from the EEC were taken into consideration.

16. The member of the Working Party who had raised the point stated that he was not fully convinced that the difference in levels of development between the parties had been so widened because of the enlargement of the EEC so as to make it necessary to introduce the use of quotas in addition to customs duties. Also, he expressed concern that such provisions might push backwards rather than forwards the formation of a true customs union by allowing the adoption of more restrictive measures.

Conclusions

17. Members of the Working Party expressed understanding for the considerations that had led to the Agreement under examination. Some members doubted whether the Agreement was in conformity with Article XXIV of the General Agreement and referred to the inadequate trade coverage, the unduly long transition period, the absence of a plan and schedule and the possibility of discriminatory application or removal of restrictive measures.

18. The parties to the Agreement, supported by several other members of the Working Party, held the view that the Agreement, which consisted of adaptation measures, conformed fully with Article XXIV of the General Agreement.