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EURO-MEDITERRANEAN AGREEMENT BETWEEN THE EUROPEAN COMMUNITIES AND TUNISIA

Questions and Replies

This document reproduces questions addressed to the Parties and the responses submitted. The questions and replies set out below are organized in accordance with documents WT/REG69/2.

I. BACKGROUND INFORMATION ON THE AGREEMENT

1. Membership and Dates of Signature, Ratification and Entry into Force

1. Tunisia provisionally applied the Agreement as of 1 January 1997, but the Agreement was not notified until later. Why did Tunisia not notify it at the time of provisional application?

The Agreement was notified to the WTO in January 1999, following the completion of the ratification process in January 1998 and its entry into force in March 1998. There was no provisional application of the Agreement: only the provisions on tariffs, not the full Agreement, were applied (by Tunisia) in advance of March 1998.

2. Was a mechanism put in place by Tunisia to collect interim duties that would have been owed if the treaty had not been ratified? Did the circumstances amount to provisional application of the Agreement? How do the Parties explain the situation where one Party implemented the Agreement but not the other? Why were tariff preferences granted unilaterally to the European Communities (EC) not applied on an MFN basis?

There was no decision by the Parties to implement the Agreement provisionally from January 1997. Tunisia decided, for internal reasons, to eliminate duties ahead of schedule, in order to stimulate the dynamism of its domestic economy. The EC/Tunisia Co-operation Agreement of 1976 remained in force until the entry into force of the Euro-Mediterranean Agreement on 1 March 1998, following completion of the ratification process.

3. Scope

3. According to the Understanding on Article XXIV, implementation periods for free trade areas (FTAs) should not exceed 10 years except in exceptional circumstances. The transitional period foreseen in this Agreement is a maximum of 12 years from the date of entry into force of the Agreement. How do the Parties justify this?

The rationale for the transitional period of 12 years lies in the sharp difference between the respective levels of development of the EC and Tunisia. The Barcelona process¹ provides the overall framework for the development of the partnership agreements between the EC and the countries of the Mediterranean basin and recognizes the need to allow for progressive establishment of the FTAs, which form an important element of this desired partnership.

On the EC side, all market opening under the Agreement takes place immediately (except for some concessions on agricultural products which are implemented progressively by 1/1/2000). In view of the level of development already achieved in Tunisia, market opening towards imports from the Community is slower, lasting in some cases up to 12 years. A transitional period of this length is necessary to allow Tunisia to deal progressively with the economic and social consequences linked to the process of economic liberalisation and market opening under the FTA.

The Parties consider that these factors fully justify the length of this transitional period.

4. Can the Parties please describe and identify the Harmonized System (HS) Chapter numbers of the products falling under the 12-year transition period, and the volume of trade covered?

Products falling within the 12-year transition are listed in Annexes 4 and 5 of the Agreement. Annex 4, under which tariff elimination takes place progressively over a period of 12 years from entry into force of the Agreement, covers 1509 tariff positions at seven-digit level and concerns products which enjoy a certain level of competitiveness against like European products. Over the period 1996-98 average imports of these products were about 502 million dinars. Annex 5, under which tariff elimination takes place progressively over a period of eight years beginning four years after entry into force, covers 1188 tariff positions at seven-digit level and concerns products which need to reach a higher level of competitiveness before exposure to competition from like European products. Over the period 1996-98 average imports of these products were about 476 million dinars.

5. Are there any products on which the EC has a transition period longer than 10 years? If yes, with what justification?

No. Under Article 9 of the Agreement all tariffs on imports of industrial products into the EC from Tunisia are eliminated at entry into force. Specific concessions made on agricultural and fisheries products are found in Protocols 1 and 2. These concessions also apply from entry into force. For some products covered by Protocol No 1, growth rates are built in to tariff quotas or reference quantities, but these cover the period up to 2000 only (i.e. less than ten years). Tariff quotas or reference quantities are increased in four equal instalments each corresponding to 3 per cent of these amounts from 1 January 1997 to 1 January 2000. These increases were applied retrospectively from the date of entry into force of the Agreement.

We note that some of the products will be subject to liberalization in a time-frame longer than ten years. We would be grateful for an explanation of the reasons for the extended time-frames and the items involved.

The parties to the Agreement have provided replies to questions concerning the exceeding of the ten-year period provided for by the Understanding on the Interpretation of Article XXIV of the GATT on territorial application, frontier traffic, customs unions and free trade areas (c.f. Section I/paragraph 13 of WTO Secretariat document WT/REG69/M/1, dated 26 July 1999).

¹ The Barcelona process was launched at the Euro-Mediterranean Conference held in Barcelona on 27/28 November 1995.

The products falling within the 12-year period for tariff elimination are listed in Annexes 4 and 5 of the Agreement.

Annex 4, under which tariff elimination takes place progressively over a period of 12 years from entry into force of the Agreement, covers 1,509 tariff positions at seven-digit level and concerns products which enjoy a certain level of competitiveness against like European products. Over the period 1996-1998 average imports of these products were about 502 million dinars.

Annex 5, under which tariff elimination takes place progressively over a period of eight years beginning four years after entry into force, covers 1,188 tariff positions at seven-digit level and concerns products which need to reach a higher level of competitiveness before exposure to competition from like European products. Over the period 1996-1998 average imports of these products were about 476 million dinars.

4. Trade Data

6. Could the Parties provide further trade data on the different products covered by liberalisation under the agreement, including the individual annexes and protocols? How much trade is covered by each subdivision? Could the Parties provide information on the proportions of MFN trade; less-than-MFN-trade; and duty-free trade for agricultural, industrial and total trade?

All trade between the Parties in industrial products (HS Chapters 25-97) will be liberalised by the end of the transitional period, with the possible exception of imports into Tunisia of products falling under Annex 6. The Parties have undertaken to examine future arrangements concerning Annex 6 products four years after entry into force of the Agreement. Imports into Tunisia in 1998 of all products on the Annex 6 list were of a value of 31 million ECU, representing roughly 0.3 per cent of total bilateral trade in that year. Total bilateral trade in HS Chapters 25-97 represented 93.3 per cent of total trade in 1997 and 94.1 per cent in 1998. Taking into account the trade liberalisation also undertaken in respect of trade in agricultural and fisheries products, the Parties are of the opinion that the statistical data already presented demonstrates that the Agreement meets the "substantially all the trade" coverage test of Article XXIV:8(b).

7. We welcome the data provided by the Parties. We would also be grateful for advice of what percentage of trade for each major sector (e.g. industrial, fisheries, agriculture) of trade between the parties (for each party):

- **has the duties eliminated and other regulations of commerce (such as quotas) eliminated?**
- **is given concessions (rather than having duties and other regulations of commerce removed) or is excluded?**

For industrial products:

- Exports from Tunisia into the European Union are completely free since the Cooperation Agreement entered into force;
- imports into Tunisia from the European Union are subject to progressive liberalization over a period of 12 years.

The following table provides information concerning exports of agricultural and fishery products from Tunisia into the European Union (in millions of dinars):

Products	1997	1998	1999	Average
Products free of customs duties or tariff quotas	426.9	402.6	511.7	447
Other products	23.1	18.4	30.3	24
Total	450	421	542	471
Percentage share of products free from customs duties or tariff quotas	94.86%	95.63%	94.4%	94.9%

II. TRADE PROVISIONS

1. Import Restrictions

7. Tunisia maintains quantitative restrictions on the import of automobiles, which were subject to a phase-out plan under the supervision of the Committee on Balance-of-Payments Restrictions. How are these measures applied against the EC since the introduction of their FTA in 1997?

The abolition of quantitative restrictions vis-à-vis the EC was in line with WTO provisions; quantitative restrictions imposed for balance-of-payments reasons also applied to the EC.

3. Rules of Origin

8. Please give a more complete description of the operation of the rules of origin regime. Given that there were cumulation provisions for work carried out in the EC, Algeria, Morocco and Tunisia, what was the rationale for cumulation with Algeria, as no FTA was currently in force between the EC and Algeria? Were there any countries other than the EC, Algeria, Morocco and Tunisia for which products received originating status under the Agreement? If so, identify them.

Since 1978, the agreements which have linked the EC with the Maghreb countries (Algeria, Morocco and Tunisia) have already allowed for identical rules of origin which included provisions on cumulation. The negotiations for a new generation of agreement have led to the conclusion of Euro-Mediterranean Agreements between the EC and Morocco and between the EC and Tunisia. But as yet only the EC/Tunisia Agreement has entered into force. Cumulation remains possible for any products which have identical rules of origin subject to the provisions contained in all the agreements presently in force.

9. Section III.5 of the Standard Format (WT/REG69/2) stated that if Tunisia concluded FTAs with other Mediterranean countries, the EC was "ready to envisage" cumulation of origin in its trade with these countries. Please explain the phrase "ready to envisage cumulation".

Parallel to what has been done with the countries of Central and Eastern Europe the EC has undertaken work to harmonize the rules of origin which govern trade with the countries of the Mediterranean. It is eventually envisaged to establish a "pan-European-Mediterranean" system of cumulation, in which the Community and all its Mediterranean partners would participate. For this system of cumulation to be achieved, which would depend on the use of identical rules of origin, a certain amount of work will be called for. Hence the declaration of the EC in this Agreement on its readiness to envisage future cumulation.

10. We understand that Egypt and Tunisia have a FTA. The EC is advanced in its negotiations for an agreement with Egypt. Is it correct, however, that cumulation between Egypt and Tunisia with regard to the EC is ruled out at the moment?

The only possibility for cumulation between the EC and Tunisia is that set out in the Association Agreement. Cumulation between Egypt, Tunisia and the EC would be subject to the rules on “pan-European-Mediterranean” cumulation, in which the EC and all the Mediterranean countries also signatories of the Barcelona declaration would participate.

11. How does the cumulation of origin for products coming into the Mediterranean fit within the pan-European system of cumulation? To what extent was additional processing required for such products to become European-origin products? Could the parties clarify the relationship between the cumulation provisions applied to the bilateral agreements between the EC and Mediterranean countries and how the agreements would fit into the overall European system?

The system of pan-European cumulation applies between the EC, EFTA, the Central and Eastern Europe countries and the Baltic countries. The Mediterranean countries do not participate in this system. In order to be considered as Tunisian or EC products and thereby entitled to benefit from preferences under the Agreement, products imported into Tunisia or the EC must undergo sufficient working or processing in the sense of Article 7 of Protocol No. 4. For any product imported into Tunisia from one of the countries of EFTA, Central and Eastern Europe or the Baltic countries, its origin will be determined by the legal framework under which the importation takes place.

4. Standards

12. To what extent has Tunisia already adopted European technical standards?

At present Tunisia adopts national standards on the basis of international standards or, where these are lacking, on the basis of European standards. In the absence of Tunisian standards, international standards are applied and, where these are lacking, European standards are applied.

5. Safeguards

13. It is stated in the Standard Format (WT/REG69/2) that, in the case of safeguard measures taken to protect infant industries, Tunisia is allowed to increase or re-introduce customs duties. What is meant by an increase or re-introduction of customs duties? Would it be possible to raise relevant duties above the rate at the time the Agreement was signed; to the MFN rate at the time the Agreement was signed; or to some rate in between them?

Pursuant to Article 14 of the Agreement, Tunisia is allowed during a transitional period, and in exceptional circumstances and provided that certain conditions are met, to increase or reintroduce customs duties which have been reduced or abolished pursuant to Article 11 of the Agreement. Such increased or reintroduced duties may not exceed 25% ad valorem and shall maintain an element of preference for products originating in the EC.

14. Have safeguard measures ever been applied under the Agreement? If so, when, how, and on what products? How would the Parties apply the global safeguard provisions set out in the WTO Agreement on Safeguards: is there a possibility that Parties could exclude each other from the application of a safeguard measure or maintain preferential rates vis-à-vis another Party in the face of a global safeguard action by one of the Parties?

No safeguard measures have yet been applied under the Agreement. The Agreement does not contain any provisions which affect or prejudice the Parties' rights and obligations under the WTO Agreement on Safeguards.

15. Can the Parties confirm that if any Party to the Agreement took a safeguard action under the WTO Agreement, such action would be applied equally to the other Party as well as to all other Members of the WTO?

The Agreement does not affect or prejudice the Parties' rights and obligations under the WTO Agreement on Safeguards.

16. Are the safeguard measures envisaged under the Agreement (Articles 25-27) consistent with the provisions of the WTO Agreement on Safeguards or are the conditions for the demonstration of serious injury and serious disturbance different from those of the WTO Agreement on Safeguards?

The safeguard provisions of the Agreement are consistent with the provisions of the WTO Agreement on Safeguards. As regards safeguard measures, it should be noted that no such measures have been applied until now under the Agreement.

With regard to safeguards, including Article 25, what criteria are to be used to determine whether a "serious disturbance" is being caused and what are the "appropriate measures" to be used? Can the contracting Parties give assurances that such measures would be WTO consistent, and would not prejudice the rights of non-parties to this agreement?

Tunisia has not applied any safeguard measures in trade relations with the European Union.

The criteria to be used to determine the existence of serious injury are those contained in Article 4 of the WTO Agreement on Safeguards. The "appropriate measures" referred to in Article 25 of the Cooperation Agreement are consistent with the provisions of Article 5 of the Agreement on Safeguards and will be applied to imported products whatever their origin.

As regards safeguard measures, the Cooperation Agreement does not contain any provisions for measures whose application might prejudice the safeguard-related rights of WTO Members that are not party to this Agreement.

8. Sector-Specific Provisions

8.2 Agricultural and fisheries products

17. When would any tariff rate quotas (TRQs) for agricultural and fisheries products be completely liberalized, given that the TRQs entered into force immediately and the size of the quotas were increasing? Was there a schedule for periodic increases in the size of the tariff quota and changes in the rates? If so, did any of those periods run beyond 10 years?

The Agreement establishes a process aiming at a greater liberalisation of the Parties' reciprocal trade in agricultural and fishery products. The first stage of this process runs until 31 December 2000. From 1 January 2000 the EC and Tunisia will assess the situation with a view to determining the liberalisation measures to be applied from 1 January 2001.

18. For those items subject to reference quantities, would imports from Tunisia over the reference amount still be allowed to enter the EC at the MFN rate? If so, is it reasonable to equate the reference quantity with a TRQ with a zero tariff rate?

The answer to the first question is “yes”. The reference quantity should not be equated directly to a TRQ, as the management of reference quantities is more flexible than that of tariff quotas.

19. Would further liberalisation of trade in agriculture products take place within the 12 year maximum transition period of the Agreement?

Article 16 of the Agreement provides for a greater liberalisation of reciprocal trade in agricultural products. Examination of new liberalisation measures, pursuant to Article 18 of the Agreement, will be undertaken from 1 January 2000. New liberalisation measures should be applied from 1 January 2001.

20. Could the Parties please describe the items included in the Protocols and the measures being applied within them?

Protocol No 1 sets out the arrangements applying to imports of agricultural products into the EC. It concerns 125 tariff positions across 11 chapters of the nomenclature. The following table provides a summary of the products and the type of concession concerned.

Chapter Number	Products	Number of Tariff Positions	Distribution of Tariff Positions by Type of Concession
1	Live animals	2	zero customs duties
2	Meat	3	zero customs duties
6	Flowers	1	zero customs duties subject to tariff quota
7	Vegetables	25	21 positions with zero customs duties, 1 position with zero customs duties subject to tariff quota and 3 positions with duties below MFN rates
8	Fruits	17	7 positions with zero customs duties, 3 with zero customs duties subject to tariff quota and 7 with duties below MFN rates
9	Spices	5	zero customs duties
12	Oilseeds and oleaginous fruits	7	zero customs duties
15	Olive Oil	2	preferential rate below (-95%) MFN rates subject to tariff quota
20	Preparations of Vegetables, Fruit...	59	37 positions with zero customs duties, 3 positions with zero customs duties subject to tariff quota and 19 with duties below MFN rates
22	Wine	2	zero customs duties subject to tariff quota
23	Residues and Wastes from the food industries	2	1 position with zero customs duties and 1 position with duties below MFN rates
<u>Summary: Number of positions by type of concession</u> <ul style="list-style-type: none"> - 83 positions with zero customs duties - 10 positions with zero customs duties subject to tariff quota - 30 with duties below MFN rates - 2 with duties below MFN rates subject to tariff quota 			

These preferences cover 94 per cent of EC imports of agricultural products (as defined in Annex II of the EC Treaty) originating in Tunisia (based on average imports 1996-98).

Protocol No 2 sets out the arrangements applying to imports of fish and fisheries products into the EC. This provides that all imports are free of customs duties. Imports of canned sardines are subject to an annual duty free quota of 100 tonnes.

Protocol No 3 sets out the arrangements applying to imports into Tunisia for 39 items (at six-digit level). Imports of these products are subject to preferential customs duties within set tariff quotas.

21. The Standard Format (WT/REG69/2) indicates that for over 120 products, notably fruits and vegetables, customs duties have been eliminated or reduced and that these products are listed by HS lines in the Protocols. On how many lines have duties been eliminated and on how many have they been reduced? How many lines are subject to TRQs, etc?

The answer to this question is given in that to the proceeding question.

III. GENERAL PROVISIONS OF THE AGREEMENT

5. Relation with Other Trade Agreements

22. Is there any provision in the Agreement which prevents Tunisia from making concessions on a MFN basis?

The answer is no.

6. Provisions on Right of Establishment and Services

23. Do the Parties intend to establish an Economic Integration Agreement on Services?

Articles 31 and 32 of the Agreement indicate how the Parties intend to progress in the area of services. They agree to cover the area of services in the Agreement by simply reaffirming their obligations under the General Agreement on Trade in Services (GATS) at the entry into force. An assessment of how the objective of liberalisation in this area is being attained, and possible subsequent recommendations, are scheduled for no later than five years after entry into force of the Agreement. Pending the relevant discussions between the Parties, it is too early to anticipate how this will be taken forward.

IV. OTHER

We acknowledge that competition policy (Article 36) is not covered explicitly by the WTO rules. However, certain aspects of competition are captured by various WTO rules we therefore would be grateful for comments on the following questions:

- **What criteria are to be applied in assessing whether actions prevent, restrict or distort competition, or whether actions by dominant undertakings constitute an abuse of their position? Are these considerations subject to specific legally based processes?**

- **Can the Parties give assurances that implementation of Article 36 does not discriminate against the interests of non-parties to the Agreement (particularly given that it exempts agricultural and fishery products from the provisions stipulated in para. 1(c) of this Article?**

Article 36, paragraph 3, states: "The Association Council shall, within five years of the entry into force of this Agreement, adopt the necessary rules for the implementation of this Article."

Whatever provisions are adopted in this respect will take into account the relevant WTO disciplines.
