

Dir. gen. I. Gen. 1
No 3885
Date 28 FÉV 1974
MI

NOTE for the attention of the Directorate-General
for External Relations

Subject-Matter: Territorial application of the agreements signed by the Community with EFTA countries and certain Mediterranean countries.¹⁾

Reference : Note from D.G. I No. 341 of 31.1.1974

- I. The basic principle to be respected in the territorial application of Community agreements is that they should apply to the entity which is the European Economic Community. However, as the Treaty establishing this Community laid down certain provisions for particular territories within the Community, these differences are reflected in the Community's agreements with third countries. Until the Accession of the new Member States, this distinction in treatment was normally drawn between the European territory of the Member States and the French Overseas Departments. Now the special provisions contained in the Act of Accession for the Channel Islands, the Isle of Man, and Gibraltar, are also reflected in Community agreements with third countries.
- II. Territorial application of the agreements with the EFTA countries, Cyprus, Israel, Malta, Spain, Morocco, Tunisia, Turkey and Greece, as concerns the European territories forming part of the Community.

1) This is not an exhaustive study of all the provisions contained in the agreements, it is limited to the provisions relating to tariff concessions, quantitative restrictions, and, internal fiscal measures and practices.

- a) The territorial provision in the agreements with the EFTA countries (Finland, Austria, Portugal, Sweden, Switzerland, Norway, Iceland) is as follows: "This agreement shall apply, on the one hand, to the territories to which the Treaty establishing the European Economic Community applies upon the terms laid down in that Treaty and, on the other, to the territory of the (Republic of Austria, etc.)".
- b) The formula used in the agreement with Cyprus is the same as the above formula except that the words "upon the terms laid down in that Treaty" are omitted.
- c) As concerns the agreements with Israel, Malta, Spain, and Tunisia the formula used is as follows: "This agreement shall apply to the European territories where the Treaty establishing the European Economic Community applies, and to the (Kingdom of Morocco etc.)".
- d) In the agreements with Turkey and Greece, the Member States are enumerated. This required an amendment to the relevant article in the agreements (Article 29 of the association agreement with Turkey, Article 73 of the association agreement with Greece) upon the accession of the new Member States. Article 5 of the complementary Protocol signed with Turkey replaces Article 29 of the association agreement, stating that the agreement applies to the European territories of the Member States which are enumerated and to the European territories for whose external relations a Member State is responsible. No additional protocol has as yet been signed with Greece. Consequently, the trade concessions contained in the association agreement do not apply in relations between Greece and the new Member States.

Though the wording of all these formulae differs slightly, there is in fact no difference of substance (except as regards the

inclusion of the new Member States in the agreements with Greece and Turkey). All the above-mentioned agreements apply to the European territories where the Treaty establishing the European Economic Community applies, upon the terms laid down in that Treaty. The words "upon the terms laid down in that Treaty" should be understood in each case as the Community's acceptance of the agreements is subject to the provisions of the EEC Treaty.

Consequences:

A. All the provisions of the agreements apply to the European territories of the Member States (with the exception of the agreement with Greece as concerns the new Member States, until an additional protocol is signed). For the new Member States, certain transitional measures and adaptations to the agreements were necessary (Article 108 of the Act of Accession). Protocols, taking into account these necessary transitional measures and adaptations, have been concluded with Cyprus, Egypt and Morocco. Protocols signed with Tunisia and Turkey have not yet been ratified, however, an interim agreement with Turkey entered into force on 1 January 1974. Protocols signed with Spain and Israel expired on 31 December 1973. No protocol has as yet been signed with Malta or Greece.

B. Under Article 227.5(c) of the EEC Treaty, the Treaty applies to the Channel Islands and to the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty of Accession (Protocol 3 of the Act of Accession) ¹⁾.

Result:

(i) Provisions contained in the agreements, relating to tariff concessions and quantitative restrictions apply to the

1) Where transitional measures for the U.K. have been included in Protocols, these measures apply, where relevant, to the Channel Islands, Gibraltar and the Isle of Man.

Channel Islands and the Isle of Man. (Protocol 3, Article 1, Act of Accession).

- (ii) Provisions, contained in the agreements, relating to internal fiscal measures do not apply (this is not a field covered by Protocol 3).

C. Gibraltar is a European territory for whose external relations the United Kingdom is responsible, it thus forms part of the Community under Article 227 paragraph 4 of the EEC Treaty. ¹⁾ Under Article 28 of the Act of Accession special provisions were laid down for Gibraltar. Acts of the institutions of the Communities relating to agricultural products contained in Annex II of the EEC Treaty and the products subject, on importation into the Community, to specific rules as a result of the Common Agricultural Policy, do not apply to Gibraltar unless the Council, acting unanimously on a proposal from the Commission, provides otherwise.

Result:

In conformity with Article 28 of the Act of Accession, the concessions contained in the agreements do not apply to agricultural products in relations with Gibraltar. With this important exception, the provisions relating to tariff concessions, quantitative restrictions, and internal fiscal measures apply to Gibraltar.

D. The agreements do not apply to the Faroe Islands. Under Article 227 paragraph 5 subparagraph (a) of the EEC Treaty, the Treaty does not apply to these islands unless the Danish government so declares, by 31 December 1975 at the latest.

1) Gibraltar is not included in the customs territory of the Community (Regulation No. 1496/68, as amended by Annex I of the Act of Accession), nor does the common system of liberation of imports apply to Gibraltar which is placed in the same situation as third countries. (Council Regulation EEC 2748/72.)

E. The agreements do not apply to the sovereign base areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus. (Article 227 paragraph 5(b) of the EEC Treaty which excludes these areas from the application of the Treaty).

III. Application of the agreements to the French Overseas Departments

According to Article 227 paragraph 2 of the EEC Treaty, the general and particular provisions of the Treaty relating to the free movement of goods (including the rules relating to the CCT) and to agriculture, save for Article 40(4) are, with the other fields listed in paragraph 2, applicable to the French Overseas Departments from the date of entry into force of the Treaty. As a result, the rules concerning the CCT and external measures relating to agriculture which are decided in an autonomous manner are valid for the French Overseas Departments. It is logical to conclude that measures concerning customs duties and agricultural products contained in agreements based on Article 113 (or Article 238) of the EEC Treaty are applicable to the French Overseas Departments.¹⁾ The conditions under which the other provisions of the Treaty are to apply are determined by decision of the Council acting unanimously on a proposal from the Commission.

A. Under the formula used in the agreements with the EFTA countries and with Cyprus according to which the agreements apply where the EEC Treaty applies under the terms laid down in that Treaty (- under the terms laid down in that Treaty - to be understood in the case of Cyprus), the situation concerning the application of these agreements to the French Overseas Departments is as follows:

- a) Provisions, contained in the agreements, relating to customs duties and external measures relating to agriculture apply (Article 227 paragraph 2 EEC Treaty).

1) Legal Service note JUR/2605/70.

- b) Provisions, contained in the agreements, relating to quantitative restrictions apply (Article 277, paragraph 2, subparagraph 2 EEC Treaty; EEC Regulations 2603 and 2604/69; 109 and 110/70; 1023 and 1024/70; 1025 and 1026/70).
- c) Provisions, contained in the agreements, relating to internal fiscal practices and measures do not apply (no decision has been taken by the Council extending the application of Article 95 of the EEC Treaty to the French Overseas Departments).

If the Council extends the application of further provisions of the EEC Treaty to the French Overseas Departments, then the corresponding provisions in the agreements with the EFTA countries and with Cyprus automatically apply to the French Overseas Departments.

B. Agreements with Israel, Malta, Spain, Morocco, Tunisia, Egypt, Greece and Turkey.

Under the formula used in these agreements, only the provisions which correspond to the fields covered by Article 227, paragraph 2 of the EEC Treaty apply to the French Overseas Departments. By agreement between the contracting parties further provisions of the agreements may be extended to these departments. Thus, unlike the formula used in the agreements with the EFTA countries and with Cyprus, decisions, taken by the Council extending to the French Overseas Departments provisions of the EEC Treaty relating to areas not covered by Article 227 paragraph 2, do not automatically extend the application of corresponding provisions in these agreements to the French Overseas Departments.

Consequences:

- a) Provisions, contained in the agreements, relating to customs duties and external measures relating to agriculture apply to the French Overseas Departments. (Article 227 paragraph 2 of the EEC Treaty).

- b) Provisions, contained in the agreements, relating to internal fiscal measures, and quantitative restrictions do not apply in relations with the DOM, as they are not fields covered by Article 227 paragraph 2 of the EEC Treaty, unless the contracting parties decide to extend these provisions in the agreements to the French Overseas Departments.

IV. Situation as regards certain countries or territories

- a) The agreements do not apply in relations between third countries and the overseas countries and territories associated with the Community under part IV of the EEC Treaty. Under the EEC Treaty, the Community does not have any competence as regards the relations of these countries and territories with third countries.¹⁾

b) Monaco and St. Marino

The Principality of Monaco and the Republic of St. Marino are independent states. They do not form part of the territory of a Member State nor is a Member State responsible for their external relations. Consequently, Monaco and St. Marino do not form part of the Community either under Article 227 paragraph 1 or paragraph 4 of the EEC Treaty, and so Community agreements do not in law apply to these two countries²⁾.

c) Vatican

It should be noted that the Vatican is an independent state and does not form part of the Community under Article 227 EEC

1) Legal Service note JUR/2605/70.

2) Legal Service note JUR/1015/72. As Monaco and St. Marino are considered as forming part of the customs territory of the Community under Regulation 1496/68 (OJ No. L 238/1, 28 September 1968), the CCT is applied to imports into these two countries. As a result, goods imported into Monaco and St. Marino will de facto benefit from any tariff concessions granted by the Community in agreements with third countries.

Treaty. Consequently, Community agreements do not apply to the Vatican. 1)

d) Andorra

Co-sovereignty is exercised over Andorra by the French Head of State and by the bishop of the Spanish town of Urgel. This co-sovereignty excludes the application of the EEC Treaty to Andorra. Consequently, Community agreements do not apply to Andorra. 1)

Conclusions:

For future agreements, the most satisfactory formula as regards the territorial application of the agreement, seems to be the following: "The agreement shall apply, on the one hand, to the territories to which the Treaty establishing the European Economic Community applies upon the terms laid down in that Treaty and, on the other to the territory of ...". This formula is already contained in the agreements with the EFTA countries. The advantage of this formula is that it covers all the territories of the Community, including Channel Islands, Isle of Man, Gibraltar, the French Overseas Departments, and furthermore, it states clearly that the agreement applies upon the terms laid down in the EEC Treaty thus reflecting clearly the special rules which have been laid down for these "special territories".

J. GROUX

F.-W. ALBRECHT

1) The Vatican (Andorra) is not considered as forming part of the customs territory of the Community. Consequently, Community agreements do not apply in law or in fact to the Vatican (Andorra).