

TURKEY - CONSULTATION UNDER ARTICLE XXII:2

Report of Working Party adopted on 28 March 1966 (L/2465)

1. The terms of reference of the Working Party were "to carry out, under the provisions of paragraph 2 of Article XXII, a consultation in respect of the following question raised by the United Kingdom:

'The application by Turkey of Article XXIV:5 (a) and of Article XXIV:6 when, in the course of forming a customs union with the Euro- pean Economic Community, the Turkish Government reduces its tariff in successive stages towards the Community on the one hand and towards other contracting parties on the other'."

2. The Working Party met under the Chairmanship of Mr. Donovan (Australia) on 14 and 15 June and on 16 July 1965.

B. Opening statements of the position of the United Kingdom and Turkey

3. The representative of the United Kingdom recalled that, under a waiver, dated 22 August 1964, the Turkish Government was imposing duties on a number of imports in excess of rates bound to contracting parties to the General Agreement. It was in the meantime seeking to negotiate release from these concessions in accordance with Article XXVIII. The increases involved were sizeable; but the United Kingdom delegation wished to emphasize that there was full and sympathetic understanding of the development needs which had prompted the Turkish Government to make these increases and the United Kingdom authorities were not challenging the right of Turkey to seek negotiations with the object of securing appropriate protection for Turkish industry.

4. In February 1964, the CONTRACTING PARTIES had been notified of the terms of the Ankara Agreement, concluded between the Turkish Government on the one hand and the European Economic Community on the other, as an interim agreement preparatory to the formation of a customs union between the two parties.

5. The coincidence of these two sequences of events raised a point on which the United Kingdom and, it could be assumed, the rest of the contracting parties, would need clarification.

6. Bearing in mind the purpose of the Ankara Agreement, in the face of the tariff increases sought by Turkey what would be the position of contracting parties vis-à-vis each other as competitors in the Turkish market? So long as Turkish industry needed increased protection, would all contracting parties find themselves on an equal footing? It appeared to the United Kingdom delegation that it would be difficult to persuade any traders that these increases were justifiable if it became apparent that some of their competitors were in any sense to share the benefit with Turkish industry of new high levels of protection. This would be the case if Community exporters entered the Turkish markets at privileged rates while other contracting parties found themselves excluded by increased rates maintained on the grounds that Turkish industry was still not ready to lose the shelter which they afforded.

7. It was, therefore, important to know at what point and by what stages the Turkish Government intended to begin and to carry through its programme of aligning its external tariff to the common

external tariff of the Community and to reduce its tariff on imports from Community sources to zero.

8. The United Kingdom delegation naturally did not contest that a point would be reached when a preference would open up between the two rates. Since, however, it was its understanding that the present increases in the Turkish tariff had been made only as a protection for Turkish industry, it suggested that Article XXIV would be appropriately applied if the preference did not begin to appear until the most-favoured-nation rate had, by whatever stages Turkey had found appropriate, returned to the present bound rates.

9. The representative of Turkey said the basis of the United Kingdom case seemed to be that there was some link between the Agreement of Association and the revision of the Turkish tariff and therefore between the operations of Articles XXIV and XXVIII. In fact there was no such link; the closeness of the two events in time was a matter of pure coincidence.

10. The revision in the Turkish tariff was part of a general fiscal reform to meet the requirements of the Turkish Development Plan and an expert study of this by the Government had begun some considerable time before. Parliamentary action on the proposals submitted by the Government following this study had been slow and this was why the relevant legislation was, in the end, passed only in May 1964. The Turkish tariff came into force thereafter and the Turkish Government was, in August 1964, granted a waiver to authorize it to apply the new tariff before the conclusion of the necessary renegotiations under Article XXVIII. The new tariff, which included the compensatory adjustments proposed by the Turkish Government, applied to all countries, including those of the EEC.

11. In the meantime negotiations had been taking place with the Community, and the Agreement of Association had been signed in September 1963 but did not come into force until December 1964. From the legal point of view, the latter was the relevant date since until then the Ankara Agreement had no legal basis. The Turkish tariff had been modified and the waiver sought and granted well before that date.

12. As far as negotiations under Article XXVIII were concerned, Turkey had made, since November 1964, several approaches to the contracting parties which have had initial negotiation rights and endeavoured to bring negotiations to a mutually satisfactory conclusion. However, Turkey had encountered certain difficulties in negotiating with some of the industrialized countries, chiefly because of the fact that there existed great imbalances between concessions granted by Turkey and those received in return.

13. In the view of the Turkish Government, therefore, the provisions of Article XXIV were not relevant to the increase in the Turkish tariff and the only relevant provisions were those of Article XXVIII. The Turkish Government recognized its obligations under Article XXVIII and was prepared to meet them, but it was not prepared to assume additional obligations under Article XXIV arising out of considerations which it regarded as having no legal basis.

14. On this last point, the representative of the United Kingdom explained that it was not the United Kingdom's intention to ask the Turkish Government to assume new obligations. He had made a suggestion about the circumstances in which (though not the time when - this was entirely a matter for the Turkish Government) a preference in favour of imports from the Community might begin to appear in the Turkish tariff; but the main objective was to find out what Turkish intentions in fact were in this respect, since, without knowing these intentions, the United Kingdom could not form a view of what was,

in its view, at issue in the Article XXVIII negotiations or what was the value to be placed on the offer Turkey had made in the Kennedy Round.

C. Discussion in the Working Party

15. The representative of one member of the Working Party said that he had always assumed that the Turkish Government would in fact do what was suggested by the United Kingdom, that is that it would reduce the recently increased rates of duty to the pre-existing levels before opening a preference in favour of Community suppliers. In his view it was not possible to argue that, on the one hand, Turkish industry needed increased protection but that, on the other hand, it was possible for Turkey at the same time to give tariff preferences to a group of countries with a highly competitive and diversified export trade.

16. The representative of Turkey pointed out that the increase of the Turkish tariff could not be appreciated out of the context in which this measure had been taken. The tariff increase was only one feature of the long-term development plan which, as appeared from the Turkish submission for the waiver, was intended to accelerate economic growth, raise levels of employment and ensure economic stability, and the maintenance of balance-of-payments equilibrium, thus enabling Turkey to reduce reliance on direct import controls. He did not share the view that a contracting party which was in balance-of-payments difficulties and needed protection for its economy could not grant preferential tariff treatment; indeed there were many such instances among contracting parties in GATT. Moreover, the representative of Turkey said that Turkey was quite conscious of its own interest and would naturally act in accordance with the requirements of its economic development, but as sovereign State, Turkey strongly felt that no further guidance was required in this context.

17. Some other members of the Working Party pointed out that, while there may have been no connexion in intent between the Ankara Agreement and the tariff increase, in terms of practical effect the connexion existed and the way in which Turkey eventually moved towards customs union with the Community was of great interest to third countries, particularly in respect of duty rates on items presently bound in Schedule XXXVII of the General Agreement. These representatives found the United Kingdom suggestion an appropriate one.

18. Referring to the mention of Article XXIV in the terms of reference of the Group, the representative of the EEC enquired as to what juridical basis in the GATT could be invoked for asking to the Government of Turkey to accept a proposal whereby it would renounce rights which it had under Article XXIV. The provisions of this Article did not impose on members of a customs union any obligation with respect to the time relationship to be observed between the adoption of the common external tariff and the movement towards free trade within the union. It appeared to him that, by asking the Turkish Government not to introduce preferential tariff treatment on certain items before a certain stage had been reached, the United Kingdom was in fact asking Turkey to assume new obligations which would restrict the freedom of action to which it was legally entitled under Article XXIV. He recalled that the increase in the Turkish tariff would be a temporary one since this tariff would, under the Ankara Agreement, be reduced to the level of the common external tariff of the Community and he noted that whereas the United Kingdom proposal contained in paragraph 8, if accepted, would prevent Turkey from introducing differential tariff treatment on certain items until the temporary increases had been eliminated, the United Kingdom, which imposed a surcharge which was also temporary, had not stopped

the process of dismantling its tariffs within the framework of the EFTA arrangements until this surcharge was eliminated. The representative of the Community added that there was nothing unique about the coincidence between the Agreement of Association and the increase in the Turkish tariff; the increase in the Portuguese tariff at the time of the coming into force of the Stockholm Convention setting up the EFTA was another instance of such coincidence.

19. In reply to a question, the representative of the EEC explained that, except as provided for in the Ankara Agreement, the text of which had been submitted to and examined by the CONTRACTING PARTIES, the parties to it had complete freedom of action on the matter examined by the Group.

20. Some other members of the Working Party did not agree that the examples mentioned by the representative of the Community were relevant to the present issue. Among the points they made was that, in the case of Portugal, there was no question of bound duties; and in the case of the United Kingdom surcharge, what was at issue then was a very temporary measure introduced as an alternative to quantitative restrictions for solely balance-of-payments reasons.

21. There was some discussion in the Working Party of what the expectations of traders in the EEC could have been when the terms of the Ankara Agreement were finalized. The Working Party noted that, at that time, EEC traders could not have expected to enjoy preferences larger than could be given under the Turkish tariff as it stood before the recent increase.

Conclusions

22. The representative of Turkey said that his Government, although it maintained its previous position, had felt that a further effort should be made in order to foster goodwill and better understanding amongst contracting parties and in that spirit, and guided by the principle of equity, it had authorized him to offer the incorporation into agreements reached in the renegotiations under Article XXVIII of the following declaration:

"The Turkish Government, having taken note of the problem raised by the United Kingdom delegation with respect to items previously bound, rates on which have been increased in the new Turkish tariff, declares herewith that, without prejudice to any rights which accrue to Turkey under the General Agreement, it will give due consideration to the equitable rights of contracting parties who are not members of the Ankara Agreement when it comes to implementing differential tariff treatment in favour of the EEC on these items."

23. The Working Party noted this statement.

24. With reference to that part of the declaration which explained that it was without prejudice to any rights which accrued to Turkey under the General Agreement, the Chairman said that it was his understanding that the declaration was without prejudice to the rights of contracting parties generally under the GATT.

25. Taking note of the declaration which the Government of Turkey envisaged to make on the completion of the negotiations under Article XXVIII, the representative of the EEC considered that the declaration was not incompatible with the provisions of the Ankara Agreement and he was glad to see that the solution had allowed the Working Party to fulfil its task.

26. The Working Party agreed that it could now report that the consultation it had been asked to

carry out had been concluded.