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GENERAL AGREEMENT ON TARIFFS AND TRADE

REPORT OF THE WORKING PARTY ON ASSOCIATION BETWEEN THE EEC AND CERTAIN NON-EUROPEAN COUNTRIES AND TERRITORIES

1. The text of the Decision of the Council of the European Communities of 29 September 1970 concerning the Association of the Overseas Countries and Territories of the European Economic Community was communicated to GATT and circulated to contracting parties in L/3467.

2. A Working Party, appointed by the Council at its meeting in February 1971, was instructed to examine in the light of the relevant provisions of the General Agreement the provisions of the Decision of the Council of the European Communities of 29 September 1970 concerning the Association of the Overseas Countries and Territories with the European Economic Community, and to report to the Council.

3. The Working Party met on 26 May and on 28 October 1971 under the chairmanship of Mr. E. von Sydow (Sweden). The following was the composition of the Working Party:

Argentina	Associated African and Malagasy States	Nigeria
Australia	Ghana	Norway
Brazil	Greece	Switzerland
Canada	India	Trinidad and Tobago
Ceylon	Indonesia	United Arab Republic
Chile	Israel	United Kingdom
Cuba	Jamaica	United States
European Communities and their member States	Japan	Yugoslavia

4. In order to facilitate the discussion, the EEC had provided the Working Party with certain statistical data on imports and exports by the overseas countries and territories, their external trade by origin and destination and their exports of principal products and imports by product groups (document W(71)1).

5. In an introductory statement, the representative of the EEC recalled that the Association was founded on the establishment of one free-trade area comprising the Community and the overseas countries and territories which, whether as autonomous countries or as dependent territories, had particular constitutional links with certain member States.

That free-trade area was characterized by continuity in the implementation of the principles and objectives of the Association of those countries and territories, as defined in the Rome Treaty.

The Decision of 29 September 1970, which defined for a further five-year period the modalities governing the Association, was fundamentally along the same lines as the Decision of 1964 which had already been examined by the CONTRACTING PARTIES. Differences which might be observed between the two texts were largely matters of form and presentation and only very occasionally involved changes of substance. The intention was either to supplement the provisions to take account of new developments in the context of the common agricultural policy since the earlier decision, or to bring certain provisions - such as the reciprocal safeguard clauses - into line with those set out in the Yaoundé II Convention. Similarly, Articles 11 and 12 of the Decision had been slightly altered to take account of changes made in the Yaoundé II Convention which permitted Associated States to conclude free-trade areas and customs unions among themselves. All those changes had been made with a view to avoiding differences in describing what were, in essence, similar instruments.

6. The representative of the EEC explained further that the dismantlement of the EEC tariff vis-à-vis the Associated non-European countries and territories had now been completed and that the concept of a plan and schedule for such dismantlement was therefore no longer topical. The Community did not impose any customs duties or other restrictive regulations of commerce on products imported from the countries and territories, with the exception of two products - sugar and rice - which did not receive full intra-Community treatment. Safeguard clauses were practically not applied on any product. As far as the overseas territories were concerned, neither customs duties nor quantitative restrictions were applied any more on goods imported from the Community. The overseas countries applied duty-free treatment. In the case of Surinam, a quota system was applied to some twenty products[1], which however, represented only a very small percentage of imports from the EEC. The Netherlands Antilles had applied in the last few months a system of licensing on imports from the EEC and from third countries alike. The system was not restrictive, however, nor could it be considered a regulation on trade; it was applied merely to enable the authorities to follow developments in trade. In the light of all those elements taken together, the representative of the Association underlined that the exceptions noted were negligible and did not bring into question the matter of free trade with respect to substantially all the trade. He concluded that the free-trade process negotiated in 1958 should be deemed to have been brought to completion in accordance with the provisions of Article XXIV.

7. Some members of the Working Party regretted that sufficient information of the kind called for under paragraph 7(a) of Article XXIV had not been provided by the Community prior to the meeting of the Working Party. Documentation available in advance did not state whether the parties considered a free-trade area had already been established or whether the arrangement was considered an interim agreement; there were no indications of trade coverage, or of the percentage of trade on which tariffs and quotas had been eliminated, reduced preferentially or maintained on a most-favoured-nation basis; nor was there any information in regard to the treatment of products subject to the Common Agricultural Policy and those included in Annex II of the Rome Treaty. They also regretted that no details had been provided before the meeting of the Working Party on the application of

[1] See page 7.

safeguard clauses, and reiterated the concern they had expressed during discussions on Yaoundé II on measures which could be taken on the grounds of development needs, and which could result in limitations on trade inconsistent with the letter and spirit of the provisions of Article XXIV of the General Agreement. These members stressed that in the absence of adequate information they were not in a position to make a definite judgment on the text of the Decision. They expressed the hope that the European Community would provide additional statistical and other relevant information.

8. The representative of the Association stated that he could not accept that the information furnished was inadequate. He recalled that full information concerning the character, objectives and modalities of the Association had been furnished and discussed when the earlier Decision had been examined in 1965. At the meeting of the Council in February 1971 the representative of the Community, when presenting the new Decision now under examination, had stated the Community's position concerning the situation of the Association in the light of the provisions of the General Agreement, and had emphasized in particular that the free-trade area had now been achieved within the meaning of Article XXIV:8. He pointed out, furthermore, that those members of the Working Party who required more information had not requested that the question and answer procedure usually followed should be applied in the present case. Be that as it may, the relevant information was available or resulted clearly from his introductory statement and from the statistics furnished The latter confirmed that free trade had been achieved with respect to substantially all the trade between the Community and the associated countries and territories. From the side of the Community, the only exceptions were in respect of sugar and rice which were not entirely duty free but were imported in negligible quantities from Surinam only; imports of petroleum products remained subject to the provisions of the 1964 Protocol but were in fact not subject to any restriction and the safeguard clause provided for those products had not been used. From the side of the associated countries and territories, the only exception to free-trade treatment was to be found in the quantitative restrictions applied by Surinam, under the safeguard clause, on about twenty products, e.g. powdered milk, cabbages and macaroni, which even in the absence of detailed statistics could represent only a very small proportion of imports from the Community. In conclusion, the percentage of trade on which duties and other restrictions had been eliminated as between the parties to the Association was very close to 100 per cent.

9. Some members indicated that their most recent information did not support the EEC contention that close to 100 per cent of EEC exports to the associated overseas countries and territories is duty free. One of the members pointed out, for example, that the most recent "Bulletin International des Douanes" available for Surinam clearly shows that Surinam has a simple two-column tariff schedule. A lower, preferential rate is applied to imports from the EEC while a higher rate is applied on a most-favoured-nation basis. This indicates that a preferential relationship, not a free-trade area, exists between Surinam and the EEC. This type of preferential relationship appears to exist with respect to arrangements between the EEC and other associated overseas countries and territories. On the basis of this information and the lack of evidence to the contrary, it sppears that the EEC-AOT arrangement is inconsistent with Article XXIV.

10. The representative of the Netherlands recognized that the presentation of the Customs Tariff of Surinam as published in the International Customs Bulletin (No. 60 - 7th edition - 1970-71) might indeed be confusing and lead to the interpretation on which certain delegations had based their reasoning.

In fact an accurate reading and interpretation of this presentation of the Surinam Tariff required that account be taken of the statement of the grounds (Toelichting) concerning the implementation of the new customs tariff of Surinam. The explanation provided by the statement of grounds indicated that the column entitled "EEC duties" represented in fact the level of the strictly fiscal levy on the item concerned, to which EEC products were subject on the same basis as third countries. Considering that the range of Surinam products was extremely limited and that such products were not imported in practice, the distinction did not raise fiscal levy problems. As to the column entitled "general duties", it represented the rates applicable to third countries which had been arrived at by adding up the revenue duty and the protective duty.

The preference in favour of the EEC related therefore to the full protective duty concerning all products on which a protective duty was levied, without any exceptions. The level of the protective duty, under the present presentation, comprising two columns in the Surinam Tariff, was the difference between the "general duties" and the "EEC duties" columns.

It would of course have been more precise to have a three-column presentation, including one column for fiscal duties, another column for general rates and probably one column relating to duties applicable to the Community, which would be in accordance with the structure of frontier levies.

The Government of the Netherlands was prepared to request the Surinam authorities to re-examine the question of the tariff presentation.

The representative of the Netherlands could not hold the view that the existence of revenue duties of general applicability was in any way a negation of the achievement of free trade between the EEC and overseas countries and territories.

The representative of the Association stated that the presentation of the Tariff of the Netherlands Antilles was correct, as it comprised two columns, one for duties regarded as being of a fiscal nature, the other for protective duties applicable only to third countries. No protective duty was provided in the case of the parties to the Association.

11. The members of the Working Party referred to in paragraph 9 above took note of this information. They recalled the views they had expressed during the recent examination of the Association with the African and Malagasy States with respect to the unreasonableness of interpreting "free-trade area" as meaning the reduction or elimination of a minor charge on imports from the EEC while other charges of much higher levels, having no counterpart in the internal taxes of these countries and territories, continued to be applied to imports from all sources including the EEC. They said that according to such information as they had, the preferential margin in favour of the EEC was established in some of these countries and territories by raising the level of duties applicable to third countries.

12. In reply to questions regarding the size and scope of fiscal charges in the associated countries and territories in relation to the import duties, the representative of the Association said it was difficult to give a general answer since the charges varied from country to country and territory to territory. In the case of the Netherlands Antilles, duty-free treatment had been introduced on 1 November 1970 along with a system of fiscal charges, but fiscal aspects were not relevant to evaluation of an agreement in terms of the provisions of Article XXIV:8.

The representative of the Netherlands Antilles stated that a new customs tariff was in course of preparation for that country and would be forwarded to the CONTRACTING PARTIES.

13. Some members of the Working Party, recalling that the parties to the Association had stated that the objectives of the agreements were to further the economic and social development of the associated overseas countries and territories, enquired how the parties to the Association reconciled that stated goal with the imposition of reciprocal preferences. The representative of the Association replied that the objective of the arrangement was not only to foster trade but also provided for technical and financial assistance, having regard to trade flows and their development, that assistance in fact was financing the trade deficit of the associated countries and territories vis-à-vis other countries. In any case, reverse preferences were arrangements flowing inevitably from the formation of a free-trade area.

14. One member of the Working Party asked whether the parties to the Association would eliminate quantitative restrictions not justified under the GATT on a most-favoured-nation rather than on a discriminatory basis. Some members felt that it was necessary to know the effects of the liberalization carried out by the parties to the Association on the trade of third countries. They felt that if the arrangements resulted in more stringent restrictions being imposed on other countries, such a development should be taken into account by the Working Party. They considered that quantitative restrictions applied towards third countries were covered by the terms of reference of the Working Party since they were specifically referred to in the Association agreement and were relevant to the provisions of the General Agreement, particularly Articles I, XI, XIII and

paragraphs 4, 5 and 7 of Article XXIV. The representative of the Association replied that, within the meaning of Article XXIV:8, elimination of quantitative restrictions between the parties to the Association had been achieved with respect to substantially all the trade. As to the question whether quantitative restrictions applied vis-à-vis third countries were justified, and what their incidence was, it was a matter relevant to the trade relations between each of the parties to the Association and third countries, and was not governed by the legal instrument establishing the free-trade area. That question could not, therefore, be examined under the terms of reference of the Working Party but was within the competence of any other GATT body more particularly concerned with such questions.

15. One member, commenting on the discriminatory liberalization of quantitative restrictions in various Association arrangements with the Community, recalled that Article XXIV:8(b) specified that quantitative restrictions should be eliminated except in cases provided for under Articles XI, XII, XIII, XIV, XV and XX. The representative of the EEC replied that under the provisions of Article XXIV:8(b), restrictions were required to be eliminated, except, where necessary, those permitted under those various articles.

16. One member of the Working Party pointed out that, according to the statistics contained in document W(71)1, exports from the EEC to the overseas countries and territories had been increasing during the past several years while exports from the overseas countries and territories to the EEC had been declining; that was a disquieting trend. The representative of the Association explained that the figures referred to reflected largely the re-exportation of imported crude petroleum by Curacao and Aruba which amounted to about one third of their total exports, and the effects of a series of military expenditures in French Polynesia.

Conclusions

17. The Working Party took note of the views expressed by various members. It noted that the Decision concerning the Association of the overseas countries and territories raised broadly the same kind of issues as had already been examined in the recent GATT examination of the provisions of the Yaoundé Convention. The representative of the Association considered that it fulfilled the requirements of Article XXI with respect to the establishment of a free-trade area between the EEC and certain overseas countries and territories. Some members declared themselves, on the basis of the information supplied, unable to reach a firm opinion on the case; they had, on the other hand, not stated that the basic requirements of Article XXIV:8(b) had not been met. Some members stated that on the basis of information available to them, the arrangement did not meet the requirements of Article XXIV:8(b) and therefore was inconsistent with the General Agreement.

SURINAM QUOTAS - LIST OF PRODUCTS

EEC quotas	Value in Sur. f.
Milk powder	1,500
Butter put up in packages of 500 grs. net or less	1,500
Fresh white cabbage	1,500
Coffee, whether or not roasted, except decaffeinated coffee	1,500
Extracts and essences of coffee and similar products based on coffee, other than decaffeinated coffee	1,500
Sugar, other than lump sugar, or sugar in pieces weighing each 5 grs. net or less	1,500
Vermicelli and macaroni	1,500
Wood in the rough, other than railway or tramway sleepers of virola wood	1,500
Wood, worked, other than veneers intended for the manufacture of furniture, doors, windows and chassis	1,500
Chairs and other furniture of metal, other than those intended for the equipment of offices, theatres, cinemas, hospitals, clinics, hotels, restaurants, cafés, libraries, clubs and other public rooms or for replacing or supplementing their furnishings	1,500

EEC and third countries quotas	EEC	Third countries
Decaffeinated coffee, extracts and essences of decaffeinated coffee and other products prepared therewith containing coffee	16,000	5,000
Salad oil and olive oil (litres)	24,000	7,000
Virola wood	p.m.	p.m.
Prefabricated wooden houses	1,000	500
Edible vegetable oils, n.e.s.	p.m.	p.m.
Women's outergarments, skirts, blouses and dresses	250,000	60,000
Boots and slippers with outer soles and uppers of rubber; canvas footwear with outer soles of rubber intended for sportswear; shoes and slippers for children of a size not exceeding No. 8 English corresponding to No. 25 French	160,500	40,500
Chairs of bamboo or wicker, other than those intended for the equipment of offices, theatres, cinemas, hospitals, clinics, hotels, restaurants, cafés, libraries, clubs and other public rooms or for replacing or supplementing their furnishings	66,000	16,500
Wooden chairs, other than those intended for the equipment of offices, theatres, cinemas, hospitals, clinics, hotels, restaurants, cafés, libraries, clubs and other public rooms or for replacing or supplementing their furnishings	56,000	14,000