

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/2265

1 October 1964

Limited Distribution

ASSOCIATION OF TURKEY WITH THE EUROPEAN ECONOMIC COMMUNITY

Report by Working Party

1. The Working Party was set up by the Council at its meeting of 28 May 1964 with the following terms of reference:

"To examine, in the light of the relevant provisions of the General Agreement, the provisions of the Agreement creating an Association between the European Economic Community and Turkey, and to report to the CONTRACTING PARTIES".

2. The Working Party met on 21-25 September 1964. It had at its disposal replies provided by the parties to the Agreement of Association to questions submitted by contracting parties (L/2251) in accordance with the procedures agreed upon at the twenty-first session (SR.21/9). The text of the Agreement is contained in document L/2155/Add.1.

3. The Agreement of Association was signed at Ankara on 12 September 1963. It is expected that it will enter into force in the near future.

4. In an introductory statement, the signatories of the Agreement recalled that the aim of the Association was to establish closer ties between the Turkish people and the peoples brought together in the Community. The final objective of the Agreement, notably by the institution of a customs union, is the accession of Turkey to the Community when the operation of the Agreement makes it possible to foresee the acceptance in full by Turkey of the obligations arising from the Treaty instituting the Community which go well beyond those of a simple customs union.

The provisions of the Association Agreement

5. Article 2 of the Association Agreement provides for the progressive establishment of a customs union according to conditions and procedures covering two stages, the first being referred to as the preparatory stage, and the second as the transitional stage. Articles 4 and 10 of the Agreement contain provisions relating to:

- (a) the tariff of the customs union, which will be that of the EEC;
- (b) the approximation of the trade regulations applied by Turkey towards third countries with those of the Community;
- (c) the application of a customs union régime to trade in goods generally between the EEC and Turkey. This régime will involve the elimination as between the partner countries of all customs duties and charges with equivalent effect and all quantitative restrictions.

6. During the preparatory stage, Turkey is required to strengthen and develop its economy with the assistance of the Community. The implementing provisions relating to the preparatory stage are defined in a Provisional Protocol and a Financial Protocol which are an integral part of the Agreement. Article 2 of the Provisional Protocol states that the member States of the Community are to open tariff quotas for imports of certain products from Turkey. It is stated that the duration of the preparatory stage will be five years; during that period the signatories will endeavour to draw up an additional protocol setting out the conditions, modalities and the rate of achievement of the transitional stage. If by the end of the fifth year it has not been possible to draw up the additional protocol the preparatory stage can be extended to ten years or more.

7. During the transitional stage the customs union defined above will be established progressively on the basis of reciprocal and balanced obligations. The duration of this stage will not be more than twelve years, subject to any exceptions which might prove necessary. In this respect, the representatives of the parties to the Agreement have stated that such exceptions might relate to certain sectors of trade within the framework of the latitude allowed by the words "substantially all the trade" in Article XXIV:8(a) or might involve an extension of the transitional stage for certain sectors without however exceeding the "reasonable length of time" foreseen in Article XXIV:5(a). The Agreement provides that when the final phase is reached, the customs union will be achieved.

Discussion

8. Two members of the Working Party were of the opinion that the Agreement provided for an indefinite period of preparation and that the time-table contained in the Agreement, which related only to the preparatory stage, could not be considered to constitute a plan and schedule of an interim agreement leading to the formation of a customs union within a reasonable length of time as required in Article XXIV of the GATT. The preparatory stage was, in the final analysis, of undetermined duration (see answer to question 15 in L/2251). Even when completed, it did not lead to the formation of a customs union but only to the initiation of a transitional stage, the details of which had still to be worked out (see Article 1:1 of the Provisional Protocol), and the duration of which was again not conclusively determined (see Article 4:2 of the Agreement). Further, the decision whether to proceed with the formation of the customs union is to be taken only at the end of the preparatory stage having regard to the economic situation of Turkey. The plan for a customs union, when it has been drawn up in the form of an additional protocol, (as provided in Article 1 of the

Provisional Protocol), would be appropriately examined in terms of Article XXIV:5 to 9. As the decision, under Article 23 of the Agreement to move to the transitional stage requires a unanimous vote, that is an affirmative vote by the parties to the Ankara Agreement, the tariff quotas to be established in the meantime for the benefit of exports of certain products from Turkey to the markets of the community constitute in the opinion of these members, a unilateral preferential arrangement. It was the view of one of these members that this has the effect of widening the area of discrimination against third countries and eroding their rights under the General Agreement. He suggested that it would be more appropriate to deal with this aspect of the Agreement by action under Article XXV:5.

9. The representatives of the Community and of Turkey considered that the provisions of the Agreement are not inconsistent with paragraphs 5 to 9 of Article XXIV. The Association Agreement, which must be examined as a whole, is an "interim agreement leading to the formation of a customs union" in the sense of Article XXIV:5. It contains a plan and a schedule. Thus, it provides that the preparatory stage, which will normally last five years, will be followed by the transitional stage which should not exceed twelve years in duration, subject to any exceptions which could not, however, prevent the completion of a customs union within a reasonable period. It is true that the preparatory stage might last longer than five years, and as a rather theoretical hypothesis, beyond a maximum period of eleven years, but the parties have provided for the adoption of appropriate measures to make such an extension improbable. As stated in the reply to question 15 in L/2251, in the event that the preparatory stage had to be prolonged the parties to the Agreement would observe the requirements of Article XXIV:7(c). Although the details regarding the approximation of the Turkish Customs Tariff with that of the Community and the progressive elimination of customs duties and other regulations affecting trade in goods between the partners have not yet been determined, so far as the transitional stage is concerned, the fact remains that Article 10 expressly and imperatively requires the progress to be completed. That Article, and Articles 2:2, 4 and 7 require the parties to the Agreement to establish the customs union. Furthermore, according to the representatives of the Community and Turkey the fact that Article XXIV:5 uses the words "interim agreement" indicates rather clearly that the "plan and schedule" need not necessarily be detailed and complete; the CONTRACTING PARTIES have examined other regional agreements which were also somewhat imprecise in this respect. As to the allegedly unilateral character of the arrangement the parties to the Agreement recalled that it was a case of an economic integration Agreement between parties at very different stages of development¹ and that such arrangements are rightly characterized by a certain imbalance in the obligations undertaken during their formative period. As regards the achievement of the customs union within a reasonable period the parties to the Agreement recalled that the CONTRACTING PARTIES themselves had recognized that in considering the time required for the definitive establishment of a customs union, account should be taken in each case of the characteristics of the economies of the countries concerned. Moreover, as in the implementation of the Rome Treaty, the various stages will, if possible, be accelerated. For these reasons the parties to the Agreement consider that they have respected the letter and the spirit of GATT.

¹It will suffice to recall that Turkey's gross national product per capita amounts to \$209, as compared with \$1,296 within the Community (1962 statistics).

10. The representatives of the parties to the Agreement gave an assurance that the text of the additional protocol, when this is drawn up, will be communicated to the CONTRACTING PARTIES under paragraph 7(c) of Article XXIV.

11. The representatives of the parties to the Agreement informed the Working Party that the duties in the Turkish tariff are now on the whole considerably higher than those of the common external tariff and that the alignment of Turkish duties on this tariff will therefore result in a lowering of the general incidence of the Turkish duties. Hence the requirements of Article XXIV:5(a) in this respect will be observed. Further, the common external tariff is subject to reduction during the GATT trade negotiations now in progress. If for some items on which the Turkish duties are bound under the GATT the alignment should result in an increase, compensation would be negotiated in keeping with the provisions of the General Agreement. The parties to the Agreement stated that it could be expected that the same process of lowering trade barriers would occur in the fields of the "other regulations of commerce" referred to in Article XXIV:5(a), in particular with respect to quantitative restrictions imposed for balance-of-payments reasons. Other members of the Working Party pointed out that the provisions of Article XXIV:5(a) also cover barriers to trade in agricultural commodities and that the common agricultural policy of the Community had not yet been fully established.

12. In connexion with the tariff quotas, specified in Article 2 of the Provisional Protocol, the representatives of the parties to the Agreement informed the Working Party that these are slightly lower than the average of imports of the products into the respective member States from Turkey in 1958-60. At the request of a member of the Working Party, the representative of the Community agreed to provide a statement setting out the present duties levied on these products by the member States of the Community. This statement will be circulated later as an addendum to this report. In reply to questions, the representative of the Community said that it was not possible to foresee what increases might be made in these tariff quotas, or what new quotas or other measures might be adopted in accordance with the provisions of Articles 4 and 6 of the Provisional Protocol; but the basis on which the existing tariff quotas had been drawn up could be an indication of the way in which these matters would be dealt with during the preparatory stage.

Interests of third countries

13. Several members of the Working Party urged that, during both the preparatory and the transitional stage, the parties to the Agreement should take into account the commercial interests of third countries so that the traditional markets which these countries have enjoyed in Turkey and in the member States of the Community would not be lost or injured. There might be occasions during the implementation of the Agreement when they would wish to consult on such matters with the parties to the Agreement under GATT procedures. Several members recalled their special concern as to the possible effect of any increases in the tariff quotas, under Article 4 of the Provisional Protocol, and of the establishment of tariff quotas or the taking of other special measures, under Article 6 of that Protocol, to promote exports of yet other products from Turkey to the markets of the Community.

One member of the Working Party expressed the view that the Agreement should not be brought into force until such time as adequate protection is afforded for the trade interests of third countries. In this connexion, he expressed his Government's concern that the tariff quota fixed for one of the products mentioned in Article 2 of the Provisional Protocol, would adversely affect the export of this product from his country and he informed the Working Party of his Government's intention to seek consultations designed to find constructive solutions to mutual problems.

14. The representatives of the Community and Turkey recalled that the Agreement of Association does not provide for any increase in the common external tariff and expressed the view that the acceleration of the development of the Turkish economy, during the preparatory stage and later, would in fact benefit third countries by providing expanding opportunities for trade. They gave an assurance that, in accordance with their obligations under the GATT, all relevant information on tariff quotas and other measures taken during the implementation of the Agreement will be made available to the CONTRACTING PARTIES and that their governments will be prepared to consult with contracting parties on matters affecting the operation of the General Agreement as required by Article XXII.

Conclusions

15. Members of the Working Party expressed their sympathy with measures to promote the economic development of Turkey. Some members seriously questioned whether the Agreement could be approved by the CONTRACTING PARTIES as constituting an interim agreement leading to the formation of a customs union. One of these members said that, in the opinion of his delegation, if the CONTRACTING PARTIES were to decide that the Agreement was not in conformity with the relevant provisions of Article XXIV, then the provisions of paragraph 7(b) of that Article should apply. Some members had serious misgivings with respect to the effects of the Agreement on their own interests.

16. Other members of the Working Party considered that they needed more time before they could voice an opinion regarding the Agreement, while some refrained from making any general observations preferring to wait until the next session of the CONTRACTING PARTIES.

17. The representatives of the EEC and Turkey, who considered that the Ankara Agreement is not incompatible with the provisions of Article XXIV:5 to 9 of the General Agreement, emphasized that the Agreement had many points in common with other regional arrangements already considered by the CONTRACTING PARTIES and that, moreover, the Agreement did not seem likely to damage the interests of third countries.

18. In these circumstances, the Working Party considered it appropriate to confine its report to recording the information, clarifications and arguments which have been put forward so that governments may be given an opportunity to consider the matter fully. The Working Party accordingly recommends that the CONTRACTING PARTIES should consider the Agreement creating an Association between the European Economic Community and Turkey in the light of this report.

